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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Clerk

**LEGAL PRACTITIONERS (AMENDMENT) BILL (No 2) 1997
AND
LEGAL PRACTITIONERS (CONSEQUENTIAL AMENDMENT) BILL 1997**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

Circulated by authority of
Gary Humphries MLA
ATTORNEY GENERAL

LEGAL PRACTITIONERS (AMENDMENT) BILL (No 2) 1997 AND LEGAL PRACTITIONERS (CONSEQUENTIAL AMENDMENTS) BILL 1997 - AMENDMENT

BACKGROUND

The *Remuneration Tribunal (Consequential Provisions) Act 1997*, which came into force on 23 September 1997, repealed section 39 of the *Legal Practitioners Act 1970*.

The Schedule to the Legal Practitioners (Amendment) Bill (No 2) 1997 amends section 39. A supplementary amendment to the Bill is necessary to delete the amendment of section 39.

Subsection 39(3) of the Legal Practitioners Act provided for payment of members of the Professional Conduct Board to be made by the Law Society out of moneys standing to the credit of the Statutory Interest Account. The repeal of section 39 of the Legal Practitioners Act by the *Remuneration Tribunal (Consequential Provisions) Act 1997* has inadvertently removed this provision.

To continue the authority for the Law Society to make payments to members of the Board from the Statutory Interest Account, a provision based on the former subsection 39(3) of the Legal Practitioners Act is inserted into the Act by this amendment to the Bill. In order that continuity be maintained, the provision is deemed to take effect from 23 September 1997.

Other amendments of the Bill are drafting amendments and the opportunity has been taken to include amendments which refine the definitions inserted by the Bill and the transitional provisions of the Bill.

The amendments to the Legal Practitioners (Consequential Provisions) Bill 1997 are drafting amendments which include the updating of amendments in the Bill as a consequence of the commencement of other legislation subsequent to the introduction of the Bill.

FINANCIAL CONSIDERATIONS

There are no financial considerations.

DETAILS OF THE LEGAL PRACTITIONERS (AMENDMENT) BILL (NO 2) 1997

Item 1 amends **clause 2** of the Bill to insert **subclause (1A)** which provides that the amendment to section 39 of the Principal Act is to be taken to have commenced operation on 23 September 1997 the date of the coming into force of the *Remuneration Tribunal (Consequential Provisions) Act 1997*. The effect is that the amendment in **Item 9** will be deemed to have had effect from that date and the law as regards subsection 39(3) of the Principal Act will have continuous effect.

Item 9 amends the **Schedule** to the Bill to delete the amendment of section 39 and to insert a new section 39 which will provide, as did subsection 39(3) of the Principal Act prior to the commencement of the *Remuneration Tribunal (Consequential Provisions) Act 1997*, for the payment of a member of the Professional Conduct Board by the Law Society out of funds standing to the credit of the Statutory Interest Account.

Item 2 amends **subclause 2(2)** of the Bill as a consequence of the insertion of **Item 1**.

Item 3 amends **clause 4** of the Bill to insert a definition of 'Admission Board' which reflects the change in terminology from 'barrister and solicitor' to 'legal practitioner'.

Item 4 amends **paragraph (a)** of **clause 4** of the Bill to provide for the insertion of a definition of the 'Roll of Legal Practitioners'.

Item 5 amends **paragraph (b)** of **clause 4** of the Bill to insert a definition of the 'Roll of Legal Practitioners'.

Item 6 amends **clause 21** of the Bill to insert **subclauses 21(1A), (1B) and (1C)** as additional transitional provisions in relation to the lodgment of notices under section 19 of the Mutual Recognition Act. These provisions will address the possible situation where one or more notices are lodged a short time before the commencement of **clauses 5 to 8** of the Bill and will allow such notices to be dealt with in generally the same way as notices lodged after the commencement of those clauses. The provisions will allow the Registrar of the Supreme Court, subject to an order of the Court, to issue directions as to the modification of the time limits within which the Law Society may draw the attention of the Registrar to any grounds for postponement, or for a refusal of the enrolment of a person who has lodged a notice, or for the reference to the Court of a notice by the Registrar, or the furnishing to the Court of a copy of its report on a notice by the Admission Board.

Item 7 amends **subclause 21(29)** of the Bill to make it clear that the subclause can only apply where the agreement or arrangement is in force when subsection 79(2) of the Principal Act is amended.

Item 8 amends **subclause 21** of the Bill to insert **subclause 21(33)** to avoid any doubt about the continuing effect of a permission able to be given under the former section 197 of the Principal Act in relation to the employment by a legal practitioner of persons who have ceased to be legal practitioners.

Item 10 amends the **Schedule** to the Bill to amend subsection 63(2) of the Principal Act to bring that provision into line with the amendments in the Legal Practitioners (Consequential Amendments) Bill 1997 in respect of the protection of a legal practitioner appearing in a court.

Item 11 amends the **Schedule** to the Bill to insert an amendment to subsection 191M(5) of the Principal Act as a consequence of the insertion by Item 5 (above) of a revised definition of the 'Roll of Legal Practitioners'.

Items 12, 13 and 14 are technical amendments made consequent to Items 3, 5 and 10 (above).

DETAILS OF THE LEGAL PRACTITIONERS (CONSEQUENTIAL AMENDMENTS) BILL 1997

Item 1 amends the **Schedule** to the Bill to correct the reference to the *Coroners Act 1997* consequent to the commencement of that Act on 9 October 1997. **Item 1** also amends the *Coroners Act 1997* to delete the definition of 'legal practitioner' in that Act which will be replaced by the definition of 'legal practitioner' to be inserted into the *Interpretation Act 1967* by the Bill.

Items 2, 3, 4, 5 and 7 correct references to a legal practitioner in the Bill in relation to the amendment of the *Domestic Relationships Act 1994*, the *Government Solicitor Act 1989*, the *Intoxicated Persons (Care and Protection) Act 1994*, the *Land Titles Act 1925* and the *Magistrates Court (Civil Jurisdiction) Act 1982*.

Item 6 amends a provision to be inserted into the *Magistrates Court (Civil Jurisdiction) Act 1982* by the *Magistrates Court (Civil Jurisdiction) (Amendment) Bill 1997*.

Item 8 amends the reference to a legal practitioner in subsection 111(2) of the *Residential Tenancies Act 1997* which will commence after the commencement of the Bill.

Item 9 amends the *Stamp Duties and Taxes Act 1987* consequent to the amendment of that Act subsequent to the introduction of the Bill.

Item 10 omits from the Bill the amendment of the *Small Claims Act 1974* which Act will be repealed by the *Magistrates Court (Civil Jurisdiction) (Amendment) Bill 1997*.