

1997

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LEGAL PRACTITIONERS (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

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**GARY HUMPHRIES MLA
ATTORNEY-GENERAL**

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OUTLINE

The *Legal Practitioners Act 1970* ("the Act") provides for the regulation of the legal profession.

The Standing Committee of Attorneys-General agreed to model legislation which would permit lawyers from a participating Australian jurisdiction to practise law in another participating jurisdiction without having to be admitted to practice or obtain a practising certificate in that other jurisdiction.

The model legislation, in essence, places lawyers from participating jurisdictions on the same regulatory footing as local lawyers as regards such matters as indemnity insurance, trust accounts and discipline. Disciplinary action may be referred back to the lawyer's home jurisdiction. An important element of the model legislation is that an interstate practitioner will be subject to any condition or restriction imposed in his or her home jurisdiction thereby limiting the extent of that person's practise in another jurisdiction to what the lawyer is authorised to do in his or her home jurisdiction.

The legal profession in the Territory is a fused profession in that practitioners are admitted by the Supreme Court as barristers and solicitors with practitioners choosing to practise as barristers, as solicitors or as both. Solicitors are regulated by the Law Society which is constituted by the Act. However, the Act does not establish a regulatory system for barristers who, unlike solicitors, are not required to hold practising certificates. Both barristers and solicitors are subject to the inherent jurisdiction of the Supreme Court.

The Act will apply generally to an interstate legal practitioner practising as a solicitor because key provisions of the Act, for example, the requirement to comply with trust monies obligations, applies to a barrister and solicitor who practises as a solicitor or as a barrister and solicitor, see section 86. Accordingly, no special provision needs to be made for these Parts of the Act to apply to interstate practitioners who practise as a solicitor or as a barrister and solicitor.

The implementation of the model Bill is, at this stage, primarily relates to solicitors. However, new sections 191C and 191D will enable a barrister from a participating jurisdiction to practise in the Territory without the need to be admitted to practice.

FINANCIAL CONSIDERATIONS

The Bill has no financial implications.

DETAILS OF INDIVIDUAL CLAUSES

FORMAL PROVISIONS

Clause 1 provides for the citation of the Bill as the Legal Practitioners (Amendment) Act 1997 and **clause 3** defines the term "Principal Act" to mean the *Legal Practitioners Act 1970*.

COMMENCEMENT

Subclause 2(1) provides for sections 1 and 2 to commence when the amending Act is notified in the *Gazette*. **Subclause 2(2)** provides for the remaining provisions to commence on 1 July 1997.

GENERAL PROVISIONS

Clauses 4 and 5 effect amendments which are required as a result of an interstate practitioner not being required to be admitted to practice by the Supreme Court. Such a person is taken to be a barrister and solicitor within the meaning of the Principal Act. **Clause 4** also inserts a new definition of "practising certificate" which refers to both an unrestricted practising certificate or a restricted practising certificate issued by the Law Society under the Principal Act.

CERTAIN PRACTITIONERS TO HOLD PRACTISING CERTIFICATES

Clause 6 provides for an interstate legal practitioner who practises as a solicitor to be able to be employed by another solicitor in the Territory and for the interstate practitioner to be able to recover costs notwithstanding that that solicitor does not hold a current unrestricted practising certificate issued by the ACT Law Society.

INTERPRETATION

Clause 7 amends the definition of "professional misconduct" contained in paragraph 37(c) of the Principal Act in order to include references to new subsections 191D(3), 191E(3) or 191M(2). These new provisions are described below.

PART XVA - INTERSTATE LEGAL PRACTITIONERS

Clause 8 inserts a new Part XVA which sets out the requirements applicable to interstate legal practitioners who wish to practise in the Territory.

Interpretation

New section 191A contains new definitions relating to interstate legal practice.

The key element of the definition of "interstate legal practitioner" is that the person must be from a participating State (which includes another Territory). A participating jurisdiction must have a law which substantially corresponds to the new Part XVA

The primary application of the amendments to solicitors is reflected in the definition of "local legal practitioner" as referring to a person who holds a practising certificate issued by the Law Society or who is otherwise entitled to practise as a solicitor in the

Territory “**Regulatory authority**”, in respect of the Territory, is defined as being the Supreme Court, the Law Society and the Professional Conduct Board of the Law Society.

New section 191B provides that an interstate legal practitioner establishes an office in the Territory when the practitioner offers and provides legal services to the public from an office maintained by the practitioner or the practitioner’s employer or a partner of the practitioner.

Status of interstate practitioners

New section 191C provides that an interstate legal practitioner shall be taken to be a person whose name has been entered on the Roll of Barristers and Solicitors and to have signed the Roll. This new provision thus ensures that an interstate practitioner will be subject to the supervisory jurisdiction of the Supreme Court.

Interstate practitioners may practice in this jurisdiction

New subsection 191D(1) empowers an interstate practitioner to practise law in the ACT, subject to the Principal Act, to the extent that that person is permitted to do so in his or her home jurisdiction.

New subsection 191D(2) provides that an interstate practitioner must comply with the Principal Act and any regulations and any rules of practice applicable to local practitioners engaged in the same type of legal practice. Such a practitioner remains subject to any condition, limitation, restriction or prohibition imposed on that person by the Supreme Court, the Law Society or the Professional Conduct Board or by a regulatory authority in another jurisdiction.

Under subsection 191D(3) an interstate practitioner who contravenes subsection 191D(2) is guilty of professional misconduct.

Subsection 191D(4) equates the position of a local and an interstate practitioner by prohibiting the Supreme Court, the Law Society or the Professional Conduct Board from imposing a condition, limitation, restriction or prohibition on an interstate practitioner that is more onerous than it would impose on a local practitioner in the same or similar circumstances.

Notification of establishment of office

New subsection 191E(1) requires an interstate legal practitioner who practises as a solicitor or as a barrister and solicitor and who has established an office in the Territory to give written notice to the Law Society within 28 days after establishing the office.

New subsection 191E(2) specifies the information which must be included in the notice.

New subsection 191E(3) provides that a person who contravenes subsection 191E(1) is guilty of professional misconduct.

Professional indemnity insurance requirements

New subsection 191F(1) applies the section to an interstate legal practitioner who establishes an office in the Territory and who, if he or she were a local practitioner,

would be required under the Principal Act to have professional indemnity insurance or contribute to the Solicitors' Mutual Indemnity Fund.

New subsection 191F(2) prohibits an interstate legal practitioner from practising as a solicitor or as a barrister and solicitor unless that person has appropriate indemnity insurance or contributes to the Indemnity Fund.

New subsection 191F(3) provides that a practitioner has appropriate indemnity insurance if that person has, in respect of the Territory, the same or a higher level of insurance in respect of that person's practice in the Territory and the terms of which are broadly equivalent to a policy of insurance approved by the Law Society under section 78 of the Principal Act

New subsection 191F(4) defines terms relating to the Solicitors' Mutual Indemnity Fund.

Fidelity Fund contributions

New section 191G provides that an interstate legal practitioner who practices as a solicitor or as a barrister and solicitor and who has established an office in the Territory must pay the equivalent Fidelity Fund contribution to that of a local practitioner.

Clients' disputes with interstate practitioners

New section 191H provides for disputes, complaints, inquiries and disciplinary action in respect of an interstate legal practitioner practising as a solicitor or as a barrister and solicitor may be dealt with under the discipline provisions contained in Part VIII of the Principal Act.

Clients' disputes with local practitioners

New section 191I complements new section 191H by providing that a dispute, complaint and inquiry in respect of a local legal practitioner's practice in a participating jurisdiction may be dealt with under the discipline provisions contained in Part VIII of the Principal Act.

Referral of disputes and disciplinary matters to interstate regulatory authorities

New subsection 191J(1) defines a legal practitioner for the purposes of this section to be a legal practitioner practising as a solicitor or as a barrister and solicitor.

New subsections 191J (2) and (3) empower the Law Society to refer a dispute lodged with it or a complaint made to it in relation to a legal practitioner to a regulatory authority in a participating jurisdiction to be dealt with under the law of that jurisdiction.

New subsection 191J(4) empowers the Law Society to request a regulatory authority in a participating jurisdiction to investigate the conduct of a practitioner under the law of that jurisdiction.

New subsection 191J(5) prohibits the Law Society from further dealing with a matter referred under subsections (2) or (3) or which is the subject of a request under subsection (4) except to comply with new section 191M unless the interstate regulatory authority declines to deal with the matter.

Matters referred by interstate regulatory authorities

New subsection 191K(1) defines a legal practitioner for the purposes of this section to be a legal practitioner practising as a solicitor or as a barrister and solicitor.

New subsections 191K(2) and (3) empower the Law Society to resolve a dispute and to investigate a complaint between a person and a legal practitioner referred to the Society by an regulatory authority in a participating jurisdiction whether or not the subject matter of the dispute or complaint arose in or beyond the Territory.

New subsection 191K(4) empowers the Law Society to investigate the conduct of a legal practitioner where a regulatory authority from a participating jurisdiction requests the Law Society to do so. The Law Society may investigate the conduct whether or not the conduct occurred in or beyond the Territory.

Furnishing Information by Law Society

New subsection 191L(1) requires the Supreme Court, the Law Society and the Professional Conduct Board to furnish to a regulatory authority in a participating jurisdiction information reasonably required about a legal practitioner in connection with actual or possible disciplinary action against that person.

New subsection 191L(2) provides that the information may be provided notwithstanding any Territory law relating to secrecy or confidentiality.

New subsection 191L(3) makes it clear that nothing in the section affects any obligation or power to provide information apart from the section.

New subsection 191L(4) obliges the Supreme Court, the Law Society and the Professional Conduct Board to notify the appropriate regulatory authority in a participating jurisdiction of any condition, restriction, limitation or prohibition imposed on a practitioner in respect of that person's legal practise as a result of disciplinary action against that person.

Local practitioners subject to interstate regulatory authorities

New subsection 191M(1) stipulates that a local legal practitioner, in engaging in legal practise in the Territory, must comply with any condition, restriction, limitation or prohibition imposed on a practitioner by a regulatory authority as a result of disciplinary action against that person in a participating jurisdiction in respect of that person's legal practise.

New subsection 191M(2) provides that a local practitioner who contravenes subsection 191M(1) is guilty of professional misconduct.

New subsection 191M(3) provides that a regulatory authority in a participating jurisdiction which has jurisdiction to suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or imposition of further conditions on a practising certificate issued to an interstate practitioner in that jurisdiction and to which a local practitioner is subject, may similarly treat a local practitioner's practising certificate.

New subsection 191M(4) obliges the Law Society to comply with an order made under the preceding subsection.

New subsection 191M(5) empowers a regulatory authority in a participating jurisdiction that has power to order the removal of a person's name from the roll of practitioners in that jurisdiction to order the removal of a local practitioner's name from the Territory's roll. Where such an order is made the Supreme Court is to cause the practitioner's name to be removed from the roll.

Trust moneys

New section 191N requires a local practitioner to deal with trust monies received in the course of legal practice beyond the Territory (other than trust monies received in the course of legal practice in a participating jurisdiction where the practitioner has established an office) in accordance with Part XI of the Principal Act (which relates to Trust Moneys and Controlled Moneys) as if the trust moneys had been received in the course of local practice in the Territory.

Powers conferred by corresponding law

New section 191O empowers the Supreme Court, the Law Society and the Professional Conduct Board to exercise any power conferred on them by a corresponding law in respect of an interstate practitioner. The term "corresponding law" is defined in new section 191A to mean a law of another State or Territory that contains provisions that substantially correspond to the provisions of new Part XVA.

Fidelity Fund claims

New subsection 191P(1) defines "legal practitioner" to mean a legal practitioner who practises as a solicitor or as a barrister and solicitor. "Failure to account" has the same meaning as in Division 2 of Part XII.

New subsection 191P(2) specifies the circumstances in which a claim lies against the Fidelity Fund established by Part XII of the Principal Act.

New paragraph 191P(2)(a) specifies that a claim lies in relation to a loss occurring wholly in the Territory from a failure to account committed by a local or interstate legal practitioner whether or not in the course of engaging in legal practise in the Territory.

New paragraph 191P(2)(b) specifies that a claim lies against the Fidelity Fund in relation to a loss from a failure to account by a legal practitioner if the loss occurred in both the Territory and a participating jurisdiction or the loss occurred in both places but it cannot be determined precisely where the loss occurred.

New paragraph 191P(2)(c) and subsection 191P(3) provide that a claim lies against the Fidelity Fund in the circumstances where an agreement or arrangement between the Law Society and a regulatory authority in a participating jurisdiction provides that a claim is payable.

New subsection 191P(4) makes it clear that this section applies notwithstanding anything to the contrary in Part XII of the Principal Act.