

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Legal Practitioners (Amendment) Bill
(No. 3) 1991**

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**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 (No. 3) 1991*.

Principal Act

2. In this Act, "Principal Act" means the *Legal Practitioners Act 1970*.¹

Interpretation

- 10 3. Section 5 of the Principal Act is amended—
 (a) by omitting "Barristers and Solicitors" from the definition of "the Disciplinary Committee"; and

(b) by inserting the following definition:

“ ‘Statutory Interest Account’ means an account opened and maintained in accordance with subsection 74A (2);”.

Incorporation of Law Society

5 4. Section 6 of the Principal Act is amended—

(a) by omitting subsection (4); and

(b) by omitting from subsection (9) “at any time after the thirtieth day of June, 1972, unless his” and substituting “unless his or her”.

Precedence of barristers and solicitors

10 5. Section 6B of the Principal Act is amended—

(a) by inserting in subsection (2) “or her” after “his”; and

(b) by inserting in subsections (2) and (3) “or another Territory” after “State” (wherever occurring).

Barristers and Solicitors Admission Board

15 6. Section 7 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

“(5) The Registrar, or a person nominated for the purpose by the Registrar, shall be the Secretary to the Admission Board.”.

Vacation of the office of members of Admission Board

20 7. Section 8 of the Principal Act is amended by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors;”.

25

Limitations on issue of unrestricted practising certificates

8. Section 15E of the Principal Act is amended by inserting in subparagraph (1) (a) (iii) “of the Commonwealth” after “Department”.

Effect of bankruptcy on unrestricted practising certificate

30 9. Section 15H of the Principal Act is amended by inserting in subsection (1) “applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors,” after “bankrupt,”.

Substitution

10. Section 25A of the Principal Act is repealed and the following section substituted:

Remuneration and allowances

5 "25A. (1) A member of the Disciplinary Committee shall be paid such remuneration and allowances as are determined in writing by the Attorney-General.

"(2) Subsection (1) does not apply—

- 10 (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the member; or
- (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the member.

15 "(3) Payments under this section shall be made by the Law Society out of moneys standing to the credit of a Statutory Interest Account.

"(4) An instrument referred to in subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

"(5) In subsection (2)—

20 'determination' means a determination of the Remuneration Tribunal of the Commonwealth."

Secretary to Disciplinary Committee

11. Section 26 of the Principal Act is amended by adding at the end the following subsection:

25 "(2) If the Secretary—

- (a) is a barrister and solicitor; and
- (b) is not employed by the Law Society;

the Secretary is entitled to be paid as if he or she is a member of the Disciplinary Committee."

30 **Inquiry by Disciplinary Committee**

12. Section 30 of the Principal Act is amended by omitting from subsection (3B) "\$500" and substituting "\$1,000".

Disciplinary Committee may summon witnesses etc.

13. Section 32 of the Principal Act is amended by omitting the penalty

at the foot of subsection (2) and substituting the following penalty:

"Penalty: \$5,000 or imprisonment for 6 months, or both."

Refusal to be sworn or give evidence

14. Section 35 of the Principal Act is amended—

- 5 (a) by inserting in subsection (1) " , without reasonable excuse," after "shall not"; and
- (b) by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

"Penalty: \$5,000 or imprisonment for 6 months, or both."

10 **Protection of member of Disciplinary Committee etc.**

15. Section 38 of the Principal Act is amended—

- (a) by inserting in subsection (1) " , or the Secretary to," after "member of"; and
- 15 (b) by omitting from subsection (1) "the duties of a member" and substituting "his or her duties".

Fees and allowances to witnesses

16. Section 39 of the Principal Act is amended by omitting from subsection (1) all the words after "travelling expenses" and substituting "as the person would be entitled to receive if he or she was appearing as a witness before the Supreme Court."
- 20

Repeal

17. Section 42K of the Principal Act is repealed.

Furnishing of information

18. Section 42M is amended—

- 25 (a) by inserting in subsection (2) " , without reasonable excuse," after "shall not"; and
- (b) by omitting "\$250" and substituting "\$5,000 or imprisonment for 6 months, or both".

Interpretation

30 19. Section 42O of the Principal Act is amended—

- (a) by omitting the definition of "company" and substituting the following definition:
- " 'company' means the company managing the Indemnity Fund;"

(b) by adding "1898 of the State of New South Wales, as continued in force by the Legal Profession Act" at the end of the definition of "Indemnity Fund"; and

(c) by omitting the definition of "Legal Practitioners Act" and substituting the following definition:

" 'Legal Profession Act' means the Legal Profession Act 1987 of the State of New South Wales;".

Unrestricted practising certificates—restrictions on issue

20. Section 42P of the Principal Act is amended—

(a) by omitting "74G" and "74J" and substituting "45" and "48" respectively; and

(b) by omitting "Practitioners" and substituting "Profession".

Failure to pay levy

21. Section 42Q of the Principal Act is amended—

(a) by omitting from paragraph (5) (a) "Part IXA", "Practitioners" and "74H" and substituting "Division 2 of Part III", "Profession" and "46" respectively; and

(b) by omitting from paragraph (5) (b) "74J (d)" and substituting "48 (d)".

Audit of trust accounts

22. Section 58 of the Principal Act is amended—

(a) by omitting the penalty at the foot of subsection (1A);

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

"(1AA) A solicitor shall not, without reasonable excuse, fail to comply with subsection (1) or (1A).

Penalty: \$5,000 or imprisonment for 6 months, or both."; and

(c) by omitting the penalty at the foot of subsection (1B) and substituting the following penalty:

"Penalty: \$2,000.".

Interim auditors' report

23. Section 62 of the Principal Act is amended—

(a) by omitting the penalty at the foot of subsection (1); and

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

“(1A) An auditor shall not, without reasonable excuse, fail to comply with subsection (1).

Penalty: \$5,000 or imprisonment for 6 months, or both.”.

Secrecy

5 24. Section 65 of the Principal Act is amended—

- (a) by inserting in subsections (1) and (2) “, without reasonable excuse,” after “shall not” (wherever occurring); and
- (b) by omitting the penalty at the foot of the section and substituting the following penalty:

10 “Penalty: \$5,000 or imprisonment for 6 months, or both.”.

Production of books etc.

25. Section 67 of the Principal Act is amended—

- (a) by inserting in subsections (1A) and (3) “not, without reasonable excuse, fail to” after “shall”;
- 15 (b) by omitting the penalty at the foot of subsection (1A); and
- (c) by omitting the penalty at the foot of the section and substituting the following penalty:

“Penalty: \$5,000 or imprisonment for 6 months, or both.”.

Secrecy

20 26. Section 68 of the Principal Act is amended—

- (a) by inserting in subsection (2) “, without reasonable excuse,” after “shall not”; and
- (b) by omitting the penalty at the foot of the section and substituting the following penalty:

25 “Penalty: \$5,000 or imprisonment for 6 months, or both.”.

Statutory Interest Account

27. Section 74A of the Principal Act is amended—

- (a) by omitting from subsection (3) “the account maintained in accordance with the last preceding sub-section” and substituting “a Statutory Interest Account”; and
- 30 (b) by omitting from subsection (4) “the account maintained in accordance with sub-section (2) of this section” and substituting “a Statutory Interest Account”.

Arrangement relating to trust bank account

28. Section 74B of the Principal Act is amended by omitting from subsection (2) "an account referred to in sub-section 74A (2)" and substituting "a Statutory Interest Account".

5 **Audit of deposits etc.**

29. Section 74C of the Principal Act is amended by omitting from paragraph (1) (c) "an account referred to in sub-section 74A (2)" and substituting "a Statutory Interest Account".

Interpretation

10 30. Section 75 of the Principal Act is amended by omitting subsection (2).

Fidelity Fund

15 31. Section 76 of the Principal Act is amended by omitting from paragraph (1) (c) "an account maintained in accordance with sub-section (2) of section 74A of this Act" and substituting "a Statutory Interest Account".

Interpretation

32. (1) Section 79A of the Principal Act is amended—

(a) by omitting from subsection (1) the definition of "failure to account" and substituting the following definition:

20 " 'failure to account' means a failure by a solicitor to account for, pay or deliver money or other valuable property received by or entrusted to the solicitor or an employee or partner of the solicitor in the course of the solicitor's or partnership's practice, being a failure that arose from a
25 dishonest act or omission of the solicitor, an employee or partner;"; and

(b) by omitting subsection (2).

30 (2) Division 2 of Part VIII of the Principal Act as amended by this Act applies in relation to a failure to account within the meaning of that Division occurring before or after the commencement of this Act.

Time for making applications

33. Section 82 of the Principal Act is amended by inserting in subsection (2) "reason of a failure to account by" after "notice by".

Appointment of receiver

- 5 34. Section 93 of the Principal Act is amended by omitting from paragraph (1) (a) "defalcation of trust moneys of a solicitor or of" and "been committed" (first occurring) and substituting "failure to account (within the meaning of Division 2 of Part VIII) by a solicitor or" and "occurred" respectively.

Secrecy

35. Section 94 of the Principal Act is amended—

- 10 (a) by omitting from subsection (3) "lawful" and substituting "reasonable"; and
(b) by omitting the penalty at the foot of the section and substituting the following penalty:

"Penalty: \$5,000 or imprisonment for 6 months, or both."

Destroying or concealing records

15 36. Section 107 of the Principal Act is amended—

- (a) by inserting " , without reasonable excuse," after "shall not"; and
(b) by omitting the penalty at the foot of the section and substituting the following penalty:

"Penalty: \$5,000 or imprisonment for 6 months, or both."

20 **Holding out as qualified**

37. Section 122 of the Principal Act is amended by omitting the penalty at the foot of the section and substituting the following penalty:

"Penalty: \$5,000."

Preparation of documents

25 38. Section 123 of the Principal Act is amended by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

"Penalty: \$5,000."

Preparation of probate etc. papers

30 39. Section 124 of the Principal Act is amended by omitting the penalty at the foot of subsection (1) and substituting the following penalty:

"Penalty: \$5,000."

Offences by corporations

40. Section 125 of the Principal Act is amended—

- (a) by omitting from subsection (1) "one of the last three preceding sections" and substituting "section 122, 123 or 124"; and
- (b) by omitting from subsection (1) "\$2,000" and substituting "\$25,000".

Repeal

41. Part XII of the Principal Act is repealed.

Corporations Law

42. Each of the following provisions of the Principal Act is amended by omitting "*Companies Act 1981 of the Commonwealth*" and substituting "*Corporations Law*":

Paragraph 59 (1) (a), subparagraph 59 (2) (a) (ii) and subsections 61 (2A), 62 (2), 66 (2), 74C (1) and 78 (1).

NOTE

- 1. Ordinance No. 43, 1970 as amended to date. For previous amendments see Note 1 to Act No. 37, 1991 and see also Acts Nos. 37 and 60, 1991.