

1995

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Legal Practitioners (Amendment) Bill
(No. 2) 1995**



A BILL

FOR

An Act to amend the *Legal Practitioners Act 1970*

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

Short title

5 1. This Act may be cited as the *Legal Practitioners (Amendment) Act (No. 2) 1995*.

Commencement

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

Principal Act

10 3. In this Act, "Principal Act" means the *Legal Practitioners Act 1970*.¹

Interpretation

4. Section 3 of the Principal Act is amended—

(a) by omitting the definition of “controlled moneys” and substituting the following definition:

5 “ ‘controlled moneys’ means moneys over which a solicitor has control, but does not include—

(a) trust moneys; or

(b) a third party payment;” and

(b) by inserting the following definitions:

10 “ ‘control’, in relation to moneys, means control by a solicitor, direct or indirect, over moneys of a client;

‘third party payment’ means a payment being a cheque, bank cheque, bank draft or money order—

15 (a) received by a solicitor from or on behalf of a client with instructions, express or implied, that the payment is to be delivered to—

(i) the person to whom it is expressed to be payable; or

20 (ii) a person other than the solicitor, a partner of the solicitor or the solicitor’s firm; and

(b) made payable otherwise than to the solicitor, a partner of the solicitor or the solicitor’s firm;”.

Heading to Part XI

25 5. The heading to Part XI of the Principal Act is amended by omitting “TRUST ACCOUNTS” and substituting “CONTROLLED MONEYS”.

Moneys received by solicitor

6. Section 87 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

30 “(4) Subsection (1) does not apply to or in relation to a third party payment.”.

Repeal

7. Section 87A of the Principal Act is repealed.

Insertion

8. After section 99 of the Principal Act the following section is inserted:

Records of controlled moneys

5 “99A. (1) Where a solicitor is given control over moneys of a client, the solicitor shall, as soon as practicable, give the client written acknowledgment of that control and retain a copy.

“(2) An acknowledgment shall identify the funds the subject of that control and specify the terms on which control may be exercised.

10 “(3) If, during a quarter, a solicitor makes a payment or payments out of funds under his or her control on behalf of a client, the solicitor shall prepare a statement in relation to those funds specifying particulars of that payment or those payments, as the case may be.

“(4) The statement shall be prepared—

15 (a) except where paragraph (b) applies—within 14 days after the end of the quarter; or

(b) if the quarter ends on the last day of December—within 1 month after the end of the quarter.

20 “(5) As soon as practicable after a solicitor prepares a statement in relation to funds under his or her control on behalf of a client, the solicitor shall forward a copy of the statement to the last known address of the client.

“(6) In this section—

‘quarter’ means the period of 3 months ending on the last day of June, September, December or March in each year.”.

25 Interpretation

9. Section 148 of the Principal Act is amended—

(a) by omitting subsection (2) and substituting the following subsection:

30 “(2) In this Part, a reference to trust property shall be read as a reference to—

(a) in relation to a solicitor—personal property that has been entrusted to, or received on behalf of any other person by, the solicitor in the course of, or in connection with, the practice of the solicitor; or

35 (b) in relation to solicitors practising in partnership—personal property that has been entrusted to, or received

on behalf of any other person by, those solicitors in the course of, or in connection with, the practice of those solicitors;

5 being property held under a trust that has not been terminated in accordance with directions given by the beneficiaries.”;

(b) by omitting paragraph (3) (a) and substituting the following paragraphs:

“(a) trust moneys and controlled moneys;

(b) documents evidencing the title to land; and”;

10 (c) by inserting in paragraph (3) (c) “, securities” after “instruments”.

Unclaimed moneys

10. Section 200 of the Principal Act is amended by omitting subsection (5).

Further amendments

15 11. The Principal Act is further amended as set out in the Schedule.

Application of Part XI in relation to controlled moneys provisions

20 12. In respect of the period commencing on 23 November 1994 and ending immediately before the commencement of this Act, the provisions of Part XI of the Principal Act shall be taken to have operated as if the term “controlled moneys” did not include a reference to valuable securities.

SCHEDULE

Section 11

FURTHER AMENDMENTS

25 **Subsection 100 (1)—**

After “trust moneys” (first occurring) insert “or controls other moneys”.

Paragraph 100 (1) (a)—

Add at the end “or controlled other moneys”.

Paragraph 100 (1) (b)—

30 After “trust money held” insert “, or other money controlled,”.

Subsections 101 (1) and (2)—

After “trust moneys held” insert “, and other moneys controlled,”.

SCHEDULE—continued

Paragraph 103 (1) (a)—

After “trust moneys received or paid” insert “, and other moneys controlled,”.

Subsection 104 (1)—

5 After “trust moneys” insert “and controlled moneys”.

Subsection 105 (1)—

After “trust moneys” (first occurring) insert “and controlled moneys”.

Paragraph 106 (1) (d)—

After “trust moneys” insert “and controlled moneys”.

10 **Subsection 110 (1)—**

Omit “of trust moneys kept by a solicitor or by two”, substitute “relating to trust moneys kept, and other moneys controlled, by a solicitor or by 2”.

Subsection 110 (2)—

After “trust moneys kept” insert “, and other moneys controlled,”.

15 **Subsection 200 (1)—**

After “trust moneys held” insert “, or other moneys controlled,”.

Subsection 200 (2)—

After “Trust moneys held” insert “, or other moneys controlled,”.

Paragraph 200 (2) (a)—

20 (a) After “been held” insert “or other moneys controlled”.

(b) Omit “trust moneys are held”, substitute “moneys are held or controlled, as the case may be”.

Paragraph 200 (2) (b)—

25 Add at the end “or, in the case of controlled other moneys, to resume control of those moneys when requested”.

Further amendments—

The following provisions are amended by inserting “or controlled moneys” after “trust moneys”:

30 Paragraphs 105 (1) (a) and (b), section 107, paragraphs 110 (4) (b) and (c) and subsection 110 (7).

NOTES**Principal Act**

1. Reprinted as at 31 December 1993. See also Acts Nos. 38, 76 and 81, 1994; No. 42, 1995.

NOTE ABOUT 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:

Section	Alteration
100	Omit the heading, substitute the following heading: Statements relating to trust moneys and controlled moneys as at the end of each quarter
101	Add at the end "and controlled moneys".
107	Omit "that no trust moneys held", substitute "relating to trust moneys and controlled moneys".

Printed by Authority of Peter Bell, ACT Government Printer

© Australian Capital Territory 1995