



AUSTRALIAN CAPITAL TERRITORY

# **Legal Practitioners (Amendment) Act (No. 3) 1997**

**No. 95 of 1997**

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AUSTRALIAN CAPITAL TERRITORY

## **Legal Practitioners (Amendment) Act (No. 3) 1997**

**No. 95 of 1997**

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### **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. 3) 1997*.

#### **Commencement**

**2. (1)** Section 1, this section and section 3 commence on the day on which this Act is notified in the *Gazette*.

**(2)** Section 39 of the Principal Act as amended by this Act shall be taken to have come into operation on 23 September 1997.

**(3)** Subject to subsection (2), the remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

**(4)** If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

### **Principal Act**

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

### **Interpretation**

4. Section 3 of the Principal Act is amended—

(a) by omitting the definition of “Admission Board” and substituting the following definition:

“ ‘Admission Board’ means the Legal Practitioners Admission Board;”;

(b) by omitting the definitions of “barrister and solicitor” and “Roll of Barristers and Solicitors”; and

(c) by inserting the following definitions:

“ ‘Court’ means the Supreme Court;

‘indemnity fund’ means a fund approved under section 83;

‘legal practitioner’ means a person whose name is on, or is to be taken to be on, the Roll of Legal Practitioners;

‘Mutual Recognition Act’ means the *Mutual Recognition Act 1992* of the Commonwealth;

‘professional indemnity insurance’ means a policy of insurance approved under section 76 or taken to be approved under section 77;

‘Roll of Legal Practitioners’ means the roll kept under section 16C;”.

### **Heading to Part VI**

5. The heading to Part VI of the Principal Act is omitted and the following heading substituted:

**“PART VI—ADMISSION OR ENROLMENT OF LEGAL PRACTITIONERS”.**

### **Substitution**

6. Sections 11, 12 and 13 of the Principal Act are repealed and the following sections substituted:

#### **Application for admission or enrolment**

“11. (1) A person who meets the requirements prescribed by the Rules of Court may apply to the Court for admission as a legal practitioner.

“(2) Subsection (1) does not apply to a person entitled to practise law in a place outside the Territory.

“(3) A person who—

- (a) is entitled to practise law in New Zealand; and
- (b) meets the prescribed requirements;

may apply to the Court for enrolment as a legal practitioner.

“(4) An application for admission or enrolment under this section shall be in accordance with the Rules of Court.

### **Enrolment of persons entitled to registration under the Mutual Recognition Act**

“12. Where a person lodges with the Court a notice under section 19 of the Mutual Recognition Act—

- (a) the lodgment of the notice shall be taken to be the making of an application for enrolment under this section based on that notice; and
- (b) the person on whose behalf the notice was lodged shall be taken to be the applicant.

### **Copies of applications to Admission Board and Law Society**

“13. On receipt of an application under section 11 or 12, the Registrar shall forward a copy of the application to the Admission Board and to the Law Society.”.

### **Report by Admission Board—other cases**

7. Section 14 of the Principal Act is amended—

- (a) by omitting from subsection (1) “under subsection 11 (2), 12 (6) or 13 (1)” and substituting “for admission or enrolment”;
- (b) by omitting from paragraph (1) (a) “to practise” and substituting “or enrolled”; and
- (c) by omitting subsection (4) and substituting the following subsections:

“(4) Subject to subsection (5), the Board shall furnish a copy of its report to the applicant and to the Law Society.

“(5) Where the application is to be heard by the Court, the Board shall furnish the copy of its report not less than 3 days before the day of the hearing.”.

**Substitution**

8. Sections 15 and 16 of the Principal Act are repealed and the following sections substituted:

**Response to applications by Law Society**

“15. The Law Society may—

- (a) furnish information to the Registrar regarding an applicant for admission or enrolment;
- (b) object to an application for admission or an application for enrolment under subsection 11 (3); and
- (c) in the case of an application for enrolment under section 12—draw to the attention of the Registrar, within 7 days of the making of that application, any grounds for postponement or refusal of enrolment of the applicant.

**Enrolment of New Zealand practitioners—action by Registrar and Law Society**

“16. (1) If on an application for enrolment under subsection 11 (3), the Registrar is satisfied that the applicant—

- (a) is entitled to apply for enrolment as a legal practitioner; and
- (b) is of good fame and character;

the applicant is entitled to be enrolled as a legal practitioner.

“(2) Before considering an application under subsection 11 (3), the Registrar shall have regard to any information furnished or objection made by the Law Society.

“(3) If the Law Society so requests, the Registrar shall refer an application under subsection 11 (3) to the Court.

“(4) Where the Registrar is not satisfied as required by subsection (1), the Registrar—

- (a) may; and
- (b) shall, if the applicant so requests;

refer the application to the Court.

“(5) Where the Registrar refers an application to the Court the Registrar shall notify the applicant and the Law Society accordingly.

“(6) An application referred to the Court shall be taken to be an application to the Court for admission as a legal practitioner.

**Enrolment of practitioners under the Mutual Recognition Act—action by Registrar and Law Society**

“16A. (1) Where in relation to an application under section 12 the Registrar considers that there are grounds under the Mutual Recognition Act for postponement or refusal of enrolment, the Registrar shall, within 14 days of the making of the application, refer the application to the Court.

“(2) In considering an application under subsection (1), the Registrar shall have regard to any grounds for postponement or refusal drawn to his or her attention by the Law Society.

“(3) Subject to subsection (4), if the Law Society so requests, the Registrar shall refer an application under section 12 to the Court.

“(4) Unless the Court orders that a request may be made at a later time, a request shall be made within 14 days of the making of the application.

“(5) Where an application is referred to the Court, the Registrar shall notify the applicant and the Law Society.

“(6) An application referred to the Court shall be taken to be an application to the Court for admission as a legal practitioner.

**Admission or entitlement to enrolment or registration**

“16B. (1) If on an application for admission the Court is satisfied that the applicant—

- (a) is entitled to apply to be admitted as a legal practitioner; and
- (b) is of good fame and character;

the Court shall admit the applicant as a legal practitioner.

“(2) If on an application that is taken to be an application for admission by virtue of subsection 16 (6) the Court is satisfied that the applicant—

- (a) is entitled to apply for enrolment as a legal practitioner; and
- (b) is of good fame and character;

the applicant is entitled to be enrolled as a legal practitioner.

“(3) If on an application that is taken to be an application for admission by virtue of subsection 16A (6) the Court is satisfied that the applicant is entitled to registration as a legal practitioner under the Mutual Recognition Act the applicant is entitled to be enrolled in accordance with subsection 16D (2).

“(4) The Law Society is entitled to be heard on the hearing of the application.

### **Roll of legal practitioners**

“16C. (1) The Registrar shall keep a roll to be known as the Roll of Legal Practitioners.

“(2) The roll referred to in subsection (1) includes the Roll of Legal Practitioners—Mutual Recognition Scheme.

“(3) The Roll shall be kept in accordance with any applicable Rules of Court.

### **Entry of names on Roll**

“16D. (1) The Registrar shall enter on the Roll of Legal Practitioners—

- (a) the name of each person admitted as a legal practitioner;
- (b) the name of each person entitled to be enrolled as a legal practitioner; and
- (c) the date on which the entry is made.

“(2) Where a person lodges a notice under section 19 of the Mutual Recognition Act and becomes entitled to registration under that Act, the Registrar shall, when the person becomes so entitled, enter on the part of the Roll referred to in subsection 16C (2)—

- (a) the name of the person; and
- (b) the date on which the person became so entitled.”.

### **Substitution**

9. Part VII of the Principal Act is repealed and the following Part substituted:

## **“PART VII—SOLICITORS’ PRACTISING CERTIFICATES**

### ***“Division 1—Preliminary***

### **Interpretation**

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

‘public employment’ means employment as—

- (a) a public employee in the Attorney-General’s Department;
- (b) a public employee in the Legal Aid Commission (A.C.T.);

- (c) a public employee in the Office of the Director of Public Prosecutions;
- (d) an officer or employee in the Attorney-General's Department of the Commonwealth; or
- (e) an officer or employee in the Office of the Director of Public Prosecutions of the Commonwealth.

***“Division 2—Requirement***

**Practising certificates required**

“22. (1) Subject to Part XVA, a legal practitioner shall not practise as a solicitor on his or her own account or in partnership with another legal practitioner unless he or she holds a current unrestricted practising certificate.

“(2) For the purpose of subsection (1), a person shall not be taken to practise as a solicitor by reason only that the person is a member of a partnership whose practice is conducted by another member or other members of the partnership.

“(3) A legal practitioner practising as a solicitor shall not employ another legal practitioner to perform the functions of a solicitor unless—

- (a) the employer holds a current unrestricted practising certificate; and
- (b) the employee—
  - (i) holds a current practising certificate; or
  - (ii) is an interstate legal practitioner who is entitled to engage in legal practise in the Territory by virtue of section 191D.

“(4) A legal practitioner is not entitled to recover any costs or disbursements in respect of any work of a professional nature done by him or her as a solicitor 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 is entitled to practise in the Territory, and to recover the costs or disbursements, by virtue of section 191D.

“(5) In this section, a reference to a person who holds a type of practising certificate shall be taken to include a person named in an order under subsection 31 (4) or 36D (5) in respect of a practising certificate of that type specified in the order.

***“Division 3—Application***

**Restrictions on persons who may apply**

“23. (1) An application for a practising certificate may be made only by a legal practitioner.

“(2) Subject to subsection 28 (2), a legal practitioner whose practising certificate is suspended (including a suspension under a law of another jurisdiction) is not entitled, during the period of the suspension, to apply for the issue of a practising certificate.

**Applications for practising certificates**

“24. An application for the issue of a practising certificate, shall be in a form approved by the Law Society and shall be signed by the applicant.

***“Division 4—Issue***

**Issuing authority**

“25. Subject to this Division, practising certificates shall be issued by the Law Society.

**Issue of certificates—generally**

“26. (1) The Law Society shall not issue a practising certificate unless the applicant has paid to the Law Society the fee fixed under subsection 36E (1).

“(2) The Law Society may refuse to issue a practising certificate if the applicant—

- (a) fails to pay a fine or any costs, fees or expenses payable by him or her to the Law Society under this Act;
- (b) being required by the Council to explain specified conduct by him or her as a solicitor, fails without reasonable excuse to give a reasonable written explanation to the Council;
- (c) fails to fulfil any obligations he or she has pursuant to an agreement referred to in section 46;
- (d) fails to comply with a direction of the Professional Conduct Board under paragraph 58 (1) (b) or subsection 58 (2) or 59 (1); or
- (e) has been sentenced to a term of imprisonment.

### **Issue of unrestricted practising certificates**

“27. (1) Subject to this Division, if the Law Society receives an application from a person under section 24 and is satisfied that the person is qualified as provided in an item of the following table, the Law Society shall issue to the applicant an unrestricted practising certificate:

**Table**

| Item | Qualification  |
|------|--|
| 1    | A person who holds an unrestricted practising certificate in respect of a period that will expire on 30 June in a year and applies for an unrestricted practising certificate to commence later that year.   |
| 2    | A person who—<br>(a) held an unrestricted practising certificate not more than 5 years immediately preceding the date of the application (whether before or after the commencement of this section); and<br>(b) has retained such a level of professional skill that it is appropriate that a further unrestricted practising certificate be issued to him or her.   |
| 3    | A person who—<br>(a) has not previously held an unrestricted practising certificate;<br>(b) during the period of 5 years immediately preceding the date of the application, has, for a period of not less than 2 years or for periods which, in the aggregate, are not less than 2 years—<br>(i) been employed in a State or Territory under articles of clerkship;<br>(ii) been performing work of a legal nature as an employee of a solicitor in the Territory or in a State or another Territory;<br>(iii) been performing work of a legal nature in public employment;<br>(iv) practised in the Territory or in a State or another Territory as a solicitor, either on his or her own account or in partnership with another legal practitioner; or<br>(v) been employed or practised, as the case may be, in any 2 or more of the capacities referred to in subparagraphs (i), (ii), (iii) and (iv); and<br>(c) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her. |
| 4    | A person who—<br>(a) has not previously held an unrestricted practising certificate;   |

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| Item | Qualification   |
|------|---|
|      | <p>(b) during the period of 5 years immediately preceding the date of the application—</p> <p>(i) has served or practised for a period of not less than 12 months, or for periods which, in the aggregate, are not less than 12 months, in any 1 or more of the capacities referred to in paragraph (b) in Column 2 of item 3; and</p> <p>(ii) has completed a prescribed course of training for the practise of law; and</p> <p>(c) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.</p>   |
| 5    | <p>A person who—</p> <p>(a) has during the period of 5 years immediately preceding the date of the application—</p> <p>(i) practised in the Territory or in a State or another Territory as a barrister for a period of not less than 2 years;</p> <p>(ii) practised in the Territory or in a State or another Territory as a barrister for a period of not less than 1 year and served or practised, as the case may be, in any 1 or more of the capacities referred to in paragraph (b) in Column 2 of item 3 for a period of not less than 1 year or for periods which, in the aggregate, are not less than 1 year; or</p> <p>(iii) after completing a prescribed course of training for the practise of law, practised in the Territory or in a State or another Territory as a barrister for a period of not less than 1 year; and</p> <p>(b) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.</p> |
| 6    | <p>A person who—</p> <p>(a) has previously held a practising certificate; and</p> <p>(b) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.</p>   |
| 7    | <p>A person who, being a New Zealand barrister and solicitor—</p> <p>(a) has for a continuous period of not less than 6 months following the person's admission or enrolment in the Territory been employed by a legal practitioner in the Territory; and</p> <p>(b) has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her.</p>   |

“(2) The Law Society shall not issue an unrestricted practising certificate unless the applicant has paid to the Law Society—

- (a) any contribution payable by the applicant to the Fidelity Fund in respect of the period for which the practising certificate will be in force; and
- (b) any levy payable by the applicant under section 147.

“(3) Subject to subsection (4), the Law Society shall not issue an unrestricted practising certificate unless it is satisfied that the applicant has or will have professional indemnity insurance for the period during which the practising certificate sought by the applicant will be in force.

“(4) The Law Society may issue an unrestricted practising certificate to a solicitor in relation to a period without the solicitor having professional indemnity insurance in respect of that period if the Law Society is satisfied that the nature of the practice of the solicitor does not require professional indemnity insurance.

“(5) The Law Society may refuse to issue an unrestricted practising certificate if—

- (a) the applicant fails to comply with subsection 104 (6) or section 106; or
- (b) a report under Division 5, 6 or 7 of Part XI discloses a deficiency in the trust moneys held by him or her (not being a deficiency that was excusable and was made good before the date of the report).

“(6) The Law Society shall refuse to issue an unrestricted practising certificate if the applicant—

- (a) is bankrupt;
- (b) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) has compounded with creditors or made an assignment of remuneration for the benefit of his or her creditors.

“(7) The Law Society shall not issue an unrestricted practising certificate to an applicant who has not previously held such a certificate unless the applicant has satisfied the Law Society by passing examinations or otherwise that he or she has an adequate knowledge of accounts and legal ethics.

**Issue of restricted practising certificates**

“28. (1) Subject to this Division, if the Law Society receives an application from a person under section 24 and is satisfied that the person is qualified to hold a restricted practising certificate, the Law Society shall issue to the applicant a practising certificate of that type.

“(2) The Law Society may issue a restricted practising certificate to a person whose unrestricted practising certificate—

- (a) has been suspended; or
- (b) has been cancelled in accordance with subsection 36A (2) or (3).

**Issue of practising certificates to practitioners enrolled under the Mutual Recognition Act**

“29. (1) Where a person holds a practising certificate under the law of a State or another Territory (in this section called ‘the home State’) and—

- (a) the name of the person is entered on the Roll of Legal Practitioners under subsection 16D (2); and
- (b) the person lodges with the Law Society a notice under section 19 of the Mutual Recognition Act;

the Law Society shall issue to the person a practising certificate subject to payment to the Society of the amount provided for by subsection 26 (1) and any amounts provided for by subsection 27 (2).

“(2) If the practising certificate held by the person under the law of the home State corresponds most closely to—

- (a) an unrestricted practising certificate; or
- (b) a restricted practising certificate;

the Law Society shall issue such a certificate to the person under this section.

“(3) Subject to this Division, if the holder of a practising certificate issued under this section makes an application under section 24, the Law Society shall issue to the applicant a further practising certificate of the same type.

**Notice of refusal to issue practising certificates**

“30. Where the Law Society refuses to issue a practising certificate, it shall give notice in writing to the applicant of, and of the ground for, the refusal.

**Powers of Court relating to issue of practising certificates**

“31. (1) Where the Law Society—

- (a) has refused to issue a practising certificate of the type sought by a person; or
- (b) has refused to issue an unrestricted practising certificate to a person in accordance with subsection 27 (4) in relation to a period without the person having professional indemnity insurance in respect of that period;

the person may, within 14 days after being given notice of the refusal or the condition, apply to the Court for an order under subsection (2).

“(2) On an application under subsection (1), the Court may direct the Law Society, as the case requires, to issue to the applicant—

- (a) a practising certificate of the type sought by the applicant (with or without professional indemnity insurance); or
- (b) if the applicant sought the issue of an unrestricted practising certificate—a restricted practising certificate.

“(3) A person who has made an application under subsection (1) may apply to the Court for an order under subsection (4).

“(4) The Court in its discretion may order that the person shall, until the determination of his or her application under subsection (1), be taken to be a person who holds a practising certificate of the type specified in the order.

“(5) The Law Society shall be the respondent to an application under this section.

**Application to Court by person not qualified under subsection 27 (1)**

“32. (1) A legal practitioner who—

- (a) is not qualified, in accordance with subsection 27 (1), to have an unrestricted practising certificate issued to him or her; and
- (b) having regard to his or her training and experience, has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her;

may apply to the Court for an order under subsection (2).

“(2) Where the Court is satisfied having regard to the training and experience of the applicant, that the applicant has attained such a level of professional skill and gained such experience that it is appropriate that an unrestricted practising certificate be issued to him or her the Court may direct the Law Society to issue to the applicant an unrestricted practising certificate.

“(3) The Court may order that the practising certificate have effect subject to a condition or conditions specified in the order.

“(4) On an application under subsection (1), the Court shall, on the application of the Law Society, order that the costs incurred by the Law Society in connection with the application 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.

“(5) The Law Society shall be the respondent to an application under this section.

#### **Issue of certificates conditionally or unconditionally**

“33. (1) The Law Society may issue a practising certificate unconditionally or subject to conditions.

“(2) The Law Society may from time to time, by notice in writing to the holder of a practising certificate, add to, or vary or revoke a condition of, a practising certificate whether or not the certificate was originally issued unconditionally.

“(3) The imposition of conditions on a practising certificate by virtue of an order of the Court does not limit the powers of the Law Society under subsection (2) in relation to that certificate.

“(4) Without limiting the conditions that may be imposed under subsection (1), added under subsection (2) or the effect of a condition as varied under subsection (2), the conditions that may be so imposed, added or varied include all or any of the following:

- (a) restricting the holder of the certificate to certain specified classes of work;
- (b) prohibiting the holder of the certificate from engaging in certain specified classes of work;
- (c) requiring the holder of the certificate to undertake all work or certain specified classes of work subject to supervision of a specified type;

- (d) requiring the holder of the certificate to practise, or perform the functions of a solicitor, only in a type or types of specified employment or in the employment of a specified person;
- (e) requiring the holder of the certificate to undertake education or training of a specified type or types;
- (f) requiring the holder of the certificate to cease employing a specified person or persons;
- (g) requiring the holder of the certificate to effect a specified type of insurance.

“(5) In subsection (4)—

‘specified’ means specified in the practising certificate.

#### **Powers of Court relating to conditions on practising certificates**

“34. (1) Where the Law Society has—

- (a) issued a practising certificate subject to a condition which the holder considers is unreasonable (not being a condition referred to in paragraph 31 (1) (b));
- (b) added a condition to a practising certificate which the holder of the certificate considers is unreasonable; or
- (c) varied a condition on a practising certificate in a way which the holder of the certificate considers is unreasonable;

the holder may apply to the Court for an order under subsection (2).

“(2) The Court may order that a practising certificate have effect—

- (a) free of any condition; or
- (b) subject to any conditions the Court thinks fit.

“(3) An order under subsection (2)—

- (a) may be expressed to have effect from a date earlier than the date on which the order is made; and
- (b) may provide that a condition or conditions specified in the order is or are to operate instead of another condition or conditions specified in the order.

“(4) The Law Society shall be the respondent to an application under this section.

***“Division 5—Surrender***

**Surrender of practising certificates**

“35. (1) Subject to subsection (2), a legal practitioner may surrender his or her practising certificate by application in writing to the Law Society accompanied by the certificate.

“(2) The Law Society may decline to accept the surrender of a practising certificate.

“(3) A surrender of a practising certificate shall be taken to have effect on and from the date specified by the Law Society in the acknowledgment referred to in paragraph (4) (a).

“(4) Where the Law Society accepts the surrender of a practising certificate it shall—

- (a) acknowledge that fact in writing to the former holder of the certificate and specify in that writing the date on and from which the surrender is to be taken to have effect; and
- (b) refund to the former holder a proportion, calculated in accordance with subsection (5), of—
  - (i) the fees paid for the issue of the certificate; and
  - (ii) any contribution made to the Fidelity Fund referred to in paragraph 27 (2) (a).

“(5) The amount of a refund—

- (a) of the fees shall bear the same proportion to the total amount of the fees; and
- (b) of any contribution shall bear the same proportion to the total amount of the contribution;

as the number of whole months that would have been the unexpired period of the certificate if it had not been surrendered bear to the total period of the certificate if it had not been surrendered.

“(6) The surrender of a practising certificate does not affect any liability of the former holder (other than the liability for fees and any contribution and levy paid for the issue of the certificate) that had been incurred or accrued before the surrender of the certificate.

***“Division 6—Suspension and cancellation***

**Suspension**

“36. (1) The Law Society may suspend for a specified period not exceeding 12 months a practising certificate held by a legal practitioner who—

- (a) fails to pay a fine or any costs, fees or expenses payable by him or her to the Law Society under this Act;
- (b) being required by the Council to explain specified conduct by him or her as a solicitor, fails without reasonable excuse to give a reasonable written explanation to the Council;
- (c) fails to fulfil any obligations he or she has pursuant to an agreement referred to in section 46; or
- (d) fails to comply with a direction of the Professional Conduct Board under paragraph 58 (1) (b) or subsection 58 (2) or 59 (1).

“(2) The Law Society may suspend for a specified period not exceeding 12 months an unrestricted practising certificate held by a legal practitioner—

- (a) if the legal practitioner fails to comply with subsection 78 (1);
- (b) if the legal practitioner fails to comply with subsection 104 (6) or section 106; or
- (c) if a report under Division 5, 6 or 7 of Part XI discloses a deficiency in the trust moneys held by him or her (not being a deficiency that was excusable and was made good before the date of the report).

“(3) If the Law Society is satisfied that a legal practitioner whose practising certificate has been suspended has paid the levy referred to in paragraph 78 (1) (b), the Law Society shall revoke the suspension.

“(4) A legal practitioner whose practising certificate is suspended shall be taken, during the period of its suspension, not to hold a current practising certificate.

**Cancellation**

“36A. (1) Where—

- (a) the name of a person is removed from the Roll of Legal Practitioners; or

- (b) the right of a person to practise in the Territory as a solicitor or as a barrister and solicitor is suspended;

a practising certificate held by the person is, by force of this section, cancelled.

“(2) The Law Society shall cancel an unrestricted practising certificate held by a legal practitioner if he or she—

- (a) becomes bankrupt;
- (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

“(3) The Law Society may cancel a practising certificate held by a legal practitioner who has been sentenced to a term of imprisonment.

#### **Notice of cancellation or suspension**

“36B. Where the Law Society cancels or suspends a practising certificate it shall give the person to whom the certificate was issued notice in writing of, and of the ground for, the cancellation or suspension.

#### **Delivery of cancelled certificate to Law Society etc.**

“36C. (1) Subject to subsection (2), a legal practitioner who is given notice of the cancellation of his or her practising certificate shall forthwith deliver the certificate to the Law Society.

“(2) Where—

- (a) a practising certificate has been cancelled;
- (b) an order has been made under subsection 36D (5); and
- (c) the Court refuses to make an order under subsection 36D (2);

the person who held the practising certificate shall, forthwith after the refusal, deliver the certificate to the Law Society.

“(3) Where a practising certificate that has been cancelled is delivered to the Law Society under subsection (2) and before the expiration of the certificate in accordance with subsection 36F (2)—

- (a) the cancellation of the certificate is revoked; or
- (b) the Court makes an order under subsection 36D (5);

the Law Society shall forthwith cause the certificate to be returned to the legal practitioner concerned.

**Powers of Court relating to cancellation or suspension of practising certificates**

“36D. (1) A person whose practising certificate has been cancelled or suspended by the Law Society may apply to the Court for an order under subsection (2).

“(2) Where, on an application under subsection (1), the Court is satisfied that the circumstances are such that the cancellation or suspension of the applicant’s practising certificate ought to be revoked, the Court may, subject to such terms and conditions (if any) as it thinks fit, by order revoke the cancellation or suspension of the applicant’s practising certificate.

“(3) Where the Court makes an order under subsection (2), the revocation of the cancellation or suspension of the applicant’s practising certificate shall take effect on and from the date of the order or such other date as is specified in the order.

“(4) A person who has made an application under subsection (1) may apply to the Court for an order under subsection (5).

“(5) The Court in its discretion may order that the person shall, until the determination of his or her application under subsection (1), be taken to be a person who holds a practising certificate of the type specified in the order.

“(6) The Law Society shall be the respondent to an application under this section.

***“Division 7—Miscellaneous***

**Fees for practising certificates**

“36E. (1) The fee payable on an application for the issue of an unrestricted practising certificate or a restricted practising certificate is that fixed by the Law Society as the fee payable for that type of practising certificate.

“(2) Where an application for the issue of a practising certificate is made after 1 July in any year and before the following 30 June, the fee payable for the issue of the practising certificate is an amount that bears to the fee applicable under subsection (1) the same proportion as the number of months in the period between the date of the application and the following 30 June bears to 12.

“(3) Where the Law Society issues a practising certificate to a person who has, within the period of 12 months immediately preceding the date of issue of the certificate, had his or her practising certificate cancelled—

- (a) the fee payable in respect of the application for the issue of the practising certificate may be reduced or payment of the fee may be waived by the Society; and
- (b) where the person has already paid a contribution to the Fidelity Fund in respect of a period including the period for which the certificate will be in force, the person is not required to pay a contribution to the Fidelity Fund.

#### **Date of effect and term of practising certificates**

“36F. (1) A practising certificate takes effect on the date on which the certificate is expressed to take effect.

“(2) A practising certificate expires on 30 June next following the date on which the certificate takes effect.

#### **Register of holders of practising certificates**

“36G. (1) The Law Society shall keep a register of the names of all persons holding current unrestricted practising certificates and a register of the names of all persons holding current restricted practising certificates.

“(2) A register shall be kept in such manner and form as the Law Society determines.

#### **Notice of change of circumstances**

“36H. (1) The holder of an unrestricted 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 or she 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.

“(2) Where the holder of a restricted practising certificate who is employed by a solicitor—

- (a) ceases employment with the solicitor; or

(b) commences employment with another solicitor;  
the holder shall, within 14 days of ceasing or commencing employment, as the case may be, notify the Law Society of that fact.”.

### **Substitution**

**10.** Sections 75A, 76, 77 and 78 of the Principal Act are repealed and the following sections substituted:

### **Approval of indemnity insurance**

“76. (1) For the purposes of this Part, the Law Society may approve—

- (a) an insurer; and
- (b) the terms of a policy of professional indemnity insurance for solicitors offered by the insurer.

“(2) The Law Society may—

- (a) grant an approval under subsection (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) vary or revoke any such approval.

### **Indemnity insurance taken to be approved**

“77. Where an indemnity fund has been approved under section 83 and the rules or conditions applicable to the contributors to the fund require a contributor to hold a policy of professional indemnity insurance, the terms of the policy shall be taken to be approved.

### **Maintenance of indemnity insurance**

“78. (1) A solicitor who is issued with an unrestricted practising certificate on the basis that he or she is, or will be, the holder of a policy of professional indemnity insurance for the period of the practising certificate shall—

- (a) take all reasonable steps to ensure that the policy continues in force during that period and, if the policy ceases to be in force, obtain a replacement policy for that part of the period; and
- (b) if the solicitor is a contributor to an indemnity fund—pay any levy payable in accordance with the rules or conditions applicable to contributors to the fund.

“(2) A solicitor referred to in subsection (1) who is issued with an unrestricted practising certificate shall notify the Law Society if his or her policy of professional indemnity insurance ceases to be in force before the expiration of the practising certificate.”.

### **Repeal**

**11.** Section 81 of the Principal Act is repealed.

### **Substitution**

**12.** Part X of the Principal Act is repealed and the following Part substituted:

## **“PART X—INDEMNITY FUNDS**

### **Interpretation**

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

‘indemnity fund’ means a fund established to assist in meeting claims against a solicitor in respect of the conduct of his or her practice not being claims involving a dishonest act or omission.

### **Approval of funds**

“83. (1) The Law Society may, by instrument, approve an indemnity fund to be a fund to which a solicitor may make contributions.

“(2) Without limiting the scope of subsection (1), an approval under that subsection may be given in respect of a fund established by or under the law of a State or Territory.”.

### **Interpretation**

**13.** Section 86 of the Principal Act is amended by inserting the following definition:

“ ‘banking day’, in relation to a trust account that has been opened at or is maintained at a bank, means a day other than a Saturday, Sunday or public holiday on which the bank is open for business;”.

### **Trust accounts**

**14.** Section 90 of the Principal Act is amended—

- (a) by adding at the end of paragraph (2) (a) “and”; and
- (b) by omitting paragraph (b).

### **Payment into trust bank account**

**15.** Section 91 of the Principal Act is amended—

- (a) by inserting “subsection (2) and” after “Subject to”;
- (b) by omitting “, in connection with his or her practice in the Territory, from, or on behalf of, a client of the solicitor”;
- (c) by omitting “day on which the bank at which the account is maintained is open for business” and substituting “banking day”;  
and
- (d) by adding at the end the following subsection:

“(2) Where trust moneys are paid by direct deposit or electronic transfer into an account operated by the solicitor in connection with his or her practice, the solicitor shall cause that money to be paid into 1 of the bank accounts referred to in subsection (1) on the next banking day after the day on which he or she becomes aware of the payment.”.

### **Instructions regarding certain trust moneys**

**16.** Section 93 of the Principal Act is amended by omitting from paragraphs (a) and (b) “\$1,000” (wherever occurring) and substituting “\$5,000”.

### **Substitution**

**17.** Section 99 of the Principal Act is repealed and the following section substituted:

### **Receipts for trust moneys**

“99. (1) Subject to this section, where a solicitor receives trust money from or on behalf of a person the solicitor shall issue to the person a receipt.

“(2) Subject to subsection (3), a receipt—

- (a) shall be numbered; and
- (b) shall specify—
  - (i) the amount of the payment;
  - (ii) the date on which the payment was received;
  - (iii) the name of the person from whom the payment was received;
  - (iv) if the payment was made by a person on behalf of another person—the name of that other person;

- (v) if the payment was received on behalf of a client of the solicitor—the name of the client; and
- (vi) a notation sufficiently detailed to enable identification of the matter to which the payment relates.

“(3) Where particulars of the matters dealt with by the solicitor in the course of his or her practice are normally recorded in a computer and at the time of the payment—

- (a) the matter has not been entered in the computer; or
- (b) the computer is not in operation;

the solicitor shall issue an interim receipt in accordance with paragraph (2) (b) and as soon as practicable after the matter has been so entered, or the computer is in operation, forward to the person on whose behalf the payment was made a receipt in accordance with subsection (2).

“(4) Where a solicitor issues a receipt for trust money, the solicitor shall keep a copy of the receipt or of the particulars referred to in paragraph (2) (b).

“(5) Where the payment is made by direct deposit or electronic transfer into an account operated by the solicitor in connection with his or her practice, the solicitor shall, as soon as he or she becomes aware of the payment—

- (a) take reasonable steps to identify the person who made the payment; and
- (b) issue to the person a receipt in accordance with subsection (2).”.

### **Insertion**

**18.** After section 99A of the Principal Act the following section is inserted:

#### **Monthly statements relating to trust moneys**

“99B. (1) In respect of each month during which a solicitor maintains a trust account the solicitor shall obtain a bank statement.

“(2) The solicitor shall carry out a reconciliation in respect of each monthly bank statement within 7 days of receiving the statement.”.

**Insertion**

**19.** After section 198 of the Principal Act the following sections are inserted:

**Review by Tribunal**

“198A. Application may be made to the Administrative Appeals Tribunal for review of a decision or determination, as the case may be, of the Law Society—

- (a) under subsection 76 (1) to refuse to approve an insurer or to refuse to approve the terms of a policy of professional indemnity insurance;
- (b) under paragraph 76 (2) (b) to impose conditions upon the grant of an approval;
- (c) under paragraph 76 (2) (c) to vary or revoke an approval;
- (d) under subsection 139 (1) to refuse to allow further time within which an application for compensation under Part XII may be accepted;
- (e) under subsection 139 (2), where a notice is published under section 138, to refuse to allow further time within which an application for compensation under Part XII may be accepted;
- (f) under paragraph 141 (1) (a) as to the amount of pecuniary loss in respect of which compensation may be paid to an applicant under Part XII;
- (g) under paragraph 141 (1) (b) that there is no pecuniary loss in respect of which compensation may be paid to an applicant under Part XII;
- (h) under subsection 145 (3) to refuse to pay compensation out of the Fidelity Fund to a solicitor;
- (j) under subsection 145 (3) as to the amount of compensation paid out of the Fidelity Fund to a solicitor;
- (k) under subsection 146 (1) to refuse to make an interim payment of compensation to an applicant under Part XII; or
- (m) under subsection 146 (1) as to the amount of an interim payment of compensation paid to an applicant under Part XII.

### **Notification of decisions**

“198B. (1) The Law Society shall cause notice of a decision or determination referred to in section 198A to be given to the applicant concerned.

“(2) A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

### **Further amendments**

**20.** The Principal Act is further amended as set out in the Schedule.

### **Saving and transitional**

**21. (1)** Where immediately before the commencement of this section a person—

- (a) held office as a member of the Barristers and Solicitors Admission Board of the Australian Capital Territory under subsection 7 (1) of the Principal Act; or
- (b) held office under subsection 7 (4) of the Principal Act;

the person shall, subject to the Principal Act as amended by this Act, hold office for a period equal to the period which immediately before that commencement was the unexpired portion of his or her term of office as if—

- (c) in the case of a person referred to in paragraph (a)—the person had been appointed under subsection 7 (1) of the Principal Act as amended by this Act; or
- (d) in the case of a person referred to in paragraph (b)—the person had been appointed under subsection 7 (4) of the Principal Act as amended by this Act.

**(2)** Where before the commencement of this section a person had lodged with the Court a notice under section 19 of the Mutual Recognition Act but had not become entitled to registration before that commencement, for the purpose of enabling the notice to be dealt with under the Principal Act as amended by this Act—

- (a) the lodgment of the notice shall be taken to be the making of an application for enrolment under section 12 of the Principal Act as amended by this Act;
- (b) the person on whose behalf the notice was lodged shall be taken to be the applicant; and

- (c) if the Registrar had not, before that commencement, forwarded a copy of the notice to the Admission Board and to the Law Society—the Registrar shall comply with section 13 as soon as practicable after that commencement.

**(3)** In relation to an application referred to in subsection (2), the reference in—

- (a) paragraph 15 (c);
- (b) subsection 16A (1); or
- (c) subsection 16A (4);

of the Principal Act as amended by this Act to the making of the application shall be taken to be a reference to the commencement of this section.

**(4)** Subject to any order of the Court, where in relation to a particular application the Registrar is satisfied, having regard to the time limit specified in subsection 21 (1) of the Mutual Recognition Act, that the processing of the application within the periods provided for in—

- (a) subsection 14 (5) of the Principal Act as amended by this Act; and
- (b) the provisions referred to in subsection (3), as affected by that subsection;

would not be possible, or reasonably practicable, the Registrar may issue written directions to abridge any 1 or more of those periods.

**(5)** Where before the commencement of this section a person had signed the Roll of Barristers and Solicitors in accordance with section 19 of the Principal Act and immediately before that commencement his or her name remained on the Roll, the person shall, for the purposes of the Principal Act as amended by this Act, be taken to have been enrolled as a legal practitioner.

**(6)** For the purposes of subsection (5) the name of a person shall be taken not to have remained on the Roll if, before the commencement of this section, the Supreme Court had given a direction referred to in paragraph 67 (1) (a) of the Principal Act which immediately before that commencement had not been given effect.

**(7)** Where immediately before the commencement of this section the name of a person was entered on the Roll of Barristers and Solicitors but the person had not signed the Roll in accordance with section 19 of the Principal Act, the person shall, for the purposes of the Principal Act as amended by this Act, be taken to have been enrolled as a legal practitioner on signing the Roll.

**(8)** The Roll kept under section 16 of the Principal Act immediately before the commencement of this section shall be taken to be the Roll of Legal Practitioners for the purposes of the Principal Act as amended by this Act.

**(9)** The Roll known as the “Roll of Barristers and Solicitors—Mutual Recognition” kept by the Registrar immediately before the commencement of this section—

- (a) shall be taken always to have formed part of the roll referred to in subsection (8); and
- (b) shall for the purposes of the Principal Act as amended by this Act be referred to as the Roll of Legal Practitioners—Mutual Recognition Scheme.

**(10)** Subject to subsection (11), where an application under section 22 of the Principal Act that was signed by the applicant was pending immediately before the commencement of this section, that application shall be taken to be an application under section 24 of the Principal Act as amended by this Act.

**(11)** Where an application under section 22 of the Principal Act referred to in subsection (10) does not include information required to be provided by the form approved by the Law Society for the purposes of section 24 of the Principal Act as amended by this Act (in this subsection called the “relevant information”), the Law Society may—

- (a) by notice in writing to the applicant, require the applicant to provide the relevant information to the Law Society; and
- (b) decline to deal with the application until the applicant has complied with a notice referred to in paragraph (a).

**(12)** Sections 198A and 198B of the Principal Act as amended by this Act apply in relation to a decision by the Law Society declining to deal with the application referred to in subsection (11) as if that decision were referred to in section 198A.

**(13)** Where but for the repeal of subsection 29 (1) of the Principal Act a person would have had a right to apply to the Supreme Court in accordance with that subsection in respect of a refusal referred to in paragraph 29 (1) (a) or (b) of that Act, the person may apply to the Court in accordance with subsection 31 (1) of the Principal Act as amended by this Act as if subsection 31 (1) had been in operation at the time the person was given the notice of that refusal.

**(14)** Where immediately before the commencement of this section an application had been made under subsection 29 (1) of the Principal Act in respect of a refusal referred to in paragraph 29 (1) (a) or (b) of that Act but had not been determined, the application may be continued and shall be determined as if it had been made under subsection 31 (1) of the Principal Act as amended by this Act.

**(15)** Where before the commencement of this section the Supreme Court had given the Law Society a direction in accordance with paragraph 29 (5) (a) of the Principal Act to issue to a person a practising certificate of the type sought by the person and immediately before that commencement the practising certificate had not been issued, the direction shall continue in force as if it had been given under paragraph 31 (2) (a) of the Principal Act as amended by this Act.

**(16)** Where before the commencement of this section an applicant to the Supreme Court sought the issue of an unrestricted practising certificate but the Court had given the Law Society a direction to issue to an applicant a restricted practising certificate in accordance with paragraph 29 (5) (a) of the Principal Act and immediately before that commencement the practising certificate had not been issued, the direction shall continue in force as if it had been given under paragraph 31 (2) (b) of the Principal Act as amended by this Act.

**(17)** Where—

- (a) before the commencement of this section the Law Society had refused to issue a practising certificate to a person and the person had applied to the Supreme Court for an order under subsection 29 (5) of the Principal Act;
- (b) before that commencement the Court on an application under section 30 of the Principal Act had ordered that until the determination of the application under that subsection the person be deemed to be the holder of a practising certificate of the type specified in the order; and
- (c) immediately before that commencement the application under that subsection had not been determined;

the order of the Court shall be taken to be an order under subsection 31 (4) of the Principal Act as amended by this Act.

**(18)** Where—

- (a) before the commencement of this section the Law Society had cancelled a practising certificate held by a person and the person had applied to the Supreme Court for an order under subsection 29 (6) of the Principal Act;
- (b) before that commencement the Court on an application under section 30 of the Principal Act had ordered that until the determination of the application under that subsection the person be deemed to be the holder of a practising certificate of the type specified in the order; and
- (c) immediately before that commencement the application under that subsection had not been determined;

the order of the Court shall be taken to be an order under subsection 36D (5) of the Principal Act as amended by this Act.

**(19)** Where but for the repeal of subsection 29 (1) of the Principal Act a person would have had a right to apply to the Supreme Court in accordance with that subsection in respect of a condition referred to in paragraph 29 (1) (c) of that Act, the person may apply to the Court in accordance with subsection 34 (1) of the Principal Act as amended by this Act as provided in paragraph 34 (1) (a) of that Act as if subsection 34 (1) had been in operation at the time the person was issued with the practising certificate containing that condition.

**(20)** Where but for the repeal of subsection 29 (2) of the Principal Act a person would have had a right to apply to the Supreme Court in accordance with that subsection in respect of the cancellation or suspension of his or her practising certificate, the person may apply to the Court in accordance with subsection 36D (1) of the Principal Act as amended by this Act in respect of that cancellation or suspension.

**(21)** Where immediately before the commencement of this section an application had been made under subsection 29 (2) of the Principal Act but had not been determined, the application may be continued and shall be determined as if it had been made under subsection 36D (1) of the Principal Act as amended by this Act.

**(22)** Where immediately before the commencement of this section an application had been made under subsection 29 (3) of the Principal Act but had not been determined, the application may be continued and shall be determined as if it had been made under subsection 32 (1) of the Principal Act as amended by this Act.

**(23)** Subject to subsection (25), where immediately before the commencement of this section a person held an unrestricted practising certificate, the person shall, for the purposes of the Principal Act as amended by this Act, be taken to hold a practising certificate issued under section 27 of the Principal Act as amended by this Act.

**(24)** Subject to subsection (25), where immediately before the commencement of this section a person held a restricted practising certificate, the person shall, for the purposes of the Principal Act as amended by this Act, be taken to hold a practising certificate issued under section 28 of the Principal Act as amended by this Act.

**(25)** Where immediately before the commencement of this section a practising certificate referred to in subsection (23) or (24) was suspended under a provision of the Principal Act specified in Column 1 of the table to this subsection, the certificate shall, for the purposes of the Principal Act as amended by this Act, be taken to have been suspended under the provision of the Principal Act as amended by this Act specified in Column 2 of the table for the same period as imposed under the provision specified in Column 1 of the table as if the provision specified in Column 2 of the table had been in operation at the time the suspension was imposed.

**TABLE**

| COLUMN 1  | COLUMN 2             |
|---|----------------------|
| subsection 27 (2)   | subsection 36 (1)    |
| subsection 84 (1)   | paragraph 36 (2) (a) |
| subsection 27 (3) (in respect of a barrister and solicitor referred to in paragraph 27 (3) (c)) | paragraph 36 (2) (b) |
| subsection 27 (3) (in respect of a barrister and solicitor referred to in paragraph 27 (3) (d)) | paragraph 36 (2) (c) |

**(26)** Where before the commencement of this section notice of the suspension of a practising certificate was given under section 28 of the Principal Act and that suspension had not expired or been revoked before that commencement, that notice shall be taken to have been given under section 36B of the Principal Act as amended by this Act.

**(27)** The register of names of all persons holding current unrestricted practising certificates kept under section 33 of the Principal Act immediately before the commencement of this section shall for the purposes of the Principal Act as amended by this Act be taken to have become the register of names of all persons holding current unrestricted practising certificates kept under subsection 36G (1) of the Principal Act as amended by this Act.

**(28)** The register of names of all persons holding current restricted practising certificates kept under section 33 of the Principal Act immediately before the commencement of this section shall for the purposes of the Principal Act as amended by this Act be taken to have become the register of names of all persons holding current restricted practising certificates kept under subsection 36G (1) of the Principal Act as amended by this Act.

**(29)** An approval under section 78 of the Principal Act shall be taken to be an approval under section 76 of the Principal Act as amended by this Act.

**(30)** Subject to subsection (31), the Solicitors' Mutual Indemnity Fund established by subsection 74B (1) of the Legal Practitioners Act 1898 of New South Wales, as continued in force by the Legal Profession Act 1987 of that State, shall be taken to have been approved by the Law Society under section 83 of the Principal Act as amended by this Act.

**(31)** The approval effected by subsection (30) ceases to have effect immediately before 1 July 1998.

**(32)** An agreement or arrangement referred to in subsection 79 (2) of the Principal Act that was entered into before the amendment of that subsection by this Act and remained in force immediately before that amendment shall be taken to make provision in accordance with paragraph 79 (2) (a) of the Principal Act as amended by this Act.

**(33)** Where immediately before the commencement of this section a person had a right of appeal under section 81 or 85, that right may be exercised after that commencement as if this Act had not been passed.

**(34)** Where immediately before the commencement of this section an application had been made under section 146A of the Principal Act but had not been disposed of, the application shall be dealt with as if it had been made under the corresponding provision of section 198A of the Principal Act as amended by this Act.

**(35)** Where immediately before the commencement of this section notice of a decision or determination referred to in section 146A of the Principal Act had been given but an application had not been made under that section, the notice shall be taken to have been given under section 198B of the Principal Act as amended by this Act and to refer to the decision or determination being made under the corresponding provision of section 198A of the Principal Act as amended by this Act.

**(36)** Where before the commencement of this section permission had been given under section 197 of the Principal Act and remained in force immediately before that commencement, the permission shall be taken to have been given under section 197 of the Principal Act as amended by this Act.

## **SCHEDULE**

Section 20

### **FURTHER AMENDMENTS**

#### **Subsection 7 (1)—**

Omit the subsection, substitute the following subsection:

“(1) There shall be a Legal Practitioners Admission Board consisting of 5 members, being legal practitioners, appointed by the Chief Justice.”.

#### **Subsection 17 (1)—**

(a) Omit “to practise as a barrister and solicitor of the Supreme Court”, substitute “as a legal practitioner”.

(b) Omit “Supreme” (second occurring).

#### **Subsection 17 (2)—**

Omit “16 (1) (b)”, substitute “16D (1) (b) or subsection 16D (2)”.

#### **Subsection 17 (3)—**

Omit “to this Act”.

#### **Paragraph 18 (1) (d)—**

Omit “subsection 16 (1)”, substitute “section 16D”.

#### **Subsection 38 (4)—**

Omit all the words after “is enrolled as”, substitute “a legal practitioner (however described) whether in the Territory or elsewhere or who has the educational qualifications prescribed for admission as a legal practitioner”.

#### **New section 39—**

After section 38, insert the following section:

#### **Payment of remuneration and allowances**

“39. The amount which a member of the Professional Conduct Board is entitled to be paid by way of remuneration and allowances shall be paid by the Law Society out of moneys standing to the credit of a Statutory Interest Account.”.

#### **Paragraph 41 (2) (c)—**

Omit “barrister, as a solicitor, or as a barrister and solicitor”, substitute “legal practitioner (however described)”.

**SCHEDULE—continued**

**Subsection 63 (2)—**

- (a) Omit “barrister and solicitor” (first occurring), substitute “legal practitioner”.
- (b) Omit “and solicitor” (last occurring).

**Subsection 67 (1)—**

Omit “barrister and solicitor” (first occurring), substitute “legal practitioner”.

**Subsection 67 (3)—**

- (a) Omit “barrister and solicitor” (first and second occurring), substitute “legal practitioner”.
- (b) Omit “another barrister and solicitor”, substitute “a solicitor”.

**Section 73—**

Omit “barristers and solicitors”, substitute “legal practitioners”.

**Paragraph 79 (2) (a)—**

Omit “section 76”, substitute “subsection 27 (3)”.

**Paragraph 92 (1) (b)—**

Omit “day on which the bank at which the account is maintained or has been opened is open for business”, substitute “banking day”.

**Paragraph 128 (4) (e)—**

Omit “made under section 11, 12 or 13”, substitute “for admission or enrolment”.

**Paragraph 128 (4) (f)—**

Omit “a course of legal education of the kind referred to in subparagraph 11 (2) (b) (i)”, substitute “a prescribed course of training for the practice of law”.

**Section 136 (definition of “pecuniary loss”, paragraph (c))—**

Omit “Supreme Court Rules”, substitute “Rules of Court”.

**Sections 146A and 146B—**

Repeal the sections.

**SCHEDULE—continued**

**Section 191A (definition of “local legal practitioner”, paragraph (a))—**

Omit the paragraph, substitute the following paragraph:

- “(a) who has been admitted or enrolled as a legal practitioner under Part VI;”.

**Paragraph 191F (1) (b)—**

Omit “in accordance with Part IX or to contribute to the Indemnity Fund in accordance with Part X”.

**Subsections 191F (2), (3) and (4)—**

Omit the subsections, substitute the following subsections:

“(2) An interstate legal practitioner to whom this section applies shall not practise as a solicitor, or both as a barrister and solicitor, unless he or she has appropriate indemnity insurance in respect of his or her practice in the Territory.

“(3) An interstate legal practitioner to whom this section applies has appropriate indemnity insurance in respect of his or her practice in the Territory during a period if in respect of that period—

- (a) there is in force in respect of the practitioner a policy of insurance that provides the same or a higher level of indemnity as, and the terms of which are broadly equivalent to, a current policy of insurance approved under section 76; and
- (b) if the practitioner is a contributor to an indemnity fund—the practitioner pays any levy payable in accordance with the rules or conditions applicable to contributors to the fund.”.

**Subsection 191M (5)—**

Omit “Barristers and Solicitors kept under section 16”, substitute “Legal Practitioners”.

**Paragraphs 192 (a) and (b)—**

Insert “a barrister, a solicitor, or” before “a barrister and solicitor”.

**Subsection 193 (1)—**

Omit the subsection, substitute the following subsection:

“(1) A person other than a legal practitioner shall not, for reward, draw, or cause his or her employee to draw—

- (a) a will or other testamentary instrument; or

**SCHEDULE**—continued

- (b) an instrument—
  - (i) creating or regulating rights between persons;
  - (ii) relating to real or personal property; or
  - (iii) relating to a legal proceeding.

Penalty: 50 penalty units.”.

**Paragraph 193 (2) (a)**—

Omit the paragraph, substitute the following paragraph:

- “(a) for a person to draw an instrument in the course of his or her employment as—
  - (i) a public employee;
  - (ii) a member of the Australian Public Service;
  - (iii) a member of the Defence Force; or
  - (iv) an employee of a trust company within the meaning of the *Trustee Companies Act 1947*.”.

**Subsection 193 (3) (definitions of “draw” and “public officer”)**—

Omit the definitions, substitute the following definition:

“ ‘draw’ includes prepare and fill in;”.

**Subsection 194 (2)**—

Omit the subsection, substitute the following subsection:

- “(2) Subsection (1) does not apply to—
  - (a) a public employee;
  - (b) a member of the Australian Public Service; or
  - (c) an employee of a trust company within the meaning of the *Trustee Companies Act 1947*.”.

**Subsection 196 (2)**—

Omit “barrister and” (first occurring).

**SCHEDULE—continued**

**Section 197—**

Omit the section, substitute the following section:

**Employment of persons who have ceased to be legal practitioners**

“197. Except with the permission of the Council, a solicitor shall not employ a person in connection with his or her practice as a solicitor if he or she knows that the name of that person has been removed, otherwise than at his or her own request, from—

- (a) the Roll of Legal Practitioners;
- (b) the Register of Practitioners kept in pursuance of section 55C of the *Judiciary Act 1903* of the Commonwealth; or
- (c) the roll or register of legal practitioners (however described) of the Supreme Court of a State, another Territory or of the High Court of New Zealand.”.

**Subsection 199 (2)—**

- (a) Omit “barrister and solicitor” (first occurring), substitute “legal practitioner”.
- (b) Omit “barrister and” (second occurring).

**Subsection 200 (1)—**

- (a) Omit “a barrister and solicitor who practises as”.
- (b) Omit “barrister and” (second occurring).

**Subsection 200 (2)—**

Omit “a barrister and solicitor who practises as”.

**Schedule heading—**

Omit “**THE**”.

**Schedule—**

Omit “a barrister and solicitor” (wherever occurring), substitute “of law as a legal practitioner”.

**SCHEDULE—continued**

**Further amendments—**

**1.** The following provisions are amended by omitting “barrister and solicitor” (wherever occurring) and substituting “legal practitioner”:

Section 3 (definition of “unrestricted practising certificate”), subsections 6 (1) and 7 (4), paragraph 8 (2) (b), section 37 (definition of “solicitor”), paragraphs 38 (3) (b), 40 (2) (a) and 67 (1) (d), subsection 152 (2), section 192, paragraph 193 (2) (c), subsection 194 (1) and paragraph 199 (1) (d).

**2.** The following provisions are amended by omitting “Barristers and Solicitors” (wherever occurring) and substituting “Legal Practitioners”:

Subsections 4 (9) and 17 (2), paragraph 18 (1) (a), subsection 18 (2), sections 19, 20 and 37 (definition of “professional misconduct”, paragraph (b)), paragraph 67 (1) (a), section 72, subsection 149 (3) and paragraph 191C (a).

**3.** The following provisions are amended by omitting “barrister and” (wherever occurring):

Subsection 196 (1), paragraphs 196 (2) (c) and (d), subsection 198 (1), and paragraph 200 (2) (a).

**4.** The following provisions are amended by omitting “Supreme” (wherever occurring):

Subsections 8 (1) and (2), 14 (1), 41 (1) and (2), 62 (1), 63 (1), (2) and (3) and 64 (1), subparagraph 66 (2) (c) (ii), subsections 67 (1), (2) and (3), 68 (1), (2) and (3) and 69 (1), (2) and (3), sections 70, 71, 72 and 73, paragraphs 74 (c) and 128 (4) (d), subsections 149 (1), (2), (3) and (5), 152 (4) and 153 (1) and (2), section 158, subsections 159 (1), (3) and (4), 160 (1), (2), (3) and (5) and 161 (1), section 162, subsections 178 (2), 186 (1), (2) and (3) and 191 (1), (2), (3) and (4), section 191A (definition of “regulatory authority”, paragraph (a)), and subsections 191M (5), 198 (2), 200 (3) and 201 (1).

**5.** The following provisions are amended by omitting “Court” (wherever occurring) and substituting “court”:

Paragraphs 80 (4) (a), 108 (1) (b) and (2) (b) and 112 (1) (b) and (2) (b).

## NOTES

### Principal Act

1. Reprinted as at 30 November 1996. See also Acts Nos 26 and 89, 1997.

### Penalty units

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

### Section headings

On the day on which the *Legal Practitioners Act 1970* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, headings to sections of the Principal Act are altered as set out in the following table:

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| Section | Alteration  |
|---------|---|
| 7       | Omit “ <b>Barristers and Solicitors</b> ”, substitute “ <b>Legal Practitioners</b> ”. |
| 62      | Omit “ <b>Supreme</b> ”.  |
| 67      | Omit “ <b>Supreme</b> ”.  |
| 193     | Add at the end “ <b>for reward</b> ”.   |
| 194     | Add at the end “ <b>for reward</b> ”.   |

*[Presentation speech made in Assembly on 23 September 1997]*

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