



## AUSTRALIAN CAPITAL TERRITORY

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### Legal Practitioners (Amendment) Ordinance 1990

No. 3 of 1990

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

Dated 16 May 1990.

BILL HAYDEN  
Governor-General

By His Excellency's Command,

MICHAEL TATE  
Minister of State for Justice and  
Consumer Affairs

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An Ordinance to amend the *Legal Practitioners Ordinance 1970*

#### Short title

1. This Ordinance may be cited as the *Legal Practitioners (Amendment) Ordinance 1990*.<sup>1</sup>

(Ord. 52/89)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

**Principal Ordinance**

2. In this Ordinance, “Principal Ordinance” means the *Legal Practitioners Ordinance 1970*.<sup>2</sup>

**Statutory Interest Account**

3. Section 74A of the Principal Ordinance is amended—

- (a) by omitting from paragraph (4) (cd) “and”; and
- (b) by inserting after paragraph (4) (cd) the following paragraph:

“(ce) to assist in the preparation of an ACT Supplement to the Law Handbook (NSW); and”.

**Insertion**

4. Before section 80 of the Principal Ordinance the following section is inserted in Division 2 of Part VIII:

**Interpretation**

“79A. (1) In this Division—

‘failure to account’ means a failure by a solicitor before or after the commencement of the *Legal Practitioners (Amendment) Ordinance 1990* to account for, pay or deliver money or other valuable property received by or entrusted to the solicitor in the course of the solicitor’s practice but only if the failure arises from a dishonest act or omission of the solicitor, whether the act or omission took place before or after the commencement of that Ordinance;

‘pecuniary loss’ includes—

- (a) the costs of a claimant that are due to a failure to account;
- (b) the costs involved in making an application for compensation; and
- (c) interest that, but for a failure to account, would have been received by a claimant, calculated to the date on which the application is determined, being interest at the same rate as is fixed from time to time pursuant to section 54 of the *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth.

“(2) The reference in the definition of ‘failure to account’ in subsection (1) to money or other valuable property received by, or entrusted to, a solicitor

includes a reference to money or other valuable property that is received by, or entrusted to, the solicitor in the course of the solicitor's practice as trustee, agent, bailee or stakeholder."

### **Persons who may apply for compensation**

5. Section 80 of the Principal Ordinance is amended by omitting from subsection (1) all the words from and including "arising" to and including "Gazette" and substituting "by reason of a solicitor's failure to account".

### **Law Society may call for claims**

6. Section 81 of the Principal Ordinance is amended by omitting from subsection (1) all the words from and including "losses" to and including "notice" (first occurring) and substituting "pecuniary loss suffered by reason of a solicitor's failure to account".

### **Time for making applications**

7. Section 82 of the Principal Ordinance is amended—

- (a) by omitting from subsection (1) "the next succeeding sub-section" and substituting "subsection (2)";
- (b) by omitting from subsection (1) "defalcation" and substituting "pecuniary loss";
- (c) by omitting from subsection (2) "the last preceding section" and substituting "section 81"; and
- (d) by omitting from subsection (2) "defalcation committed" and substituting "pecuniary loss suffered".

### **Manner of making claims**

8. Section 83 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (2) (b) "defalcation" and substituting "pecuniary loss"; and
- (b) by omitting from subsection (3) "the last preceding sub-section" and substituting "subsection (2)".

### **Determination of applications**

9. Section 84 of the Principal Ordinance is amended—

- (a) by omitting from subsection (1) "sub-section (4) of the last preceding section" and substituting "subsection 83 (4)";

- (b) by omitting from subsection (2) “The last preceding sub-section” and substituting “Subsection (1)”;
- (c) by omitting from paragraph (2) (a) “arising out of the defalcation” and substituting “in relation to the pecuniary loss”;
- (d) by omitting from subsection (3) “to whose defalcation” and substituting “in respect of whose failure to account”;
- (e) by omitting from subsection (3) “the defalcation” (first occurring) and substituting “that failure”; and
- (f) by omitting from subsection (3) “defalcation” (last occurring) and substituting “failure to account”.

#### **Review of Law Society’s determination**

**10.** Section 85 of the Principal Ordinance is amended—

- (a) by omitting from subsection (1) “sub-section (4) of the last preceding section” and substituting “subsection 84 (4)”;
- (b) by omitting from subsection (2) “sub-section (1) of the last preceding section” and substituting “subsection 84 (1)”.

#### **Payment of compensation**

**11.** Section 86 of the Principal Ordinance is amended—

- (a) by omitting from subsections (2) and (3) “defalcations” and substituting “failures to account”; and
- (b) by omitting from subsection (3) “sub-section (1) of this section” and substituting “subsection (1)”.

#### **Subrogation**

**12.** Section 87 of the Principal Ordinance is amended by omitting “defalcation” and substituting “failure to account”.

#### **Solicitor’s claims**

**13.** Section 88 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (a) “defalcations committed by a solicitor” and substituting “pecuniary loss suffered by reason of a solicitor’s failure to account”;
- (b) by omitting from subsection (1) “any of those defalcations was committed” and substituting “that failure to account occurred”;

- (c) by omitting from subsection (1) “those defalcations” (second occurring) and substituting “that failure”;
- (d) by omitting from subparagraph (3) (b) (ii) “defalcation” and substituting “failure to account”;
- (e) by omitting from subsection (4) “the last preceding sub-section” and substituting “subsection (3)”; and
- (f) by omitting from subsection (4) “paragraph (a) of sub-section (1) of this section” and substituting “paragraph (1) (a)”.

**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 23 May 1990.
2. Ordinance No. 43, 1970 as amended by Ordinance No. 51, 1970; No. 9, 1971; No. 4, 1972; No. 2, 1973; No. 5, 1974; Nos. 1, 9, 22 and 45, 1975; Nos. 28 and 68, 1976; Nos. 20, 55 and 62, 1977; Nos. 8 and 46, 1978; Nos. 20 and 40, 1979; No. 16, 1980; No. 38, 1982; Nos. 61 and 62, 1983; Nos. 9 and 29, 1985; Nos. 7, 79 and 82, 1986; No. 21, 1987; No. 52, 1988; Nos. 21, 36 and 38, 1989.