

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

LEGAL PRACTITIONERS (AMENDMENT) ORDINANCE 1987

No. 21, 1987

The main purpose of this Ordinance is to amend the Legal Practitioners Ordinance 1970 (the 'Principal Ordinance') to enable A.C.T. legal practitioners to participate in a revised professional indemnity scheme provided for under the N.S.W. Legal Practitioners Act 1898 (the N.S.W. Act).

The Principal Ordinance requires all solicitors who practise, either on their own account or in partnership, to have professional indemnity insurance. Insurance for A.C.T. practitioners is effected under a master policy negotiated by the N.S.W. Law Society. As the A.C.T. legal profession is relatively small, participation by A.C.T. solicitors in the N.S.W. scheme is more economic than attempting to obtain separate cover.

The N.S.W. Law Society has re-negotiated the master policy for 1987/88 so that the insurer will only be liable for claims in excess of \$100,000. The N.S.W. Act has been amended to enable a fund to be called the Solicitors' Mutual Indemnity Fund (the Fund) to be established. The Fund will meet claims between \$1,500 and \$100,000. The amendments to the N.S.W. Act enable participation by A.C.T. practitioners in the revised scheme.

Under the amending Ordinance, which takes account of the amendments relating to the Fund made recently to the N.S.W. Act, a solicitor will not be able to obtain an unrestricted practising certificate unless the solicitor has paid the required contribution to the Fund.

The opportunity has been taken to make several other amendments of a relatively minor nature to the Principal Ordinance. These amendments provide for the payment of a daily sitting fee to members of the Disciplinary Committee of the Law Society of the A.C.T. established under the Principal Ordinance and an expansion in the purposes for which moneys in the Statutory Interest Account may be used.

The Ordinance has been prepared in consultation with the Law Society of the A.C.T.

Details of the amending Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 1987.

Section 2 defines the Principal Ordinance to mean the Legal Practitioners Ordinance 1970.

Section 3 makes a consequential amendment to the Principal Ordinance, following the insertion of section 42P by section 5 of this Ordinance.

Section 4 inserts a new section 25A in the Principal Ordinance to make provision for the payment of daily fees to members of the Disciplinary Committee for attendance at meetings of the Committee and time spent on the business of the Committee. The Disciplinary Committee hears complaints about the professional conduct of solicitors. Its members are all part-time. The members elect one of their number to be Chairman of the Committee.

There was no provision in the Ordinance for the remuneration of members of the Committee. Practitioner members of the Committee are senior practitioners and of recent years the burden placed on Committee members has increased.

The daily fee is to be at the same rate as is paid from time to time to members of the Federal Police Disciplinary Tribunal (the most comparable tribunal in terms of jurisdiction and qualification of members to that of the Committee). The Chairman is to be paid 12 per cent more than other members. This equates with the additional fee set by the Remuneration Tribunal for the Chairmen of other bodies which have a fee for members set at the same rate as that applicable to the Tribunal. As the Chairman of the Tribunal is a judge, there is no daily sitting fee set for that position.

Payment of the fee is to be made from moneys in the Statutory Interest Account, which contains interest on trust moneys which are deposited by solicitors with the Society.

Section 5 inserts a new Part VIA (sections 42O, 42P, 42Q and 42R) in the Principal Ordinance. Part VIA makes provision in relation to the participation of A.C.T. solicitors in the Fund established under the N.S.W. Act.

Section 42O contains definitions for the purposes of Part VIA.

Section 42P provides that the A.C.T. Law Society shall not issue an unrestricted practising certificate to a solicitor unless it is satisfied that the solicitor has paid to the Fund the appropriate contribution for the period during which the practising certificate is to be in force.

Section 42Q provides that where the company set up under the N.S.W. Act to administer the Fund imposes a levy on a solicitor under the N.S.W. Act and the solicitor fails to pay that levy, the Law Society shall suspend the solicitor from practice in the Territory. The suspension is to be cancelled if the Law Society is satisfied that the levy has been paid by the solicitor concerned.

Section 42R confers on a solicitor to whom the Law Society has refused to issue a practising certificate for non-payment of a contribution to the Fund, or whose right to practise is suspended for failing to pay a levy imposed on the solicitor, a right to appeal to the Supreme Court.

Section 6 amends sub-section 74A(4) of the Principal Ordinance, which specifies the purposes for which the Law Society may, with the consent of the Attorney-General, use moneys standing to the credit of the Statutory Interest Account, by specifying two additional uses to which those moneys may be put. These are, to pay the costs incurred by the Law Society in administering moneys deposited with the Society by a solicitor under the Principal Ordinance and to assist in the conduct and maintenance of a moot program by the Law Faculty of the Australian National University.

Under the Principal Ordinance a solicitor is required to deposit with the Law Society each year two-thirds of the lowest amount that stood to the credit of the solicitor's trust account during the preceding year. The moneys deposited with the Society are invested by the Society. Interest earned on the deposits is paid into an account called the Statutory Interest Account ('SIA'). Moneys in the SIA may be used for various purposes including supplementing the Fidelity Fund, legal aid, continuing legal education and practical legal training courses.

Provision is also made for the cost of administering the SIA to be met from that account. However, doubts have arisen as to the extent to which the costs of administering the moneys deposited by solicitors with the Society can be attributed to administering the SIA. The cost to the Society in administering the moneys deposited with it is in fact higher, due to the number of transactions involved, than the cost of administering the SIA itself. Given that the sole purpose of requiring solicitors to deposit moneys with the Society is to provide funds for the SIA (to be used for the various purposes provided for in the Principal Ordinance) it is appropriate that the costs of administering the monies be fully recoverable from the SIA.

The costs of administering moneys deposited by a solicitor with the Society are determined on a financial year basis. The Society has made a request to be reimbursed for the costs it has incurred in administering these moneys for the financial year ending 30 June 1986. The amendment has therefore been made retrospective to allow this request to be met in full.

The Law Society considers that providing practical skills in presentation of cases has a positive role to play in better fitting students for practice. The Society has been advised that the ANU Law School moots program is to be no longer compulsory due to shortage of funds. The Principal Ordinance has therefore been amended to give the Society the opportunity to recommend that funds from the SIA be used towards the program with the aim of it remaining compulsory.

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Authorised by the  
Attorney-General