

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

As presented

(Attorney-General)

**Legal Practitioners (Amendment)
Bill 1991**

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 1991*.

Commencement

2. (1) Sections 1, 2, 3, 5, 14 and 15 commence on the day on
which this Act is notified in the *Gazette*.
10 (2) The remaining provisions commence on a day, or respective
days, fixed by the Attorney-General by notice in the *Gazette*.
(3) If a provision referred to in subsection (2) has not commenced
before the end of the period of 6 months commencing on the day on

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which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

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

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Interpretation

4. Section 5 of the Principal Act is amended by inserting the following definitions:

"'authorised officer' means an officer of the Supreme Court of a State or another Territory authorised in accordance with Rules of Court made pursuant to paragraph 14A (1) (b);

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'Rules of Court' means Rules of Court under section 28 of the *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth."

Her Majesty's Counsel

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5. Section 6A of the Principal Act is amended—

(a) by omitting from subsection (3) all the words after "Counsel" and substituting "a fee determined under subsection (4)"; and

(b) by adding at the end the following subsection:

"(4) The Attorney-General may, by notice in writing, determine a fee for the purpose of subsection (3)."

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Admission of law graduates

6. Section 10 of the Principal Act is amended—

(a) by omitting from paragraph (1) (a) "an Australian university" and substituting "a university or other tertiary institution in Australia prescribed by Rules of Court";

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(b) by omitting paragraphs (1) (aa) and (ac);

(c) by inserting in paragraph (1) (b) "or Council" after "that Board" (wherever occurring);

(d) by omitting subsection (1A); and

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(e) by omitting from subsection (4) all the words after "Court" (last occurring).

Substitution

7. Sections 10A and 11 of the Principal Act are repealed and the following sections substituted:

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Enrolment or admission of State or Territory practitioners

"10A. (1) A person whose name is on a roll referred to in subsection 55D (1) of the *Judiciary Act 1903* of the Commonwealth may apply in writing to the Registrar to have his or her name entered on the Roll of Barristers and Solicitors.

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“(2) If, on an application under subsection (1), the Registrar is satisfied that—

- (a) the applicant is entitled to apply under that subsection;
- 5 (b) the applicant’s right to practise in federal courts or in a State or another Territory is not suspended and has not been cancelled; and
- 10 (c) the applicant’s conduct is not the subject of a complaint by any person to any court or judge (whether in Australia or elsewhere) or to any body having authority to deal with a complaint against any person entitled to practise before any court (whether in Australia or elsewhere);

the applicant is entitled to have his or her name entered on the Roll of Barristers and Solicitors.

“(3) Before determining an application under subsection (1), the Registrar shall—

- 15 (a) inform the Law Society of the name of the applicant; and
- (b) have regard to any notice of objection lodged by the Law Society to, or information supplied by the Law Society in relation to, the application.

“(4) If the Law Society so requests, the Registrar shall refer an application under subsection (1) to the Court, and shall, if an application is so referred, notify the applicant accordingly.

“(5) Where the Registrar is not satisfied as required by subsection (2), the Registrar—

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

refer the application to the Court, and shall, if an application is so referred, notify the Law Society accordingly.

“(6) An application referred to the Court under subsection (4) or 30 (5) shall be deemed to be an application to the Court for admission to practise as a barrister and solicitor of the Court.

“(7) If, on an application so referred to it, the Court is satisfied with regard to the matters referred to in subsection (2), the Court shall admit the applicant to practise as a barrister and solicitor of the Court.

35 **Admission of New Zealand practitioners**

“11. (1) A person who has been admitted as a barrister and solicitor of the High Court of New Zealand may apply to the Court to be admitted to practise as a barrister and solicitor of the Court.

“(2) If, on an application under subsection (1), the Court is satisfied that—

- 40 (a) the applicant is entitled to apply under that subsection:

(b) the applicant's right to practise in New Zealand is not suspended and has not been cancelled: and

(c) the applicant's conduct is not the subject of a complaint by any person to any court or judge (whether in New Zealand or elsewhere) or to any body having authority to deal with a complaint against any person entitled to practise before any court (whether in New Zealand or elsewhere):

the Court shall admit the applicant to practise as a barrister and solicitor of the Court.”.

Report by Admission Board

8. Section 12 of the Principal Act is amended by omitting from subsection (1) “for admission to practise under section 10, 10A or 11” and substituting “under subsection 10 (2), 10A (6) or 11 (1)”.

Substitution

9. Section 12A of the Principal Act is repealed and the following section substituted:

Objection by Law Society

“12A. The Law Society is entitled to—

(a) object to an application under subsection 10 (2), 10A (1) or (6) or 11 (1); and

(b) in respect of an application under subsection 10 (2), 10A (6) or 11 (1)—be heard on the hearing of the application.”.

Roll of Barristers and Solicitors

10. Section 13 of the Principal Act is amended—

(a) by inserting in subsection (1) “, in the manner (if any) prescribed by Rules of Court,” after “kept”;

(b) by omitting from subsection (1) “enter” and substituting “cause to be entered”;

(c) by omitting paragraph (1)(b) and substituting the following paragraph:

“(b) the name of each person who is entitled to have his or her name entered on the Roll pursuant to subsection 10A (2); and”;

(d) by omitting subsection (2).

Substitution

11. Section 14 of the Principal Act is repealed and the following sections are substituted:

Oath or affirmation

“14. (1) A person shall, before being admitted to practise as a barrister and solicitor of the Court pursuant to this Part, take an oath or make an affirmation before the Court.

5 “(2) A person whose name is, pursuant to paragraph 13 (1) (b), entered on the Roll of Barristers and Solicitors shall take an oath or make an affirmation before the Registrar or an authorised officer.

10 “(3) An oath taken or affirmation made for the purpose of subsection (1) or (2) shall be in accordance with the appropriate form in the Schedule to this Act.

Rules of Court regarding enrolment

“14A. (1) The Rules of Court may provide for or with respect to—

- 15 (a) the manner and form in which the Roll of Barristers and Solicitors is to be kept;
- (b) the authorisation of an officer of the Supreme Court of a State or another Territory to perform functions under this Act in accordance with the Rules;
- 20 (c) the taking of an oath, or the making of an affirmation, for the purpose of subsection 14 (2) before an authorised officer;
- (d) the making by an authorised officer, on behalf of the Registrar, of an entry pursuant to subsection 13 (1) on the Roll; and
- (e) the signing of the Roll pursuant to section 15 before an authorised officer.

25 “(2) Without limiting the generality of paragraph (1) (a), Rules of Court made pursuant to that paragraph may provide for the Roll of Barristers and Solicitors to be kept by means of a loose-leaf or other system to facilitate the making of entries on the Roll by, and the signing of the Roll before, authorised officers.

30 “(3) The Chief Justice may make arrangements with the Chief Justice, a Judge or an officer of the Supreme Court of a State or another Territory for the purpose of giving effect to Rules of Court made pursuant to subsection (1).”

Signing Roll

35 12. Section 15 of the Principal Act is amended by omitting “referred to in section 13 of this Act”.

Right to practise

13. Section 15A of the Principal Act is amended by omitting “whose name is on” and substituting “who has, pursuant to section 15, signed”.

Right to request statement

14. Section 110A of the Principal Act is amended—

- (a) by omitting from subsection (1) “. other than the client of the solicitor.”;
- (b) by inserting in subsection (2) “. if that person is not the client.” after “shall”; and
- (c) by inserting in subsection (5) “other than the client” after “person” (first occurring).

Notice for taxation

15. Section 111 of the Principal Act is amended by omitting from subsection (1) “to the solicitor’s client” and substituting “. if the person is not the solicitor’s client, to the client”.

NOTE

1. Ordinance No. 43, 1970 as amended by 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, 25, 36 and 38, 1989; Nos. 3, 5 and 11, 1990.