



AUSTRALIAN CAPITAL TERRITORY

Legal Practitioners (Amendment) Act (No. 2) 1997

No. 89 of 1997

An Act to amend the *Legal Practitioners Act 1970*

[Notified in ACT Gazette S380: 1 December 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 (No. 2) 1997*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

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

Insertion

4. After Part XVA of the Principal Act the following Part is inserted:

“PART XVB—FOREIGN LEGAL PRACTITIONERS

“Division 1—Preliminary

Interpretation

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

‘commercial legal presence’ means an interest in a law firm practising foreign law;

‘domestic legal practitioner’ means a person (including a foreign legal practitioner) who is—

- (a) duly registered by the Law Society to practise law in the Territory as a solicitor; or
- (b) otherwise entitled to practise law in the Territory as a solicitor;

‘foreign law’ means law of a place outside Australia;

‘foreign legal practitioner’ means a person who is duly registered to practise law in a place outside Australia by a foreign registration authority;

‘foreign registration authority’ means the person or authority in a place outside Australia having the function conferred by law of registering persons to practise law in that place;

‘home registration authority’, in relation to a foreign legal practitioner means the foreign registration authority stated in the practitioner’s registration notice under section 191T;

‘law firm’ means—

- (a) a person practising as a legal practitioner on the person’s own account; or
- (b) a partnership of 2 or more persons practising as legal practitioners;

‘locally registered foreign legal practitioner’ means a person who is registered as a foreign legal practitioner under this Part;

‘practise foreign law’ means doing work, or transacting business, in the Territory concerning foreign law, being work or business of a kind that, if it concerned the law of the Territory, would ordinarily be done or transacted by a domestic legal practitioner practising as a solicitor;

‘registered’ means—

- (a) when used in connection with a place outside Australia—
having all necessary licences, approvals, admissions, certifications, or other forms of authorisation (including practising certificates), required by or under legislation for the carrying on of the practice of law in that place; or
- (b) when used in connection with the exercise of a function by the Law Society otherwise than under this Part—holding a current practising certificate.

Application

“191R. (1) This Part applies to any individual (other than a domestic legal practitioner) who practises foreign law in the Territory.

“(2) Nothing in this Part requires a domestic legal practitioner (including a foreign legal practitioner who is also a domestic legal practitioner) to be registered as a foreign legal practitioner under this Part in order to practise foreign law in the Territory.

“Division 2—Local registration of foreign legal practitioners

Registration requirement

“191S. (1) A person shall not practise foreign law in the Territory unless the person—

- (a) is a locally registered foreign legal practitioner and practises foreign law in the Territory in accordance with this Part;
- (b) is a foreign legal practitioner who practises foreign law in the Territory on a temporary basis or is subject to a migration restriction and who—
 - (i) does not maintain an office for the purpose of practising as a legal practitioner in the Territory; or
 - (ii) does not have a commercial legal presence in the Territory;
- (c) is a domestic legal practitioner, or is a person employed by a domestic legal practitioner to provide advice on foreign law to, and for use by, a domestic legal practitioner; or

- (d) is a person who provides advice on foreign law in the capacity of a consultant.

Penalty: 50 penalty units.

“(2) In this section—

‘migration restriction’ means a restriction imposed on a person who is not an Australian citizen under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person.

Registration notice

“191T. (1) A foreign legal practitioner may lodge a written notice with the Law Society seeking registration as a foreign legal practitioner under this Act.

“(2) The notice shall—

- (a) state the practitioner’s educational and professional qualifications;
- (b) state that the practitioner is registered to practise law by a specified foreign registration authority in a place outside Australia;
- (c) state that the practitioner is not the subject of any disciplinary proceedings in that place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration;
- (d) state that the practitioner’s registration in that place is not cancelled or currently suspended as a result of any disciplinary action;
- (e) state that the practitioner is not otherwise personally prohibited from carrying on the practise of law in that place or bound by any undertaking not to carry on the practise of law in that place, and is not subject to any special conditions in carrying on that practise as a result of criminal, civil or disciplinary proceedings in that place;
- (f) specify any special conditions imposed as a restriction on the practise of law by the practitioner or any undertaking given by the practitioner restricting the practitioner’s practise of law; and

- (g) give consent to the making of inquiries of, and the exchange of information with, the home registration authority regarding the practitioner's activities in practising law in that place or otherwise regarding matters relevant to the notice.

“(3) The notice shall be accompanied by an original instrument, or a copy of an original instrument, from the home registration authority—

- (a) verifying the practitioner's educational and professional qualifications;
- (b) verifying the practitioner's registration by the authority to practise law in the place concerned and the date of registration; and
- (c) describing anything done by the practitioner in practising law in that place of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the practitioner's professional standing within the legal profession of that place.

“(4) The practitioner shall certify in the notice that the accompanying instrument is the original or a complete and accurate copy of the original.

“(5) The Law Society may require the practitioner to verify the statements in the notice by statutory declaration or by other proof acceptable to the Society.

“(6) If the accompanying instrument is not in English, it shall be accompanied by a certified translation in English.

Fee for registration

“191U. (1) The notice shall be accompanied by such fee as the Law Society may determine.

“(2) The fee shall not be greater than the fee paid by domestic legal practitioners for registration by the Law Society to carry on the practice of law in the Territory as solicitors.

Entitlement to registration

“191V. (1) A person is entitled to be registered under this Act as a foreign legal practitioner if—

- (a) the person lodges a notice in accordance with section 191T;
- (b) the Law Society is satisfied that the person is registered to practise law in a place outside Australia;

- (c) the Law Society considers that the person's home registration authority effectively regulates and disciplines the practice of law in that place;
- (d) the Law Society considers that the person is not, as a result of criminal, civil or disciplinary proceedings in that place, subject to any special conditions in carrying on the practice of law in that place or any undertakings concerning the person's practice of law in that place that would make it inappropriate to register the person; and
- (e) the person demonstrates an intention to practise foreign law in the Territory and to establish an office or a commercial legal presence in the Territory within a reasonable period after grant of registration for the purpose of so practising.

“(2) Residence or domicile in the Territory is not a prerequisite for, or a factor in determining entitlement to, registration as a foreign legal practitioner under this Part.

Conditions

“191W. (1) The Law Society may at any time impose any condition on the registration of a foreign legal practitioner under this Part that is equivalent to any special condition of carrying on practice imposed on the practitioner by the practitioner's home registration authority and may at any time by notice in writing revoke or vary such a condition.

“(2) The Law Society may not impose any other conditions on registration of a foreign legal practitioner under this Part.

Notification of decision

“191X. (1) The Law Society shall give a foreign legal practitioner who lodges a notice in accordance with section 191T written notice of its decision to grant registration under this Part, to refuse registration, or to impose conditions on registration.

“(2) The Law Society is to be taken to have refused registration if registration is not granted within 28 days after a notice is duly lodged under section 191T.

Duration of registration and annual fee

“191Y. (1) When granted, registration under this Part takes effect from the day on which the notice under section 191T was lodged.

“(2) Registration remains in force, unless sooner cancelled, until the expiration of 30 June next following the day on which it takes effect.

“(3) Registration may be renewed by the payment of an annual fee determined by the Law Society.

“(4) Payment shall be made on or before a day notified in writing to the locally registered foreign legal practitioner by the Law Society.

“(5) The annual fee shall not be greater than any annual fee paid by domestic legal practitioners in respect of registration by the Law Society to carry on the practise of law in the Territory as solicitors.

Register

“191Z. (1) The Law Society shall keep, in such form as it thinks fit, a register of persons registered as foreign legal practitioners under this Part.

“(2) The register shall be made available for public inspection during office hours.

Cancellation of registration

“191ZA. (1) The Law Society may, by notice in writing to a locally registered foreign legal practitioner, cancel the practitioner’s registration under this Part if it is of the opinion that there is sufficient reason for doing so.

“(2) Without limiting the grounds for cancellation, registration may be cancelled if—

- (a) the foreign legal practitioner’s home registration authority cancels registration of the practitioner as a result of criminal, civil or disciplinary proceedings;
- (b) the foreign legal practitioner fails to comply with any requirements of this Act;
- (c) the registration of the foreign legal practitioner by the practitioner’s home registration authority has lapsed;
- (d) the foreign legal practitioner has not established an office to practise foreign law, or a commercial legal presence, in the Territory within a reasonable period after being granted registration; or
- (e) the foreign legal practitioner fails to comply with any condition imposed on the practitioner’s registration under this Part.

“(3) Registration is not to be cancelled on a ground referred to in subsection (2) unless the foreign legal practitioner is given reasonable opportunity to make written submissions to the Law Society.

“(4) The registration of a foreign legal practitioner is not to be cancelled on the ground referred to in paragraph (2) (c) if the practitioner demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the practitioner but from circumstances beyond the practitioner’s control.

“(5) Registration as a foreign legal practitioner under this Part is automatically cancelled if the practitioner concerned—

- (a) is registered as a domestic legal practitioner; or
- (b) requests the cancellation.

“(6) Cancellation of registration at the request of a legal practitioner does not affect the exercise by the Law Society of any power relating to disciplinary proceedings brought against the practitioner before the cancellation.

Appeals

“191ZB. (1) If the Law Society—

- (a) refuses to register a foreign legal practitioner under this Part;
- (b) cancels the registration of a foreign legal practitioner under this Part; or
- (c) takes any disciplinary action against a foreign legal practitioner under this Act;

the practitioner may appeal to the Supreme Court.

“(2) The Supreme Court may make any order in relation to the refusal, cancellation or disciplinary action that might be made in relation to an appeal by—

- (a) an applicant for registration as a domestic legal practitioner who is refused registration as a solicitor;
- (b) a domestic legal practitioner whose registration as a solicitor is cancelled by the Law Society; or
- (c) a domestic legal practitioner against whom disciplinary action has been taken by the Law Society.

“Division 3—Legal practice

Scope of practice

“191ZC. (1) A locally registered foreign legal practitioner may provide only the following legal services:

- (a) doing any work, or transacting any business, in the Territory concerning the law of the place in which the practitioner is registered by the practitioner’s home registration authority;
- (b) legal services (including appearances) in relation to arbitration proceedings in the Territory of a kind prescribed by the regulations;
- (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of the place referred to in paragraph (a) is essential;
- (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in the Territory of a kind prescribed by the regulations.

“(2) Nothing in this Part authorises a locally registered foreign legal practitioner to advise on the law of any Territory or State or the Commonwealth or to appear in any court (except on the practitioner’s own behalf).

Form of practice

“191ZD. (1) A locally registered foreign legal practitioner may practise—

- (a) as a foreign legal practitioner on the practitioner’s own account;
or
- (b) in partnership with other locally registered foreign legal practitioners or with domestic legal practitioners (or both).

“(2) Any such affiliation does not entitle the locally registered foreign legal practitioner to practise domestic law in the Territory.

Professional conduct

“191ZE. (1) A locally registered foreign legal practitioner has the same duties to maintain the standards of professional conduct of the legal profession of the Territory as a domestic legal practitioner.

“(2) However, a locally registered foreign legal practitioner need not comply with any standard if the practitioner proves that to do so would subject the practitioner to disciplinary action by the practitioner’s home registration authority if done in the place of foreign registration.

Discipline

“191ZF. (1) A locally registered foreign legal practitioner is subject to the disciplinary provisions and arrangements that are applicable to domestic legal practitioners.

“(2) However, a locally registered foreign legal practitioner cannot be disciplined for the breach of any provision if the practitioner proves that such a breach would not subject the practitioner to disciplinary action by the practitioner’s home registration authority if done in the foreign place of registration.

“(3) The regulations may exempt any foreign legal practitioner or class of foreign legal practitioners from compliance with all or specified disciplinary provisions or arrangements.

Letterhead and other identifying documents

“191ZG. (1) A locally registered foreign legal practitioner may describe himself or herself and any law firm with which the foreign legal practitioner is associated in any of the ways designated in section 191ZH.

“(2) A locally registered foreign legal practitioner shall indicate on the practitioner’s letterhead, and any other document used when practising foreign law in the Territory to identify the practitioner as a legal practitioner, the fact that the practitioner is a locally registered foreign legal practitioner and a statement that such registration does not entitle the practitioner to practise as a domestic legal practitioner in the Territory.

“(3) A locally registered foreign legal practitioner may (but need not) indicate all Territories and States in which the practitioner (and any of the practitioner’s partners) are registered as foreign legal practitioners on any document referred to in this section.

“(4) A locally registered foreign legal practitioner may (but need not) indicate all places outside Australia in which the practitioner is registered to practise law on any document referred to in this section.

Designation

“191ZH. (1) A locally registered foreign legal practitioner may use the following designations:

- (a) the practitioner’s own name;
- (b) the title the practitioner is authorised by law to use in the place outside Australia in which the practitioner is registered by the home registration authority;
- (c) subject to subsection (2), the name of any law firm outside Australia with which the practitioner is affiliated (whether as a partner or otherwise);
- (d) if the foreign legal practitioner is a member of any law firm in Australia that includes both locally registered foreign legal practitioners and domestic legal practitioners, a description of the firm that includes reference to both domestic legal practitioners and registered foreign legal practitioners.

“(2) A locally registered foreign legal practitioner who is a partner of a law firm outside Australia may use the name of the firm in practising foreign law in the Territory, or use the name in connection with the practice, only if—

- (a) the practitioner indicates on the practitioner’s letterhead, and any other document used in the Territory to identify the practitioner as a legal practitioner, the purely foreign nature of the law firm;
- (b) the practitioner has provided the Law Society with a copy of the partnership agreement or other acceptable evidence that the practitioner is a partner of the law firm; and
- (c) use of the name complies with any requirements of the law of the Territory concerning use of business names and will not lead to any confusion with the name of any established domestic or foreign law firm in the Territory.

“(3) A locally registered foreign legal practitioner who is a partner of a law firm may use the name of the firm as referred to in this section whether or not other partners in the firm are locally registered foreign legal practitioners.

Advertising

“191ZI. (1) A locally registered foreign legal practitioner shall comply with any advertising restrictions imposed by the Law Society or by law on the practice of law by a domestic legal practitioner that are relevant to the practice of foreign law in the Territory.

“(2) Without limiting the generality of subsection (1), a locally registered foreign legal practitioner shall not advertise (or use any description on the practitioner’s letterhead or any other document used in the Territory to identify the practitioner as a legal practitioner) in any way that might reasonably be regarded as—

- (a) false, misleading or deceptive; or
- (b) suggesting that the locally registered foreign legal practitioner is a domestic legal practitioner;

or that contravenes any requirements of the regulations.

Employment

“191ZJ. (1) A locally registered foreign legal practitioner may employ, or be employed by, 1 or more domestic legal practitioners.

“(2) Any such arrangement does not entitle the locally registered foreign legal practitioner to practise domestic law in the Territory.

“(3) A period of employment by a locally registered foreign legal practitioner may not be used by a domestic legal practitioner to satisfy any requirement concerning a period of supervised practise imposed on the domestic legal practitioner by the Law Society.

Indemnity insurance

“191ZK. (1) A foreign legal practitioner who practises foreign law in the Territory shall comply with any requirement concerning indemnity insurance that is equivalent to any such requirement that applies by or under a law to domestic legal practitioners and that is designed to protect the public, clients or others.

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

Trust accounts, controlled moneys and fidelity fund contributions

“191ZL. (1) A locally registered foreign legal practitioner who receives money on behalf of another person in the course of practising as a foreign legal practitioner in the Territory shall comply with any applicable provisions of the law of the Territory that require a domestic legal practitioner receiving money on behalf of another person in the course of practising as a domestic legal practitioner to maintain a trust account or to maintain records of controlled moneys.

“(2) A locally registered foreign legal practitioner who maintains a trust account or who is given control over moneys of a client shall not practise foreign law in the Territory without complying with any requirement made by the Law Society concerning contributions to the Fidelity Fund that is equivalent to any such requirement made in respect of domestic legal practitioners who practise as solicitors and that is designed to protect the public, clients or others.

“(3) In this section, a reference to money is not limited to a reference to money in the Territory.

Application of provisions to locally registered foreign legal practitioners

“191ZM. The provisions of Division 7 of Part XI, Parts XIII, XIV and XV and sections 196, 197 and 198 apply in relation to locally registered foreign legal practitioners as they apply in relation to solicitors.

“Division 4—Miscellaneous

Membership of professional association

“191ZN. A locally registered foreign legal practitioner is not required to join (but may, if eligible, join) any professional association.”.

NOTES

Principal Act

1. Reprinted as at 30 November 1996. See also Act No. 26, 1997.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 23 September 1997]

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