

**1995**

**LEGISLATIVE ASSEMBLY  
FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**LEGAL PRACTITIONERS (AMENDMENT) BILL 1995**

**EXPLANATORY MEMORANDUM**

**by the Attorney General  
Mr Gary Humphries MLA**

**LEGAL PRACTITIONERS (AMENDMENT)  
BILL 1995**

**OUTLINE**

The *Legal Practitioners Act 1970* ("the Act") sets out the functions of the Supreme Court, the Barristers and Solicitors Admission Board and the Law Society in regulating the legal profession of the Territory. It also provides a statutory power to appoint a legal practitioner as one of Her Majesty's Counsel (Queen's Counsel) for the Territory and regulates the recognition of precedence among individual legal practitioners.

The Legal Practitioners (Amendment) Bill 1995 ("the Bill") amends the Act in relation to the ending of governmental involvement in the appointment of Queen's Counsel. It repeals both Part III (section 5), which relates to the appointment by the Executive of a legal practitioner as one of Her Majesty's Counsel for the Territory and Part IV (section 6), which sets out the rules governing the recognition of precedence among individual legal practitioners. It also abolishes any prerogative right or power of the Crown to appoint practitioners as Queen's Counsel or to grant precedence.

Subsection 6(1) of the Act refers to the "rights of precedence of the Attorney-General". The repeal of this provision will not affect the traditional precedence of the Attorney-General over legal practitioners. This is preserved by section 5 of the *Law Officer Act 1992* which declares that "... the Attorney-General has, in relation to the Territory, the traditional powers, duties, prerogatives and privileges of the Attorneys-General of the States."

The Bill also preserves the Executive's power to revoke an existing appointment of a person as a Queen's Counsel, whether the appointment was made under the statutory power in section 5 of the Act or pursuant to the Crown's prerogative power.

**Financial considerations**

The enactment of the legislation will lead to a loss of approximately \$6,000 in revenue per annum in respect of the fee payable for appointment as a Queen's Counsel.

## NOTES ON INDIVIDUAL CLAUSES

### Formal clauses

Clauses 1, 2 and 3 are formal provisions relating to the short title of the Bill, its commencement on the day when it is notified in the *Gazette* and defining the term "Principal Act" to mean the *Legal Practitioners Act 1970*.

### Repeal

Clause 4 repeals Parts III and IV of the Principal Act. Part III (section 5) confers on the Executive the power to appoint a legal practitioner as one of Her Majesty's Counsel for the Territory. Part IV (section 6) deals with the recognition of precedence amongst individual legal practitioners.

Clause 4 substitutes a new Part III containing substituted sections 5 and 6.

### Existing appointments

New subsection 5(1) preserves both existing appointments of Queen's Counsel and the Executive's power to revoke a commission of appointment as a Queen's Counsel.

New subsection 5(2) continues the status, rights, privileges and responsibilities of a person who has been appointed as a Queen's Counsel, other than the right or privilege of precedence.

### Royal prerogatives to appoint and revoke an appointment

New subsection 6(1) abrogates any Crown prerogative right or power to appoint Queen's Counsel or to grant letters patent of precedence to a legal practitioner. This provision will meet the contingency that the prerogative power to appoint was not displaced by the enactment of a statutory power to appoint and the possibility that such a power has been exercised in relation to an appointment.

New subsection 6(2) makes it clear that any prerogative right or power of the Crown to revoke an appointment of a person as a Queen's Counsel will be preserved.