

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

Legal Practitioners (Amendment) Ordinance 1983

No. 61 of 1983

This Ordinance makes a number of amendments to the Legal Practitioners Ordinance 1970 ('the Principal Ordinance'), the most significant of which relate to the Statutory Deposits Account, Statutory Interest Account and Fidelity Fund provisions of the Ordinance.

The Principal Ordinance requires a solicitor to deposit one-half of the notional amount of trust moneys in his trust account with the A.C.T. Law Society to form the Statutory Deposits Account (the notional amount is equal to the lowest balance in the account during the preceding year). The interest from this Account is paid to the Statutory Interest Account, moneys in which may be used, with the Attorney-General's consent, to supplement the Fidelity Fund, for legal aid, for post graduate legal education and research, and to meet the costs of administering the Account. The Fidelity Fund is designed to provide compensation in the event of defalcations by solicitors. It is funded by solicitors' contributions.

To date moneys accruing in the Statutory Interest Account have not been used, (except for the cost of maintaining the Account) in order to accumulate a sufficient reserve for the Fidelity Fund.

The Law Society has indicated that sufficient funds have accumulated for it now to make funds available from the Statutory Interest Account for the other purposes laid down in the Principal Ordinance. To facilitate this, the Ordinance clarifies and expands the purposes for which moneys in the Account may be used. These amendments, which bring the A.C.T. legislation broadly into line with equivalent legislation in New South Wales and Victoria, make moneys standing to the credit of the Statutory Interest Account available to:

- . supplement from time to time the Fidelity Fund;
- . assist in the conduct of a scheme for the provision of legal aid and provide funds to the Legal Aid Commission (A.C.T.);
- . assist and promote post graduate legal education and legal research and meet the costs of maintaining any scheme of continuing legal education conducted by the Law Society;
- . pay the costs and disbursements incurred by the Law Society in relation to disciplinary proceedings;
- . assist in the conduct and maintenance of a scheme of practical legal education conducted and maintained in the Territory (currently the A.N.U. Legal Workshop);
and
- . meet the costs of administering the Account.

To increase the income available from the Statutory Interest Account the Ordinance increases from one-half to two-thirds the proportion of the notional amount in his trust account that a solicitor is required to deposit with the Law Society.

Provision is made for an increase from \$50,000 to \$200,000 in the amount of compensation payable in respect of any one defalcation with a discretion in the Council of the Law Society to pay a higher sum and for removal of the restrictions on the number and amount of levies that the Law Society may impose on a solicitor to supplement the Fidelity Fund.

Other Amendments

The Ordinance removes the requirements in the Principal Ordinance that a person be a British subject to be eligible for admission to practise and swear an oath of allegiance on admission. It also removes technical difficulties from provisions dealing with pre-admission training either through a prescribed course of legal education (the Legal Workshop) or articles of clerkship.

The Ordinance also allows costs to be awarded against the Law Society in certain circumstances following proceedings before the Disciplinary Committee

Other amendments included are designed to strengthen the provisions relating to solicitors' trust accounts to assist in the prevention of defalcations. The most significant of these amendments will enable the Law Society to institute a system of random inspections of solicitors' trust accounts.

Details of the Ordinance are set out below.

Section 1 provides that the Ordinance may be cited as the Legal Practitioners (Amendment) Ordinance 1983.

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

Section 3 amends section 10 of the Principal Ordinance to enable a person to satisfy the requirements for admission by completing the Legal Workshop course prior to formal conferral of a qualifying degree and to remove the requirement that a person be a British subject to be eligible for admission to practise.

Section 4 amends section 11 of the Principal Ordinance by deleting the requirement that an overseas practitioner be a British subject to be eligible for admission.

Section 5 amends section 12A of the Principal Ordinance to allow the Law Society to object and be heard on all applications to the Court relating to admission to practise under sections 10, 10A or 11. This will include an application for an order that a person is entitled to apply for admission based on special circumstances.

Section 6 amends section 14 of the Principal Ordinance to remove the requirement that a person swear an oath of allegiance on admission to practise (the oath as to professional conduct is to remain).

Section 7 amends sub-section 19(1) of the Principal Ordinance to include a reference to paragraph 16(4) (aa) thereby allowing a person who is eligible for admission to a qualifying degree to enter into articles of clerkship of 12 months duration.

Section 8 inserts new sub-sections (2A) and (5A) in section 36 of the Principal Ordinance to allow the Disciplinary Committee, where it does not make an order under the section arising from an inquiry into the professional behaviour of a barrister and solicitor, to order the Law Society to pay the costs, or part of the costs of the barrister and solicitor in relation to the inquiry. The amount of costs so ordered to be paid will be recoverable as a debt due.

Section 9 inserts new sub-section (3A) in section 41 of the Principal Ordinance to enable the Supreme Court to order the Law Society to pay the costs of a barrister and solicitor before the Disciplinary Committee where the Court has not made an order under the section arising from the conduct of the barrister and solicitor, following a report to the Court by the Disciplinary Committee under section 37 of the Ordinance.

Section 10 inserts new sub-section (1A) in section 56 of the Principal Ordinance to require a solicitor to issue a receipt in respect of trust money not later than the next banking day after receipt of the money.

The section also deletes the requirement that a solicitor keep a register of receipts of trust moneys (the requirement to keep particulars of each receipt issued together with a record of trust moneys so received will remain).

Section 11 inserts new sub-sections (1A), (1B) and (1C) in section 58 of the Principal Ordinance which will require a solicitor who practises on his own account and ceases to so practise, or a solicitor who practises in a partnership and retires from that partnership, to engage an auditor to audit his trust account records not later than 7 days after he ceases to so practise or retires from the partnership, as the case may be. The Law Society is to be notified of the name of the auditor so appointed within 14 days of his appointment.

The requirement to appoint an auditor will not apply to a solicitor who retires from a partnership and the partnership business is carried on by a continuing partner.

Section 12 inserts new sub-section (3A) in section 61 of the Principal Ordinance to require a solicitor to lodge his annual audit report with the Law Society not later than 30 June each year. A discretion is given to the Law Society to grant an extension of time.

Section 13 inserts new sub-section (1A) in section 66 of the Principal Ordinance to enable the Law Society to institute a system of random inspections of solicitors' trust accounts.

Section 14 amends section 67 of the Principal Ordinance, consequent upon the amendments effected by section 13, to enable a person appointed under the new sub-section 66(1A) to compel the production of books and other documents.

Section 15 amends section 71 of the Principal Ordinance to increase from one-half to two-thirds the proportion of the notional amount in his trust account that a solicitor is required to deposit with the Law Society. The notional amount is, generally, the lowest balance in the general trust bank account of a solicitor during the year in question.

Section 16 amends sub-section 74A(4) to expand and clarify the purposes for which moneys standing to the credit of the Statutory Interest Account may be used. Under the amendments effected by this section these moneys may be used:

- . to supplement from time to time the Fidelity Fund (amended paragraph 74A(4)(a)). At present moneys can only be transferred from the Statutory Interest Account to the Fidelity Fund where the Fund is insufficient for any purpose for which it may be used;
- . to provide funds to the Legal Aid Commission (A.C.T.) (amended paragraph 74A(4)(b)). The amendment will remove doubts whether the existing paragraph 74A(4)(b) (which refers to assisting in the conduct of a scheme for the provision of legal aid) permits funds to be made available to the Commission, which was established after the Principal Ordinance came into force;

- . to assist in maintaining a scheme of continuing legal education conducted by the Law Society including a proportion of the salary of Law Society employees attributable to maintaining such a scheme (amended paragraph 74A(4)(c)). This amendment will remove any doubt as to the scope of existing paragraph 74A(4)(c) (which refers to assisting and promoting post graduate legal education and legal research);
- . to meet the costs and disbursements of the Law Society in relation to disciplinary proceedings (new paragraph 74A(4)(ca)); and
- . to assist in the conduct and maintenance of a prescribed course of legal education (the ANU Legal Workshop or any other such course which may be established in the Territory in the future) (new paragraph 74A(4)(cb)).

The other statutory purpose in paragraph 74A(4)(d) (meeting the costs of administering the Account) remains unaltered.

Section 17 amends section 86 of the Principal Ordinance to increase from \$50,000 to \$200,000 the amount of compensation payable to an applicant in respect of defalcations by the same solicitor, with a discretion in the Council of the Law Society to pay a larger amount in a particular case.

Section 18 amends section 90 of the Principal Ordinance to remove the restrictions on the number and amount of levies that the Law Society may impose on a solicitor to supplement the Fidelity Fund.

ORD No. 24/83

Authorised by
Attorney-General