

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
LEGAL PRACTITIONERS (AMENDMENT) ORDINANCE 1985
No. 29 of 1985

This Ordinance amends the Legal Practitioners Ordinance 1970 ('the Principal Ordinance') to remove doubts that arose recently about the Constitution of the Law Society of the A.C.T. ('the Law Society').

The Legal Practitioners Ordinance 1972 amended the Principal Ordinance by, among other matters, inserting a new Part 1A to constitute the Law Society as a body corporate, give legislative recognition to its Constitution and require the approval of the Governor-General for any subsequent amendment of the Constitution to be effective. Sub-section 6(5) in Part 1A provided that the Constitution of the Law Society is its Constitution as in force immediately before the commencement of this Ordinance.

It was intended that the Constitution to be recognised by this provision was the Constitution in force at the commencement of the amending Ordinance (10 February 1972). This was stated in the Explanatory Memorandum for the amending Ordinance. In fact, on the insertion of Part 1A in the Principal Ordinance, the reference to 'this Ordinance' in sub-section 6(5) must be read as a reference to the Principal Ordinance. This meant that the legislation recognized the Constitution of the Law Society as being its Constitution as at the date of commencement of the Principal Ordinance on 14 December 1970 i.e., over a year prior to the date of commencement of the amending Ordinance.

Between 14 December 1970 and 10 February 1972 the Law Society made several amendments to its Constitution. In 1975, when the Constitution was first amended in accordance with the provisions of Part 1A of the Principal Ordinance, the Constitution used as a basis for these amendments was the Constitution as in force on 10 February 1972 in the mistaken

belief that this was the Constitution recognized by sub-section 6(5) of the Principal Ordinance. Further amendments were made to the Constitution in 1983, again on this basis.

Some of the provisions of the Constitution amended by the Society between 1970 and 1972 were also amended in 1975 and 1983. The fact that, on a correct interpretation of sub-section 6(5) of the Principal Ordinance, the incorrect Constitution was used as a basis for these amendments, threw considerable doubt on the wording and effect of these provisions in the current Constitution.

The Ordinance rectifies this problem by amending sub-section 6(5) of the Principal Ordinance to provide that the Constitution of the Law Society is its Constitution as at the date of commencement of Part 1A and thereby gives effect to the original intention of the legislation. This amendment is deemed to have come into operation on 10 February 1972.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 1985.

Sub-section 2(1) amends sub-section 6(5) of the Principal Ordinance to provide, in effect, that the Constitution of the Law Society is its Constitution as in force immediately before the commencement of Part 1A of the Principal Ordinance.

Sub-section 2(2) provides that the amendment effected by sub-clause (1) is to be deemed to have come into operation on 10 February 1972 (the day Part 1A of the Principal Ordinance commenced).

Authorized by the
Attorney-General