

AUSTRALIAN CAPITAL TERRITORY

No. 16 of 1980

An Ordinance to amend the *Legal Practitioners Ordinance 1970*

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 twenty-eighth day of June 1980.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

P. DURACK
Attorney-General

LEGAL PRACTITIONERS (AMENDMENT) ORDINANCE 1980

Short title

1. This Ordinance may be cited as the *Legal Practitioners (Amendment) Ordinance 1980*.¹

Principal Ordinance

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

Commencement

3. This Ordinance shall come into operation on 30 June 1980.

Issue of practising certificates

4. Section 15D of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1) "and section 42G" after "the next four succeeding sections"; and
- (b) by inserting in sub-section (2) "or section 42G" after "the next three succeeding sections".

Limitation on issue of unrestricted practising certificates

5. Section 15E of the Principal Ordinance is amended by inserting in subparagraph (1) (a) (iii) "or as an officer or a member of the staff of the Legal Aid Commission (A.C.T.)," after "Attorney-General's Department".

6. After Part V of the Principal Ordinance the following Part is inserted:

“PART VI—PROFESSIONAL INDEMNITY INSURANCE

Interpretation

“42F. In this Part, unless the contrary intention appears—

‘insurer’ means a person who carries on insurance business, whether in the Territory or elsewhere;

‘insurance business’ has the same meaning as in the *Insurance Act 1973*;

‘solicitor’ means a barrister and solicitor who practises, either on his own account or as a member of a partnership, as a solicitor or as both a barrister and solicitor.

Restriction on issuing of unrestricted practising certificates

“42G. The Law Society shall not issue an unrestricted practising certificate to a solicitor unless it is satisfied that professional indemnity insurance has been granted in respect of the solicitor for the period for which the practising certificate will, subject to this Ordinance, be in force.

Maintaining of insurance

“42H. A solicitor shall at all times during which he holds a current unrestricted practising certificate have professional indemnity insurance.

Approval of insurance

“42J. (1) A reference in section 42G or 42H to professional indemnity insurance shall be read as a reference to professional indemnity insurance the terms of which are approved for the time being by the Law Society and which has been granted by an insurer approved by the Law Society.

“(2) The Law Society may—

- (a) grant an approval for the purposes of sub-section (1) generally or in respect of any case or class of cases;
- (b) impose such conditions as it thinks fit upon the grant of any such approval; or
- (c) revoke any such approval.

Practising certificate may be issued in some circumstances notwithstanding absence of full insurance

“42K. (1) Where—

- (a) immediately before the commencement of this section a solicitor has professional indemnity insurance the terms of which are approved by the Law Society and which has been granted by an insurer which is approved by the Law Society; and
- (b) that professional indemnity insurance has been granted in respect of a period that will expire before the expiration of 30 June 1981,

the Law Society may, notwithstanding the provisions of section 42G, issue to the solicitor an unrestricted practising certificate if the solicitor gives to the Law Society an undertaking in writing that he will, before the expiration of the period in respect of which the professional indemnity insurance has been granted or such earlier date as the Law Society nominates, obtain professional indemnity insurance the terms of which are approved by the Law Society and which is granted by an insurer approved by the Law Society, being insurance granted in respect of a period that is, or includes, so much of the period during which the practising certificate will be in force as the first-mentioned professional indemnity insurance is not granted in respect of.

“(2) The Law Society may—

- (a) impose such conditions as it thinks fit upon the grant of an approval referred to in paragraph (1) (a);
- (b) revoke any such approval.

“(3) Where a solicitor does not comply with an undertaking given in pursuance of sub-section (1) the Law Society shall suspend the right of the solicitor to practise as a solicitor in the Territory.

“(4) Where the Law Society has, under sub-section (3), suspended the right of a solicitor to practise as a solicitor in the Territory it shall forthwith inform the solicitor in writing of the suspension.

“(5) A solicitor whose right to practise has been suspended shall be deemed not to have had a practising certificate during the period of the suspension.

“(6) Where—

- (a) the Law Society has, under sub-section (3), suspended the right of a solicitor to practise as a solicitor in the Territory; and
- (b) the solicitor has obtained professional indemnity insurance the terms of which are approved by the Law Society and which has been granted by an insurer approved by the Law Society,

the Law Society shall cancel the suspension forthwith.

Agreements and arrangements relating to the provision of insurance

“42L. (1) The Law Society may—

- (a) negotiate with insurers or other persons in relation to the provision of professional indemnity insurance to any solicitor or former solicitor with respect to civil liability that may arise in connection with—
 - (i) his practice or any former practice carried on by him; or
 - (ii) his administration of any trust or deceased estate of which he is, or formerly was, a trustee or executor; and
- (b) make agreements or arrangements relating to the provisions of any such insurance, including arrangements for the establishment and maintenance of an account into which any money received by the Law Society as a premium for any such insurance is to be paid.

“(2) The Law Society may make an agreement or arrangement with an insurer for the provision of professional indemnity insurance to solicitors only where the agreement or arrangement provides for each person who—

- (a) would, subject to compliance with section 42G, be entitled to have an unrestricted practising certificate issued to him; and
- (b) applies under the agreement or arrangement to be granted professional indemnity insurance that is—
 - (i) of a kind available under the agreement or arrangement; and
 - (ii) in respect of a period for which insurance is available under the agreement or arrangement,

to be granted the professional indemnity insurance applied for.

“(3) Any money paid into an account established under paragraph (1) (b) for holding money received by the Law Society as a premium for professional indemnity insurance may, pending its application in pursuance of an agreement or arrangement made under that paragraph, be invested by the Law Society in any investment authorized by the *Trustee Ordinance 1957*.

Furnishing of information

“42M. (1) The Law Society may, by notice in writing, require a solicitor, or former solicitor, to furnish to the Law Society such information as is specified in the notice relating to—

- (a) the number of persons he employs, or formerly employed, in his practice;
- (b) the duties performed by each of the persons he employs, or formerly employed, in his practice;
- (c) the gross income he received from fees during a period specified in the notice; or
- (d) any claims made against him in respect of any alleged civil liability arising from—
 - (i) his practice or any former practice; or
 - (ii) his administration of any trust or deceased estate of which he is, or formerly was, a trustee or executor.

“(2) A person who is a member, or former member, of the Council of the Law Society or an employee, or former employee, of the Law Society shall not communicate any information furnished to the Law Society in pursuance of sub-section (1) to a person who is not—

- (a) a member of the Council of the Law Society;
- (b) an employee of the Law Society;
- (c) a person with whom an agreement or arrangement has been made in accordance with section 42L; or
- (d) an employee or agent of a person referred to in paragraph (c).

Penalty: \$250.

“(3) Sub-section (2) does not apply to a communication that is made—

- (a) in or for the purpose of proceedings in a Court;
- (b) to the Attorney-General;
- (c) at an inquiry by the Disciplinary Committee; or
- (d) to a member of the Australian Federal Police acting in the course of his duties.

Appeals to Supreme Court

“42N. (1) Where the Law Society has—

- (a) refused to approve the terms of a policy of professional indemnity insurance;
- (b) refused to approve an insurer;
- (c) imposed conditions upon the grant of approval of—
 - (i) the terms of a policy of professional indemnity insurance; or
 - (ii) an insurer; or
- (d) revoked an approval of—
 - (i) the terms of a policy of professional indemnity insurance; or
 - (ii) an insurer,

the solicitor who made application for the approval, or on whose application the approval was given, as the case may be, may appeal to the Supreme Court.

“(2) Jurisdiction to hear and determine appeals under this section is vested in the Supreme Court.

“(3) The Law Society shall be the respondent on an appeal.

“(4) On an appeal the Supreme Court may—

- (a) affirm, set aside or vary the decision of the Law Society; and
- (b) make such other order as justice requires.

“(5) The Supreme Court shall set out in its decision the reason for the decision.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 30 June 1980.
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. 9, 28 and 68, 1976; Nos. 20, 55 and 62, 1977; Nos. 8 and 46, 1978; Nos. 20 and 40, 1979.