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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LEGAL PRACTITIONERS (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

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Attorney-General

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LEGAL PRACTITIONERS (AMENDMENT) BILL 1991

The Legal Practitioners Act 1970 (the Act) deals with matters relating to legal practitioners. Under Part III of the Act admission to practise is regulated by the ACT Supreme Court.

Currently the Act provides that entitlement to admission depends on completion of a law course at an Australian university or at other educational institutions specified in the Act; admission in a State or another Territory or in New Zealand or admission in England, Scotland or Northern Ireland. The Legal Practitioners (Amendment) Bill 1991 (the Bill) will amend the Act to provide that eligibility to apply for admission to practise in the Territory will depend on completion of a course of study at an Australian educational institution prescribed in the Supreme Court Rules, or on admission elsewhere in Australia or in New Zealand.

Admission of a legal practitioner currently requires an appearance at a sitting of the Supreme Court. The Bill will amend the Act to provide that an interstate legal practitioner may apply in writing for enrolment and that the Court may admit the practitioner without a Court appearance.

The Bill will also amend the Act to provide that a client of a solicitor shall, on request to the solicitor, be provided as of right with an itemised statement of costs and disbursements.

The Act prescribes the fee payable on appointment as a Queen's Counsel for the Territory. The Bill will amend the Act to provide that the fee may be set by Ministerial determination.

Financial Considerations

There will be some savings as a consequence of reduced use of Supreme Court facilities. Such savings will not accrue to the Territory until the Supreme Court comes under the administration of the Territory which will be no later than 1 July 1992.

Details of the Bill are set out in the Attachment.

ATTACHMENT

Clause 1 cites the short title of the Bill, once enacted, to be the Legal Practitioners (Amendment) Act 1991.

Clause 2 provides for commencement.

Clause 3 provides that, in the Bill, "the Principal Act" means the Legal Practitioners Act 1970.

Clause 4 deals with matters of interpretation.

Clause 5 amends section 6A of the Principal Act.

Subclause 5(a) amends subsection 6A(3) by deleting reference to the fee payable and substituting reference to the determined fee.

Subclause 5(b) inserts new subsection 6A(4) which provides that the Attorney-General may, by notice in writing, determine a fee for the purpose of subsection (3).

Clause 6 amends section 10 of the Principal Act.

Subclause 6(a) omits from paragraph 10(1)(a) reference to an Australian university and substitutes a reference to a university or tertiary institution in Australia prescribed by Rules of Court.

Subclause 6(b) omits paragraphs 10(1)(aa), which provided for the educational qualifications for admission as a barrister and solicitor of a person admitted to the degree of Bachelor of Laws at the University of Papua New Guinea when Papua New Guinea was an Australian Territory; and (ac) which provides for the degree of Bachelor of Laws at the Queensland Institute of Technology which institution may now be provided for under the Rules of the Supreme Court.

Subclause 6(c) inserts into paragraph 10(1)(b) the words "or Council" which corrects a drafting omission.

Subclause 6(d) omits subsection 10(1A) which qualified paragraph 10(1)(aa). Following Papua New Guinea's independence, a person

whose educational qualification was based on the degree of Bachelor of Laws from the University of Papua New Guinea no longer possessed the necessary educational qualification for admission. Subsection 10(1A) is, therefore, no longer relevant.

Subclause 6(e) amends subsection 10(4) by the omission from the subsection of the direction by the Court that the name of an admitted practitioner be entered on the Roll of Barristers and Solicitors. The entry of the name of a barrister and solicitor onto the Roll of Barristers and Solicitors is provided for in section 13 of the Principal Act.

Clause 7 repeals sections 10A and 11 of the Principal Act and substitutes new sections 10A and 11 which provide for the enrolment of State or Territory practitioners and the admission of New Zealand practitioners. The repeal of section 11 removes the automatic right of admission of practitioners from England, Scotland and Northern Ireland. No other Australian jurisdiction allows overseas practitioners (other than New Zealand practitioners) admission as of right. In future, practitioners from overseas, with the exception of New Zealand practitioners, will be required to gain admission to practise in another Australian jurisdiction, and to rely on that admission, in order to be admitted in the Territory.

New subsection 10A(1) provides for the application in writing to the Registrar to have his or her name entered on the Roll of Barristers and Solicitors by a person whose name is on a roll referred to in subsection 55D(1) of the Judiciary Act 1903 (Cth), which is a reference to a roll of barristers and solicitors of the High Court of Australia, or on a roll of barristers, of solicitors, of barristers and solicitors or of legal practitioners of the Supreme Court of a State or Territory.

New subsection 10A(2) provides that where the Registrar of the Supreme Court is satisfied as to the applicant's entitlement to apply, as to the professional standing of the applicant and is satisfied that the applicant's conduct is not the subject of a complaint by any person to a court, a judge or any body having authority to deal with a complaint against any person entitled to practise before any court in Australia or elsewhere, the applicant is entitled to have his or her name entered on the Roll of Barristers and Solicitors.

New subsection 10A(3) provides that, before determining an application under subsection 10A(1), the Registrar shall (a) inform the Law Society of the name of the applicant; and (b) shall 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.

New subsection 10A(4) provides that, if the Law Society so requests, the Registrar shall refer an application made under subsection 10A(1) to the Court, and shall, if an application is referred to the Court, notify the applicant of the referral.

New subsection 10A(5) provides that the Registrar (a) may; and, (b) if the applicant so requests, shall, refer the application to the Court where the Registrar is not satisfied as required by subsection 10A(2) and shall notify the Law Society of such a referral.

New subsection 10A(6) provides that an application referred to the Court under subsection 10A(4) or 10A(5) shall be deemed to be an application to the Court for admission to practise.

New subsection 10A(7) provides that if, in relation to an application referred to it under subsection 10A(4) or 10A(5), the Court is satisfied with regard to the matters referred to in subsection 10A(2), the Court shall admit the applicant to practise as a barrister and solicitor of the Court.

New section 11 provides for the admission of New Zealand practitioners.

New subsection 11(1) provides that 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.

New subsection 11(2) provides that where the Court is satisfied as to the applicant's entitlement to apply, as to the professional standing of the applicant and is satisfied that the applicant's conduct is not the subject of a complaint by any person to a court, a judge or any body having authority to deal with a complaint against any person entitled to practise before any court in New Zealand or elsewhere, the Court shall admit the applicant to practise as a barrister and solicitor of the Court.

Clause 8 amends section 12 of the Principal Act by correcting the references in the section to sections of the Act in consequence of the amendments of those sections.

Clause 9 repeals section 12A of the Principal Act and substitutes a new section 12A which provides that the Law Society is entitled to object to an application made under subsection 10(2), 10A(1) or (6) or 11(1); and to be heard at a hearing held in respect of an application made under subsection 10(2) or 10A(6) or 11(1).

Clause 10 amends section 13 of the Principal Act.

Subclause 10(a) amends subsection 13(1) to provide that the Roll of Barristers and Solicitors may be kept according to Rules of Court.

Subclause 10(b) amends subsection 13(1) to provide that the Registrar shall cause to be entered the name of a person entitled to have his or her name entered on the Roll.

Subclause 10(c) omits paragraph 13(1)(b) and substitutes a paragraph which provides for the entry onto the Roll of the name of a person who is entitled under subsection 10A(2) to have his or her name entered on the Roll.

Subclause 10(d) omits subsection 13(2) which was a transitional provision and is now superfluous.

Clause 11 repeals section 14 of the Principal Act and substitutes new sections 14 and 14A.

New subsection 14(1) provides that a person, before being admitted to the Court, shall take an oath or make an affirmation before the Court.

New subsection 14(2) provides that a person whose name is entered on the Roll pursuant to paragraph 13(1)(b) shall take an oath or make an affirmation before the Registrar or before an officer authorised by Rules of Court. This provision enables an interstate applicant to take the oath or make the affirmation before an authorised officer of the Supreme Court of his or her "home" jurisdiction.

New subsection 14(3) provides that an oath taken or affirmation made for the purposes of the section shall be in accordance with the appropriate form in the Schedule to the Principal Act.

New Section 14A provides for Rules of Court.

New subsection 14A(1) provides for matters which may be provided for in Rules of Court.

New subsection 14A(2) provides that the Roll of Barristers and Solicitors may be kept in such a manner as will facilitate the making of entries on the Roll by, and the signing of the Roll before, authorised officers.

New subsection 14A(3) provides that the Chief Justice of the Supreme Court 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 the Rules of Court made pursuant to paragraph 14A(1).

Clause 12 amends section 15 of the Principal Act by omitting the reference to section 13. The reference is no longer required.

Clause 13 amends section 15A of the Principal Act by replacing the reference to a person whose name is on the Roll of Barristers and Solicitors with a reference to a person who has signed the Roll. The amendment will give a person who has signed the Roll the right to practise in the Territory.

Clause 14 amends section 110A of the Principal Act to provide that a client of a solicitor may request the solicitor in writing to give to the person an itemised statement of costs and disbursements.

Subclause 14(a) amends subsection 110A(1) by omitting the words which disbarred a client of a solicitor from obtaining an itemised statement of costs and disbursements.

Subclause 14(b) inserts into subsection 110A(2) words which provide that a person who is not a client and who makes a request of a solicitor for a statement of costs and disbursements shall cause a copy of the request to be given to the client.

Subclause 14(c) inserts into subsection 110A(5) words which provide that where a solicitor gives an itemised statement of costs and disbursements to a person other than the client, the solicitor shall inform the client that the solicitor has given the statement to that person.

Clause 15 amends section 111 of the Principal Act so that the provision corresponds with amended section 110A in relation to the person to whom a statement of costs and disbursements is delivered.