

AUSTRALIAN CAPITAL TERRITORY

No. 20 of 1979

An Ordinance relating to Legal Practitioners

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this eighteenth day of July 1979.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

P. DURACK
Attorney-General

LEGAL PRACTITIONERS (AMENDMENT) ORDINANCE 1979

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| Short title | 1. This Ordinance may be cited as the <i>Legal Practitioners (Amendment) Ordinance 1979</i> . ¹ |
| Principal Ordinance | 2. In this Ordinance, "Principal Ordinance" means the <i>Legal Practitioners Ordinance 1970</i> . ² |
| Definitions | 3. Section 5 of the Principal Ordinance is amended— <ul style="list-style-type: none"> (a) by inserting after the definition of "barrister and solicitor" the following definition: <ul style="list-style-type: none"> " 'Chief Judge' has the same meaning as in the <i>Australian Capital Territory Supreme Court Act 1933</i>;" and (b) by omitting the definition of "the Judge". |
| Barristers and Solicitors Admission Board | 4. Section 7 of the Principal Ordinance is amended— <ul style="list-style-type: none"> (a) by omitting sub-section (1) and substituting the following sub-section: <ul style="list-style-type: none"> "(1) There shall be a Barristers and Solicitors Admission Board of the Australian Capital Territory consisting of 5 members, being barristers and solicitors, appointed by the Chief Judge."; (b) by omitting from sub-sections (2) and (3) "other than the Judge"; (c) by inserting "Chief" in sub-section (4) before "Judge"; and |

(d) by inserting after sub-section (4) the following sub-section:

“(4A) The performance of the functions and the exercise of the powers of the Admission Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board.”

5. Section 8 of the Principal Ordinance is amended—

(a) by omitting from sub-section (1) “, other than the Judge,”; and

(b) by omitting from sub-section (2) “, other than the Judge”.

Vacation of office of members of Admission Board

6. Section 9 of the Principal Ordinance is repealed and the following section substituted:

“9. (1) At a meeting of the Admission Board, 3 members constitute a quorum.

Meetings of Admission Board

“(2) At the first meeting of the Board in each year the members present shall elect 1 of their number to be Chairman.

“(3) The Chairman shall preside at all meetings of the Board at which he is present.

“(4) In the absence of the Chairman from a meeting, the members present shall elect 1 of their number to preside at the meeting.

“(5) The Admission Board shall hold meetings at such times and places as the Chairman or, if for any reason the Chairman is unable to act or there is a vacancy in the office of Chairman, the Secretary to the Board, directs or the Board determines.”

7. Section 15J of the Principal Ordinance is amended—

(a) by inserting after sub-section (2) the following sub-section:

“(2A) A barrister and solicitor who—

(a) resides in the Territory; and

(b) would, but for section 15E, be entitled, on making an application under section 15C, to have an unrestricted practising certificate issued to him,

may apply to the Court for an order under sub-section (7).”; and

Court may direct issue of certificate or revoke cancellation

(b) by adding at the end thereof the following sub-sections:

“(7) Where, on an application under sub-section (2A), the Court is satisfied that the applicant has gained such experience that an unrestricted practising certificate should be issued to him, the Court may direct the Law Society to issue to the applicant an unrestricted practising certificate.

“(8) On an application under sub-section (2A), the Court shall, on the application of the Law Society, order that the costs incurred by the Law Society in connexion with the application under sub-section (2A) be paid by the applicant unless the Court

is satisfied that, in the circumstances of the case, it would not be just and reasonable to do so.”.

8. The Principal Ordinance is amended by inserting after section 15N the following section:

“15NA. The holder of a practising certificate who—

- (a) commences to practise at an address, or under a name, other than that stated in the application for the practising certificate;
- (b) commences to practise, as a member of a partnership, under a name different from the name stated in the application for the practising certificate; or
- (c) ceases to practise at an address at which he was previously practising,

shall, within 14 days of commencing or ceasing so to practise, notify the Law Society of the fact and of the new name or address as the case requires.”.

9. After section 40 of the Principal Ordinance the following section is inserted in Division 2 of Part V:

“40A. (1) Where—

- (a) the Disciplinary Committee has made an order under sub-section 36 (1);
- (b) the period of 21 days after the date on which the order was made has expired; and
- (c) either—
 - (i) no appeal has been instituted under section 42 in relation to the order; or
 - (ii) such an appeal having been instituted, the appeal has been withdrawn or struck out or has been determined otherwise than by a decision of the Supreme Court after a hearing,

a person who publishes a fair and accurate report of the prescribed matters in relation to the order has the same protection, in relation to the publication of that report, as he would have if—

- (d) the Disciplinary Committee were a court of justice; and
- (e) the proceedings in which the order was made had been public proceedings of the Disciplinary Committee.

“(2) For the purposes of sub-section (1), the prescribed matters in relation to an order made by the Disciplinary Committee under sub-section 36 (1) are—

- (a) the name of the barrister and solicitor against whom the order was made;
- (b) the address at which, when the order was made, the barrister and solicitor was practising;

- (c) the findings of the Disciplinary Committee; and
- (d) the terms of the order.”.

10. Section 47 of the Principal Ordinance is amended by adding at the end thereof the following sub-section: General trust accounts

“(2) Where 2 or more solicitors practise in partnership in the Territory, it is sufficient compliance with sub-section (1) if a trust bank account is opened and maintained on behalf of the partnership under a title that includes—

- (a) the name or style of the partnership;
- (b) the full name of each partner in the partnership; and
- (c) words that indicate that it is the general trust bank account of the partnership.”.

11. Section 55 of the Principal Ordinance is amended by adding at the end thereof the following sub-section: Accounting records

“(4) Where 2 or more solicitors practise in partnership in the Territory, it is sufficient compliance with this section if the accounting or other records are kept on behalf of the partnership.”.

12. Section 58 of the Principal Ordinance is repealed and the following section substituted:

“58. (1) A solicitor shall, not later than 7 days after the end of each year, engage an auditor or firm of auditors to audit his records in respect of trust moneys held in that year and shall, within 1 month after the date on which he engages the auditor or firm, notify the Law Society of the name of the auditor or of the firm, as the case requires. Audit of trust accounts

“(2) Where 2 or more solicitors practise in partnership in the Territory and keep accounting or other records on behalf of the partnership, it is sufficient compliance with sub-section (1) if the auditor or firm of auditors is engaged to audit the records kept on behalf of the partnership.

“(3) A reference in this Ordinance, other than in this section or in section 59, to an auditor shall, where a firm of auditors has been appointed under this section, be deemed to include a reference to the firm of auditors.”.

13. Section 59 of the Principal Ordinance is amended by adding at the end thereof the following sub-section: Qualifications of auditors

“(2) A firm of auditors shall not be engaged to conduct an audit under this Division unless—

- (a) at least 1 member of the firm is ordinarily resident in Australia;
- (b) all the members of the firm ordinarily so resident are registered company auditors within the meaning of the *Companies Ordinance* 1962; and

- (c) no member of the firm is—
- (i) an employee of the solicitor by whom the records are kept;
 - (ii) the spouse of the solicitor by whom the records are kept;
or
 - (iii) an employee of another solicitor.”.

Provisions
applicable
in case of
default of
auditor

14. Section 63 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (e) “and”; and
- (b) by adding after paragraph (1) (f) the following paragraphs:
 - “(g) where he holds trust moneys within the meaning of section 46—that there is in a bank to the credit of a trust bank account kept in accordance with Part VII, and on deposit with the Law Society, a sum or sums sufficient to pay all moneys received by him or, in the case of a solicitor who practises with 1 or more solicitors in partnership in the Territory, received by the partnership, for or on behalf of a person and not previously paid by him, or paid on behalf of the partnership, to that person or in accordance with directions given by him; and
 - (h) where he does not hold any trust moneys within the meaning of section 46—that fact.”.

15. Section 65 of the Principal Ordinance is repealed and the following section substituted:

Secrecy

“65. (1) A person who conducts an audit under this Part shall not communicate to any person any matter that comes to his knowledge in the course of the audit unless the communication is made—

- (a) in accordance with this Ordinance;
- (b) in or for the purpose of proceedings in a Court;
- (c) to the Attorney-General;
- (d) at an inquiry by the Disciplinary Committee; or
- (e) to a member of the Commonwealth Police Force or of the Police Force of the Territory, where the member is acting in the course of his duties as a member.

“(2) A member or former member of the Council of the Law Society shall not communicate to any person, not being a member of the Council, a matter contained in a report referred to in section 61 or section 62 unless the communication is made—

- (a) in accordance with this Ordinance;
- (b) in or for the purpose of proceedings in a Court;
- (c) to the Attorney-General;
- (d) at an inquiry by the Disciplinary Committee; or

- (e) to a member of the Commonwealth Police Force or of the Police Force of the Territory, where the member is acting in the course of his duties as a member.

Penalty: \$250.”

16. Section 66 of the Principal Ordinance is amended by omitting sub-section (5) and substituting the following sub-section: Appointment of examiner

“(5) Where, as a result of an examination of records under this section—

- (a) a solicitor is convicted of an offence against this Ordinance or any other law in force in the Territory; or
- (b) an order is made against a solicitor under Part V,

the Law Society may recover the costs of the examination from that solicitor as a debt due to the Society and any amount so recovered shall be paid into the Fidelity Fund.”

17. Section 67 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-sections: Production of books, &c.

“(1) For the purposes of this Division, sub-section 60 (1) applies as if—

- (a) a reference in that sub-section to an auditor were a reference to a person appointed under sub-section 66 (1); and
- (b) a reference in that sub-section to an audit were a reference to an examination under section 66.

“(1A) A solicitor shall comply with a requirement made in pursuance of sub-section 60 (1) by a person appointed under sub-section 66 (1).

Penalty: \$1,000.”

18. Section 68 of the Principal Ordinance is repealed and the following section substituted:

“68. (1) A person who conducts an examination under section 66 shall not communicate to any person any matter that comes to his knowledge in the course of the examination unless the communication is made— Secrecy

- (a) in accordance with this Ordinance;
- (b) in or for the purpose of proceedings in a Court;
- (c) to the Attorney-General;
- (d) at an inquiry by the Disciplinary Committee; or
- (e) to a member of the Commonwealth Police Force or of the Police Force of the Territory, where the member is acting in the course of his duties as a member.

“(2) A member or former member of the Council of the Law Society shall not communicate to any person, not being a member of the Council, any matter contained in a report referred to in section 66 unless the communication is made—

- (a) in accordance with this Ordinance;
- (b) in or for the purpose of proceedings in a Court;
- (c) to the Attorney-General;
- (d) at an inquiry by the Disciplinary Committee; or
- (e) to a member of the Commonwealth Police Force or of the Police Force of the Territory, where the member is acting in the course of his duties as a member.

Penalty: \$250.”

Solicitor to deposit portion of trust moneys with Law Society

19. Section 71 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “Three thousand dollars” and substituting “\$3,000”; and
- (b) by omitting from paragraph (2) (a) “Three thousand dollars” and substituting “\$3,000”.

Investment of deposits and Statutory Interest Account

20. Section 74A of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-section:

- “(1) Moneys deposited with the Law Society by a solicitor in accordance with this Division shall be invested by the Law Society—
- (a) on interest bearing deposit with a bank in the Territory; or
 - (b) with the consent of the Attorney-General, in an investment authorized by the *Trustee Ordinance 1957*.”

Appointment of receiver

21. Section 93 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (a) “or” (last occurring);
- (b) by inserting after paragraph (1) (a) the following paragraph:
 - “(ab) that a solicitor has failed or refused to comply with the requirement of an auditor or a person appointed under sub-section 66 (1) made in pursuance of sub-section 60 (1); or”;
- (c) by omitting sub-paragraph (1) (b) (iii);
- (d) by inserting after sub-section (1) the following sub-section:
 - “(1A) Where an unrestricted practising certificate issued to a solicitor has been cancelled, the Court may, if it thinks the circumstances so warrant, by order appoint a person specified in the order to be receiver of the trust property of the solicitor or, if the solicitor carried on practice in partnership with other solicitors, of the partnership.”; and
- (e) by omitting from sub-section (3) the words “either of the last two preceding sub-sections” and substituting the words “sub-section (1), (1A) or (2)”.

22. (1) A member of the Admission Board holding office immediately before the commencement of this Ordinance, other than the member who was the Judge within the meaning of the Principal Ordinance, continues to hold office after the commencement of this Ordinance as if—

- (a) this Ordinance had been in force at the date of his appointment; and
- (b) his appointment had been made under the Principal Ordinance as amended by this Ordinance.

(2) Where a report or requirement had been made or an approval given on an application before the date of commencement of this Ordinance, the Principal Ordinance as amended by this Ordinance applies to and in relation to that report, requirement or approval as if—

- (a) this Ordinance had been in force when the report or requirement was made, or the approval given; and
- (b) the report or requirement had been made, or the approval given, by the Admission Board constituted in accordance with the Principal Ordinance as amended by this Ordinance.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 26 July 1979.
2. Ordinance No. 43, 1970 as amended by No. 51, 1970; No. 9, 1971; No. 4, 1972; No. 2, 1973; No. 5, 1974; Nos. 1, 22 and 45, 1975; Nos. 28 and 68, 1976; Nos. 20, 55 and 62, 1977; and Nos. 8 and 46, 1978.