

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Legal Practitioners (Amendment) Bill 1994

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**SCHEDULE
AMENDMENTS OF ACTS**

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Legal Practitioners (Amendment) Bill 1994

**A BILL
FOR**

An Act to amend the *Legal Practitioners Act 1970*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 1. This Act may be cited as the *Legal Practitioners (Amendment) Act 1994*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

- 10 3. In this Act, "Principal Act" means the *Legal Practitioners Act 1970*.¹

Interpretation

4. Section 3 of the Principal Act is amended—

- (a) by omitting "89" from the definition of "trust moneys" and substituting "87";
- (b) by omitting the definition of "relevant administrative unit"; and
- (c) by inserting the following definition:

5 “ ‘controlled moneys’ means moneys (other than trust moneys) or valuable securities of a client to which a solicitor has access, or over which the solicitor has direct or indirect control, in the course of, or in connection with, his or her practice;”.

10 **Issue**

5. Section 23 of the Principal Act is amended by inserting "24A, 24B," after "24,".

Substitution

15 6. Section 24 of the Principal Act is repealed and the following sections are substituted:

Limitations on issue of unrestricted practising certificates

20 "24. The Law Society shall not issue an unrestricted practising certificate to a barrister and solicitor unless, during the period of 5 years immediately preceding the date of the application for a practising certificate—

(a) the barrister and solicitor has, for a period of not less than 2 years or for periods which, in the aggregate, are not less than 2 years—

- (i) been employed in a State or Territory under articles of clerkship;
- 25 (ii) been performing work of a legal nature as an employee of a solicitor in a State or Territory;
- (iii) been performing work of a legal nature as—
 - (A) a public employee in the Attorney-General's Department;
 - 30 (B) a public employee in the Legal Aid Commission (A.C.T.);
 - (C) a public employee in the Office of the Director of Public Prosecutions;
 - 35 (D) an officer or employee in the Attorney-General's Department of the Commonwealth; or

- (E) an officer or employee in the Office of the Director of Public Prosecutions of the Commonwealth;
- 5 (iv) practised in a State or Territory as a solicitor, either on his or her own account or in partnership with another person; or
- (v) been employed or practised, as the case may be, in any 2 or more of the capacities referred to in subparagraphs (i), (ii), (iii) and (iv); or
- 10 (b) in addition to completing a course of legal education of the kind referred to in subparagraph 11 (2) (b) (i) or (ii), the barrister and solicitor has served or practised for a period of not less than 12 months, or for periods which, in the aggregate, are not less than 12 months, in any 1 or more of the capacities referred to in paragraph (a).

15 **Issue at discretion of Law Society**

"24A. (1) Notwithstanding section 24, the Law Society may issue an unrestricted practising certificate to a barrister and solicitor if it is satisfied that the barrister and solicitor has—

- 20 (a) during the period of 5 years immediately preceding the date of the application for a practising certificate—
- (i) practised in a State or Territory as a barrister for a period of not less than 2 years;
- 25 (ii) practised in a State or Territory as a barrister for a period of not less than 1 year and served or practised, as the case may be, in any 1 or more of the capacities referred to in paragraph 24 (a) for a period of not less than 1 year or for periods which, in the aggregate, are not less than 1 year; or
- 30 (iii) after completing a course of legal education referred to in paragraph 24 (b) practised in a State or Territory as a barrister for a period of not less than 1 year; and
- (b) gained such experience that an unrestricted practising certificate should be issued to him or her.

35 "(2) Notwithstanding section 24, the Law Society may issue an unrestricted practising certificate to a barrister and solicitor who has previously held a practising certificate in the Territory if the Society is satisfied that the barrister and solicitor has gained such experience that an unrestricted practising certificate should be issued to him or her.

Issue to certain New Zealand legal practitioners

"24B. Notwithstanding section 24, the Law Society may issue an unrestricted practising certificate to a barrister and solicitor if it is satisfied that the barrister and solicitor has—

- 5 (a) during the period of 10 years immediately preceding the date of the application for a practising certificate, for a period of not less than 5 years or for periods which, in the aggregate, are not less than 5 years, practised or been employed as a legal practitioner (however described) in New Zealand;
- 10 (b) during the period of 5 years immediately preceding the date of the application for a practising certificate, been employed by a barrister and solicitor in the Territory for a continuous period of not less than 6 months; and
- 15 (c) gained such experience that an unrestricted practising certificate should be issued to him or her."

Power of the Court to direct issue or to revoke cancellation or suspension

7. Section 29 of the Principal Act is amended by omitting from paragraph (3) (b) "section 24" and substituting "sections 24, 24A and 24B".

Costs

- 20 8. Section 61 of the Principal Act is amended by omitting from subsection (3) "or the employee in respect of whom the direction under subsection 59 (1) was given" and substituting "the employee in respect of whom the direction under subsection 59 (1) was given or the solicitor who employed the employee".
- 25

Disciplinary powers of Supreme Court

9. Section 67 of the Principal Act is amended by adding at the end of subsection (1) the following paragraph:

- 30 "(d) where the barrister and solicitor is practising solely as a barrister—reprimand him or her."

Appeals to Supreme Court

- 10. Section 81 of the Principal Act is amended by omitting subsection (5).

Relocation

- 35 11. Sections 89, 87 and 88 of the Principal Act are relocated so that they appear in that sequence after section 86 of the Principal Act as amended by this Act and are renumbered as sections 87, 88 and 89 respectively.

Insertion

12. After section 87 of the Principal Act as relocated by this Act the following section is inserted:

Controlled moneys

- 5 "87A. A reference in sections 98, 99, 100, 101, 103, 104, 105, 106, 107, 110 and 148 to trust moneys shall be read as including a reference to controlled moneys."

Heading to Division 2, Part XI

- 10 13. The heading to Division 2 of Part XI of the Principal Act is omitted.

Payments from trust bank accounts

14. Section 94 of the Principal Act is amended by omitting from subsection (2) "89" and substituting "87".

Late report by auditor

- 15 15. Section 106 of the Principal Act is amended—
- (a) by omitting from paragraph (1) (g) "moneys within the meaning of section 89—that there is in a bank" and substituting "moneys—that there is standing"; and
- 20 (b) by omitting paragraph (1) (h) and substituting the following paragraph:
- "(h) where the solicitor does not hold any trust moneys—that fact."

Interpretation

- 25 16. Section 136 of the Principal Act is amended by omitting "costs involved" and substituting "reasonable costs incurred" from paragraph (b) of the definition of "pecuniary loss".

Determination of applications

17. Section 141 of the Principal Act is amended by omitting subsections (5) and (6).

30 **Repeal**

18. Section 142 of the Principal Act is repealed.

Payment of compensation

19. Section 143 of the Principal Act is amended by omitting subsections (3) and (4) and substituting the following subsections:

“(3) Where the aggregate of the amounts the Law Society would, but for this subsection, be required by subsection (1) to pay to applicants for compensation in respect of failures to account by the same solicitor exceeds the amount available under subsection (2), the Law Society shall—

- 5 (a) divide the amount available under subsection (2) amongst those applicants in proportion to the amounts payable to those applicants; and
- (b) subject to any limitations imposed by this Act, finally satisfy those amounts from future accumulations of the Fidelity Fund.

10 “(4) Where, at any time, the amount of the Fidelity Fund is insufficient for the payment of all amounts that the Law Society would, but for this subsection, be required to pay, the Law Society shall—

- (a) divide the amount in the Fidelity Fund amongst the persons to whom it would be required to pay those amounts in proportion to those amounts; and
- 15 (b) subject to any limitations imposed by this Act, finally satisfy those amounts from future accumulations of the Fidelity Fund.

“(5) The Fidelity Fund is the only property of the Law Society available for payment of compensation to an applicant under this Part.”.

20 **Insertion**

 20. After section 146 of the Principal Act the following sections are inserted in Division 2 of Part XII:

Review by Tribunal

25 “146A. Application may be made to the Administrative Appeals Tribunal for review of a decision or determination, as the case may be, of the Law Society—

- (a) under subsection 139 (1) to refuse to allow further time within which an application for compensation under this Part may be accepted;
- 30 (b) under subsection 139 (2), where a notice is published under section 138, to refuse to allow further time within which an application for compensation under this Part may be accepted;
- (c) under paragraph 141 (1) (a) as to the amount of pecuniary loss in respect of which compensation may be paid to an applicant under this Part;
- 35

- (d) under paragraph 141 (1) (b) that there is no pecuniary loss in respect of which compensation may be paid to an applicant under this Part;
- 5 (e) under subsection 145 (3) to refuse to pay compensation out of the Fidelity Fund to a solicitor;
- (f) under subsection 145 (3) as to the amount of compensation paid out of the Fidelity Fund to a solicitor;
- (g) under subsection 146 (1) to refuse to make an interim payment of compensation to an applicant under this Part; or
- 10 (h) under subsection 146 (1) as to the amount of an interim payment of compensation paid to an applicant under this Part.

Notification of decisions

"146B. (1) The Law Society shall cause notice of the decision to be given to the applicant concerned.

- 15 "(2) Before the prescribed date, a notice referred to in subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- 20

- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are effected by the decision may request a statement pursuant to section 26 of that Act.

- 25 "(3) The validity of a decision referred to in subsection (1) shall not be taken to have been effected by a failure to comply with subsection (2).

"(4) On or after the prescribed date, a notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

- 30 "(5) In this section—

'prescribed date' means the day on which section 9 of the *Administrative Appeals Tribunal (Amendment) Act (No. 2) 1994* commences."

Interpretation

- 35 21. Section 148 of the Principal Act is amended—

- (a) by omitting from the definition of "solicitor" in subsection (1) "barrister and solicitor referred to in section 88" and substituting "solicitor referred to in section 89";
- (b) by adding at the end of paragraph (3) (a) "and";
- 5 (c) by omitting paragraph (3) (b); and
- (d) by omitting from paragraph (3) (c) ", securities".

Interpretation

22. Section 166 of the Principal Act is amended by omitting "barrister and solicitor referred to in section 88" from the definition of "solicitor" and substituting "solicitor referred to in section 89".

Termination of managership—reversion of moneys

23. Section 176 of the Principal Act is amended by inserting "or controlled moneys" after "trust moneys".

Interpretation

24. Section 177 of the Principal Act is amended by inserting the following definition:

" 'itemised statement', in relation to a solicitor's costs and disbursements, means a statement—

- (a) showing each item of costs or disbursements claimed by the solicitor; and
 - (b) signed by—
 - (i) the solicitor; or
 - (ii) another solicitor who is—
 - (A) a partner of;
 - (B) the employer of; or
 - (C) employed by;
- the first-mentioned solicitor."

No action by solicitor for costs until detailed statement delivered

25. Section 178 of the Principal Act is amended by omitting from subsection (1) "disbursement" and substituting "disbursements".

Right to request statement

26. Section 179 of the Principal Act is amended—

(a) by omitting from subsection (1) “A” and substituting “Subject to subsection (1A), a”;

5 (b) by inserting after subsection (1) the following subsection:

“(1A) A request under subsection (1) shall be made—

(a) in the case of a person who has not paid a solicitor’s costs or disbursements—within 3 months after receiving a written account of those costs or disbursements;

10 (b) in the case of a person who has paid a solicitor’s costs or disbursements—within 3 months after paying those costs or disbursements; or

(c) within such further time as the Registrar allows.”; and

15 (c) by inserting in paragraph (3) (b) “or within such further time as the Registrar allows” after “request”.

Preparation of probate etc. papers

27. Section 194 of the Principal Act is amended by omitting paragraph (2) (c) and substituting the following paragraph:

20 “(c) a public employee in the Attorney-General’s Department acting in the course of his or her employment; or”.

Unclaimed moneys

28. Section 200 of the Principal Act is amended by adding at the end the following subsection:

25 “(5) In this section a reference to trust moneys shall be read as including a reference to controlled moneys.”.

Application—section 9

29. Section 9 of this Act shall be deemed to have commenced on 24 December 1993.

Application—new section 146A

30 30. Section 146A of the Principal Act as amended by this Act applies in relation to decisions made on or after the commencement of this Act.

Further amendments

31. The Acts specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

Section 31

AMENDMENTS OF ACTS***Agents Act 1968*****Paragraph 9 (1) (b)—**

- 5 Omit “13”, substitute “20H”.

Legal Aid Act 1977**Subsection 5 (1) (definition of “Statutory Interest Account”)—**

Omit “74A (2)”, substitute “128 (2)”.

Subsections 9 (7) and (8)—

- 10 Omit “VII”, substitute “XI”.

Subsection 22 (5)—

Omit “13”, substitute “20H”.

Subsection 22 (11)—

Omit “V”, substitute “VIII”.

- 15 **Section 69—**

Omit “VI, VIII, IX or X”, substitute “IX, XII, XIII or XV”.

Paragraph 92AA (c)—

Omit “32”, substitute “54”.

Magistrates Court (Civil Jurisdiction) Act 1982

- 20 **Subsection 251 (5)—**

Omit “120 and 121”, substitute “190 and 191”.

Notaries Public Act 1984**Subsection 4 (2)—**

Omit “15K”, substitute “30”.

NOTE

1. Reprinted as at 31 December 1993. See also Act No. 38, 1994.

NOTE ABOUT SECTION HEADING

On the day on which the Principal Act is amended by this Act, in addition to any alteration of section headings indicated in the text of the Act, the heading to the following section is altered as set out below:

Section	Alteration
88	Omit "Division", substitute "Part".

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