

1996

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LEGAL PRACTITIONERS (AMENDMENT) BILL (NO 2) 1996

EXPLANATORY MEMORANDUM

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BACKGROUND

The *Legal Practitioners Act 1970* (the Principal Act) provides, among other things, for the regulation of the legal profession. Section 76 of the Principal Act requires a solicitor to hold professional indemnity insurance while he or she holds an unrestricted practising certificate, and section 83 prohibits the Law Society from issuing an unrestricted practising certificate unless the legal practitioner holds professional indemnity insurance cover for the period for which the unrestricted practising certificate is issued.

The Legal Practitioners (Amendment) Bill (No 2) 1996 amends the *Legal Practitioners Act 1970* to provide for a legal practitioner to hold an unrestricted practicing certificate without having to have professional indemnity insurance cover, for a discretion in the Law Society to issue an unrestricted practising certificate to a legal practitioner without requiring him or her to hold professional indemnity insurance during the period for which the unrestricted practising certificate is issued, and for an appeal to the Supreme Court to be available to a legal practitioner against an adverse decision of the Law Society in respect of the exercise of the discretion to issue an unrestricted practising certificate without the practitioner having to hold professional indemnity insurance cover or against a condition placed by the Law Society on the issue of an unrestricted practising certificate.

There are no financial considerations.

DETAILS OF THE BILL

Clauses 1 and 3 provide for the citation of the amending Act and the Principal Act.

Clause 2 provides for commencement of the amending Act on the day on which it is notified in the *Gazette*.

Clause 4 provides for the amendment of section 23 of the Principal Act, which provides that an unrestricted practising certificate shall be issued by the Law Society subject to compliance with certain of the provisions of the Principal Act. The amending Act inserts a reference to new section 23A which provides that the Law Society shall issue an unrestricted practising certificate if the solicitor complies with either new section 23A, section 76, or section 83.

The effect is to give the Law Society a discretion to issue an unrestricted practising certificate to a solicitor who does not hold professional indemnity insurance, and to exempt a solicitor from the requirement to have

professional indemnity insurance while holding an unrestricted practising certificate if he or she has been granted a practising certificate under new section 23A.

Clause 5 provides for new section 23A to be inserted into the Principal Act after section 23. New section 23A will enable the Law Society to issue an unrestricted practising certificate to a legal practitioner who does not hold professional indemnity insurance for the period of the unrestricted practising certificate.

New subsection 23A(1) provides that, for the purposes of the new section, 'indemnity cover' is to mean either the professional indemnity insurance referred to in section 78, that is, professional indemnity insurance cover which has been approved by the Law Society, or professional indemnity insurance cover which is obtained via contribution to the Solicitors' Mutual Indemnity Fund under Part X of the Principal Act. The Solicitors' Mutual Indemnity Fund buys professional indemnity insurance for legal practitioners who conduct business as solicitors on their own account or as partners in a solicitor practice.

New subsection 23A(2) provides that, if the Law Society is satisfied that the nature of the practice of a solicitor is such that he or she need not be required to hold professional indemnity insurance, the Society may issue an unrestricted practising certificate to the solicitor. Such a practice might be one where the solicitor does not have dealings directly with the public, does not handle trust money, or where the legal practitioner's 'practice' is as the employee of a single non-legal practitioner employer who would be liable for the actions of the practitioner.

New subsection 23A(3) provides that the Law Society may issue an unrestricted practising certificate under section 23A subject to conditions. Such conditions would depend on the circumstances under which the exercise of the discretion under section 23A(2) was sought. For instance, an unrestricted practising certificate may be issued by the Law Society on the condition that the practitioner deal only with certain clients, does not handle trust money or practices only within the terms of his or her employment, for the period for which an unrestricted practising certificate is issued.

Clause 6 amends section 29 of the Principal Act, which provides for an appeal to the Supreme Court in relation to the issue, suspension or cancellation of a practising certificate by the Law Society and for the Supreme Court to direct the Law Society in the issue of practising certificates.

Subclause 6(a) omits subsection 29(1) of the Principal Act and substitutes a new subsection 29(1) which replicates subsection 29(1) and also provides for an appeal against a decision of the Law Society to refuse to issue an unrestricted practising certificate without the solicitor holding professional indemnity insurance for the period of the certificate.

New paragraph 29(1)(a) provides for an application to be made to the Supreme Court for an order directing that a certificate of the kind sought be issued where the Law Society has refused to issue such a practising certificate.

New paragraph 29(1)(b) provides, where the Law Society has refused to issue a certificate applied for under section 23A, for an application to be made to the Supreme Court for an order directing the Law Society to issue an unrestricted practising certificate.

New paragraph 29(1)(c) provides for an application to be made to the Supreme Court against a decision of the Law Society in respect of a condition placed on the issue of an unrestricted practising certificate which the applicant considers to be unreasonable.

Subclause 6(b) omits subsection 29(5) and substitutes a new paragraph 29(5)(a) which replicates subsection 29(5) and provides for the Supreme Court to direct the Law Society to issue an unrestricted practising certificate with or without professional indemnity insurance, and inserts a new paragraph 29(5)(b) to provide for the Supreme Court to issue a practising certificate to a solicitor subject to conditions specified by the Court.

Subclause 6(c) adds a new subsection 29(10) to provide that the meaning of 'indemnity cover' in section 29 is professional indemnity insurance approved by the Law Society under section 78 or the professional indemnity insurance cover under the Solicitors' Mutual Indemnity Fund as provided for in Part X of the Principal Act.

Clause 7 amends the Principal Act to insert new section 75A after section 75 to provide for the application of sections 76 and 77 of the Principal Act. Section 76 prohibits the Law Society from issuing an unrestricted practising certificate unless it is satisfied that the solicitor applicant has professional indemnity insurance for the period for which the certificate is to be granted. Section 77 requires a solicitor to be covered by professional indemnity insurance while he or she holds an unrestricted practising certificate. New section 75A provides that sections 76 and 77 do not apply in relation to a period in which the solicitor has paid the contribution under section 83 to the Solicitors' Mutual Indemnity Fund which will give the solicitor professional indemnity insurance, or for which the solicitor has been issued with a practising certificate under section 23A.

Clause 8 amends section 83 of the Principal Act by adding new subsection 83(2). Section 83 prohibits the Law Society from issuing an unrestricted practising certificate to a solicitor unless it is satisfied that the solicitor has paid the required contribution to the Solicitors' Mutual Indemnity Fund which will give the solicitor professional indemnity insurance for the period of the certificate. New subsection 83(2) will provide that subsection 83(1) does not apply to a solicitor for the period in which the solicitor has professional indemnity insurance which has been approved by the Law Society in accordance with Part IX, or has been issued with a practising certificate under section 23A.

Clause 9 provides for a transitional provision to preserve an application made under section 29 of the Principal Act before the commencement of the amending Act and pending at that time, and a direction made by the Supreme Court under subsection 29(5) Act before the commencement of the amending Act.

Clause 10 provides for the validation of an unrestricted practising certificate issued in respect of a period before the commencement of the amending Act or for a period which will end after the commencement of the amending Act and for which the solicitor to whom the certificate was issued did not hold professional indemnity insurance as required under section 78 if the solicitor had paid a contribution to the Solicitors' Mutual Indemnity Fund provided for in Part X which would have given the solicitor professional indemnity insurance cover for the period of the practising certificate.