



AUSTRALIAN CAPITAL TERRITORY

Legal Practitioners (Amendment) Act 1997

No. 26 of 1997

An Act to amend the *Legal Practitioners Act 1970*

[Notified in ACT Gazette S175: 25 June 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Legal Practitioners (Amendment) Act 1997*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on 1 July 1997.

Principal Act

3. In this Act, “Principal Act” means the *Legal Practitioners Act 1970*.¹

Interpretation

4. Section 3 of the Principal Act is amended—

- (a) by inserting “, or is to be taken to be on,” after “on” in the definition of “barrister and solicitor”; and

(b) by inserting the following definition:

“ ‘practising certificate’ means an unrestricted practising certificate, or a restricted practising certificate, issued under Part VII;”.

Incorporation of Law Society

5. Section 4 of the Principal Act is amended by inserting in subsection (9) “, or is to be taken to be on,” after “on”.

Certain practitioners to hold practising certificates

6. Section 21 of the Principal Act is amended—

(a) by omitting from subsection (1) “A barrister and solicitor” and substituting “Subject to Part XVA, a barrister and solicitor”;

(b) by omitting from subsection (3) all the words after “first-mentioned” and substituting:

“barrister and solicitor—

(a) holds, or is pursuant to section 30 to be deemed to hold, a current practising certificate; or

(b) is an interstate legal practitioner who is entitled to engage in legal practise in the Territory by virtue of section 191D.”;

and

(c) by omitting from subsection (4) all the words after “solicitor” (second occurring) and substituting:

“unless, at the time at which the work was done, he or she was—

(a) the holder of a current unrestricted practising certificate; or

(b) an interstate legal practitioner who was entitled to practise in the Territory, and to recover the costs or disbursements, by virtue of section 191D.”.

Interpretation

7. Section 37 of the Principal Act is amended by adding at the end of paragraph (c) of the definition of “professional misconduct” in subsection (1) “or subsection 191D (3), 191E (3) or 191M (2)”.

Insertion

8. After Part XV of the Principal Act the following Part is inserted:

“PART XVA—INTERSTATE LEGAL PRACTITIONERS

“Division 1—Preliminary

Interpretation

“191A. In this Part, unless the contrary intention appears—

‘corresponding law’ means a law of another State that contains provisions that substantially correspond to the provisions of this Part;

‘home State’, in relation to a legal practitioner, means the State in which the practitioner has his or her principal place of practise;

‘interstate legal practitioner’ means a person—

- (a) who has been admitted to legal practise in a participating State;
- (b) who holds a practising certificate issued by a regulatory authority, or is otherwise entitled to engage in legal practise, in that State; and
- (c) whose principal place of practise is in that State;

‘legal practitioner’ means an interstate legal practitioner or a local legal practitioner;

‘local legal practitioner’ means a person—

- (a) who has been admitted to practise as a barrister and solicitor under section 11, 12 or 13, who has had his or her name entered on the Roll of Barristers and Solicitors under section 12 or who has been admitted to legal practise in the Territory, or is to be deemed to have been admitted to legal practise in the Territory, pursuant to the *Mutual Recognition Act 1992* of the Commonwealth;
- (b) who holds a practising certificate issued by the Law Society or is otherwise entitled to engage in legal practise as a solicitor in the Territory; and
- (c) whose principal place of practise is in the Territory;

‘participating State’ means a State in which a corresponding law is in force;

‘practice rules’ means rules for engaging in legal practise;

‘practising certificate’ means a certificate that confers authority to engage in legal practise, whether—

- (a) generally or of a particular type; or
- (b) unconditionally or subject to conditions, restrictions or limitations;

‘regulatory authority’—

- (a) in respect of the Territory, means the Supreme Court, the Law Society or the Professional Conduct Board; and
- (b) in respect of a participating State, means a person or body in that State having the function conferred by law of admitting persons to legal practise, issuing practising certificates to persons, making practice rules or receiving complaints against, investigating the conduct of, or disciplining, persons engaged in legal practise;

‘State’ includes a Territory.

When does an interstate legal practitioner establish an office

“191B. For the purposes of this Part, an interstate legal practitioner establishes an office in the Territory when the practitioner offers and provides legal services to the public in the Territory from an office maintained by the practitioner, or by the employer or a partner in legal practice of the practitioner, for that purpose in the Territory.

“Division 2—Legal practise by interstate legal practitioners

Status of interstate legal practitioners

“191C. An interstate legal practitioner shall be taken—

- (a) to be a person whose name has been entered on the Roll of Barristers and Solicitors; and
- (b) to have signed the Roll pursuant to section 19.

Interstate legal practitioner may practise in this jurisdiction

“191D. (1) An interstate legal practitioner is entitled to engage in legal practise in the Territory, subject to this Act, in accordance with the terms of the practitioner’s entitlement to practise in his or her home State.

“(2) In so doing, the practitioner, subject to this Part—

- (a) shall comply with this Act and any regulations made under the Act;
- (b) shall comply with any practice rules that apply to all local legal practitioners engaged in the same type of legal practice; and
- (c) is subject to any condition, limitation, restriction or prohibition imposed on the practitioner in respect of his or her practice by a regulatory authority in the Territory or a participating State (whether as a result of disciplinary action or otherwise).

“(3) An interstate legal practitioner who contravenes subsection (2) is guilty of professional misconduct.

“(4) A regulatory authority in the Territory shall not impose a condition, restriction, limitation or prohibition on an interstate legal practitioner in respect of his or her practice that is more onerous than it would impose on a local legal practitioner in the same or similar circumstances.

Notification of establishment of office required

“191E. (1) An interstate legal practitioner who—

- (a) practises as a solicitor or as both a barrister and solicitor; and
- (b) establishes an office in the Territory;

shall give written notice to the Law Society within 28 days after establishing the office.

“(2) A notice under this section shall specify—

- (a) the residential address of the interstate legal practitioner;
- (b) the address at which the interstate legal practitioner practises, or proposes to practise, in the Territory;
- (c) each place at which the interstate legal practitioner practises outside the Territory; and
- (d) if the interstate legal practitioner practises in partnership with other persons—the names of those other persons and the name under which the partnership is carried on.

“(3) An interstate legal practitioner who contravenes subsection (1) is guilty of professional misconduct.

Professional indemnity insurance required if office established

“191F. (1) This section applies to an interstate legal practitioner—

- (a) who establishes an office in the Territory; and
- (b) who, if he or she were a local legal practitioner, would be required to have professional indemnity insurance in accordance with Part IX or to contribute to the Indemnity Fund in accordance with Part X.

“(2) An interstate legal practitioner to whom this section applies shall not practise as a solicitor, or as both a barrister and solicitor, unless—

- (a) he or she has appropriate indemnity insurance in respect of his or her practice in the Territory; or
- (b) he or she has paid to the Indemnity Fund the contribution determined and approved under section 45 or 48, as the case requires, of the Legal Profession Act in respect of the period for which his or her current practising certificate has been issued.

“(3) An interstate legal practitioner to whom this section applies has appropriate indemnity insurance if there is in force in respect of the practitioner a policy of insurance that provides the same or a higher level of indemnity in respect of his or her practice in the Territory as, and the terms of which are broadly equivalent to, a current policy of insurance approved under section 78.

“(4) In this section, ‘Indemnity Fund’ and ‘Legal Profession Act’ have the same respective meanings as in Part X.

Fidelity Fund contributions

“191G. An interstate legal practitioner who—

- (a) practises as a solicitor or as both a barrister and solicitor; and
- (b) establishes an office in the Territory;

shall, in respect of each financial year, pay a contribution to the Fidelity Fund equivalent to the amount (if any) he or she would be required to pay to the Fund if he or she were a local legal practitioner.

“Division 3—Disputes, complaints and inquiries

Interstate legal practitioners

“191H. (1) A reference in this section to an interstate legal practitioner shall be read as a reference to an interstate legal practitioner who practises in the Territory as a solicitor or as both a barrister and solicitor.

“(2) A dispute between a person and an interstate legal practitioner in connection with the practitioner’s legal practice in the Territory may be resolved under Part VIII as if the interstate legal practitioner were a local legal practitioner.

“(3) A complaint may be made under Part VIII about the conduct of an interstate legal practitioner in respect of his or her legal practice in the Territory as if he or she were a local legal practitioner.

“(4) An inquiry may be undertaken under Part VIII into the conduct of an interstate legal practitioner in respect of his or her legal practice in the Territory as if he or she were a local legal practitioner.

“(5) Section 58 applies in relation to the conduct of an interstate legal practitioner in respect of his or her legal practice in the Territory as if he or she were a local legal practitioner.

“(6) In its application under subsection (5), a reference in section 58 to a practising certificate includes a reference to a practising certificate within the meaning of this Part.

Local legal practitioners

“191I. (1) A dispute between a person and a local legal practitioner in connection with the practitioner’s legal practice in a participating State may be resolved under Part VIII.

“(2) A complaint may be made under Part VIII about the conduct of a local legal practitioner in respect of his or her legal practice in a participating State.

“(3) An inquiry may be undertaken under Part VIII in relation to the conduct of a local legal practitioner in respect of his or her legal practice in a participating State.

Referral of disputes and disciplinary matters to regulatory authorities in participating States

“191J. (1) A reference in this section to a legal practitioner shall be read as a reference to a legal practitioner who practises as a solicitor or as both a barrister and solicitor.

“(2) If it considers it appropriate to do so, the Law Society may refer a dispute lodged with it in relation to a legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State.

“(3) If it considers it appropriate to do so, the Law Society may refer a complaint made to it in relation to a legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State.

“(4) If it considers it appropriate to do so, the Law Society may request a regulatory authority in a participating State to investigate the conduct of a legal practitioner in accordance with the law of that State.

“(5) After a referral under subsection (2) or (3) or a request under subsection (4) has been made, no further action may be taken by the Law Society in relation to the subject-matter of the referral or request, other than action required to comply with section 191M, unless the regulatory authority in the participating State declines to deal with the matter.

Dealing with matters referred by regulatory authorities in participating States

“191K. (1) A reference in this section to a legal practitioner shall be read as a reference to a legal practitioner who practises as a solicitor or as both a barrister and solicitor.

“(2) The Law Society may resolve a dispute between a person and a legal practitioner referred to it by a regulatory authority in a participating State whether or not the subject-matter of the dispute arose in or outside the Territory.

“(3) The Law Society may investigate a complaint against a legal practitioner referred to it by a regulatory authority in a participating State whether or not the subject-matter of the complaint allegedly occurred in or outside the Territory.

“(4) If a regulatory authority in a participating State requests the Law Society to investigate the conduct of a legal practitioner, the Society may investigate that conduct whether or not the conduct allegedly occurred in or outside the Territory.

Furnishing information

“191L. (1) A regulatory authority in the Territory shall furnish without delay any information about a legal practitioner reasonably required by a regulatory authority in a participating State in connection with actual or possible disciplinary action against the practitioner.

“(2) A regulatory authority may provide the information notwithstanding any law of the Territory relating to secrecy or confidentiality.

“(3) Nothing in this section affects any obligation or power to provide information apart from this section.

“(4) A regulatory authority in the Territory shall notify the appropriate regulatory authority in each participating State of any condition, restriction, limitation or prohibition imposed by it on a legal practitioner in respect of his or her legal practice as a result of disciplinary action against the practitioner.

“Division 4—Miscellaneous

Local practitioners are subject to interstate regulatory authorities

“191M. (1) A local legal practitioner, in engaging in legal practise in the Territory, shall comply with any condition, restriction, limitation or prohibition in respect of his or her practise imposed by a regulatory authority in a participating State as a result of disciplinary action against the practitioner.

“(2) A local legal practitioner who contravenes subsection (1) is guilty of professional misconduct.

“(3) A regulatory authority in a participating State—

(a) that 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 legal practitioner in that State; and

(b) to which a local legal practitioner is subject in that State;

may suspend, cancel, vary the conditions of or impose further conditions on, or order the suspension, cancellation, variation of the conditions of or the imposition of further conditions on, a practising certificate issued to the local legal practitioner under this Act.

“(4) The Law Society shall comply with an order of a regulatory authority in a participating State under subsection (3).

“(5) A regulatory authority in a participating State that has jurisdiction to order the removal of the name of a person from the roll of practitioners in that State may order that the name of a local legal practitioner be removed from the Roll of Barristers and Solicitors kept under section 16 and, if such an authority does so order, the Supreme Court shall cause the practitioner’s name to be removed from the Roll.

Local legal practitioner receiving trust money interstate

“191N. A local legal practitioner shall deal with trust moneys received in the course of engaging in legal practise outside the Territory (other than trust moneys received in the course of engaging in legal practise in a participating State in which the practitioner has established an office) in accordance with Part XI as if the trust moneys had been received in the course of engaging in legal practise in the Territory.

Regulatory authority may exercise powers conferred by corresponding law

“191O. A regulatory authority in the Territory may exercise in respect of an interstate legal practitioner any power conferred on it by a corresponding law.

Fidelity Fund claims

“191P. (1) In this section—

‘failure to account’ has the same meaning as in Division 2 of Part XII;
‘legal practitioner’ means a legal practitioner who practises as a solicitor or as both a barrister and solicitor.

“(2) A claim lies against the Fidelity Fund—

- (a) in relation to a loss occurring wholly in the Territory from a failure to account by a legal practitioner (whether or not in the course of engaging in legal practise in the Territory);
- (b) in relation to a loss from a failure to account by a local legal practitioner (whether or not in the course of engaging in legal practise in the Territory), if—
 - (i) the loss occurred both in the Territory and a participating State; or
 - (ii) the loss occurred in the Territory or a participating State or both, but it cannot be determined precisely where the loss occurred; or
- (c) in the circumstances where an agreement or arrangement under subsection (3) provides that a claim is payable.

“(3) The Law Society may make agreements or arrangements with a regulatory authority in a participating State for the payment of claims arising from failures to account by legal practitioners who are required to contribute to a fidelity fund in the Territory and in the participating State.

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“(4) This section applies notwithstanding anything to the contrary in Part XII.”.

NOTE

Principal Act

1. Reprinted as at 30 November 1996.

[Presentation speech made in Assembly on 15 May 1997]

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