

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

LEGAL PRACTITIONERS (AMENDMENT) ORDINANCE 1979

No. 20 1979

The purpose of the Ordinance is to amend the Legal Practitioners Ordinance with respect to the composition of the Admission Board, the grant of a practising certificate, trust accounts kept by solicitors and to provide for certain other matters. It will also bring up-to-date certain references in the Ordinance to accord with modern drafting practice. The removal of the Judge as a member of the Admission Board gives effect to a request by the Chief Judge of the Supreme Court of the Australian Capital Territory.

Section 1 - Short title and citation.

Section 2 - This Section identifies the Principal Ordinance.

Section 3 - Following an amendment of the Australian Capital Territory Supreme Court Act 1933 to provide for an office of Chief Judge, this Section inserts an appropriate definition in the Ordinance,

Section 4 - This Section amends the constitution of the Admission Board - sub-section 7(1) - so that the Judge shall no longer be a member, removes the reference to the Judge from sub-sections 7(2) and 7(3) and substitutes a reference to 'the Chief Judge' for that of 'the Judge' in sub-section 7(4).

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It also makes clear, by inserting a new sub-section 7(4A), that the exercise of the powers of the Board is not affected by reason of there being a vacancy in the membership of the Board.

Section 5 - This Section up-dates section 8 of the Principal Ordinance which permits removal from office of members of the Admission Board, except the Judge, consequent upon the amendment removing the Judge as a member of the Board.

Section 6 - Section 9 of the Principal Ordinance relating to meetings of the Admission Board is repealed and a new section is substituted to provide for the election of a Chairman and the holding of meetings consequent on the removal of the Judge as a member, and Chairman, of the Admission Board.

Section 7 - The Section amends section 15J of the Principal Ordinance, which allows the Supreme Court to direct the issue of a practising certificate in certain circumstances, so as to enable a barrister and solicitor to apply to the Supreme Court for an order directing the Law Society to issue an unrestricted practising certificate to the applicant. It further provides that the Court may make such an order and may require the applicant to pay the costs incurred by the Law Society in connection with the application. The right to apply is restricted to persons eligible to apply to the Law Society for an unrestricted practising certificate, that is, barristers and solicitors on the Australian Capital Territory Supreme Court Roll whose entitlement to a certificate is precluded by their not falling within the provisions of section 15E.

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That section placed limitations on the issue of unrestricted practising certificates based upon minimum experience requirements. It became apparent that a general provision for relief from those limitations was necessary as some practitioners with extensive practical legal experience did not fall within them. The Court's power to order the issue of a certificate under the amendments may be exercised only if it is satisfied that the applicant's experience entitles him to a certificate - new sub-section 15J (7),

Section 8 - inserts new section 15NA which will require a barrister and solicitor who holds a practising certificate to furnish to the Law Society, within 14 days, details of any change in name or address previously notified to the Law Society in pursuance of the Ordinance. The provision will enable the Law Society to operate more efficiently in connexion with examinations of trust account records and to maintain up-to-date information on practising solicitors.

Section 9 - inserts a new section, section 40A, which provides protection for a person publishing a fair and accurate report of prescribed matters relating to an order made by the Disciplinary Committee as if the Disciplinary Committee were a Court of justice. The section enables publication of the name and address of a barrister and solicitor against whom the Disciplinary Committee makes an order, the Disciplinary Committee's findings and the order it made.

Section 10& 11 - These sections clarify the right of solicitors

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who practise in partnership to operate a joint partnership trust bank account and to maintain joint accounting records.

Section 12 - Section 58 previously required that a solicitor, not later than 7 days after the end of each year, engage an auditor to audit his accounts and notify the name of the auditor to the Law Society within a further period of 1 month. New section 58 expands the operation of the provision to permit the appointment of a firm of auditors and to recognise the current practice of auditing partnership accounts.

Section 13 - Amends section 59 to provide that, in the case of an audit by a firm of auditors one member of the firm must be ordinarily resident in Australia and all resident members must be registered company auditors. In addition, no member of the firm may be an employee or spouse of the solicitor whose records are being audited or an employee of another solicitor. The requirements are similar to those of sub-section 165(2) of the Companies Ordinance 1962 in relation to the audit of company accounts.

Section 14 - section 63 provided for a solicitor who applied for an unrestricted practising certificate but had not received the auditor's report at the time of the application, to state that he had not received the report. This section amends section 63 to require that the solicitor also declares that, where he has received trust moneys, there are funds available to satisfy his obligations to clients; and where he holds no trust moneys, that fact.

Section 15 - New section 65 specifies in greater detail the present restriction imposed on auditors and on present and former members of the Council of the Law Society relating

to the disclosure of information contained in, or obtained in the course of preparing, the auditor's report. The section did not previously specifically permit disclosure to the Attorney-General, the Disciplinary Committee or the Police. This led to some doubts whether information could be so disclosed and consequent difficulty in taking appropriate action against defaulting solicitors.

Section 16 - This section merely remedies an error in the format of section 66(5) and makes no change of substance in the section.

Section 17 - This section remakes sub-section 67(1) of the Principal Ordinance to make clear that it is the provisions of sub-section 60(1) which apply to the section and brings references to other provisions into line with modern drafting practice. It also includes a new sub-section 67(1A) which makes it an offence punishable by a fine not to exceed \$1 000, for a solicitor not to comply with a requirement of an examiner appointed by the Law Society to examine his trust account records. An examiner may require a solicitor to produce books and records and to furnish information to him.

Section 18 - New section 68 specifies in greater detail the restriction imposed on examiners and present and former members of the Council of the Law Society concerning the disclosure of information contained in, or obtained in the course of preparing, an examiner's report. It is a counterpart to the amendment made by clause 15 in relation to auditor's reports.

Section 19 - This section amends sub-section 71(1) and (2)(a) to substitute \$3 000 in numerals for the same amounts in words

in accordance with modern drafting practice.

Section 20 - This section amends section 74A to permit the Law Society (with the approval of the Attorney-General) to invest solicitors' trust moneys deposited with it under the Ordinance in investments authorised by the Trustee Ordinance. Authorised trustee investments include investments in Government and semi-government securities, mortgages over freehold and leasehold lands and loans to authorised dealers in the short term money market. This power of investment is additional to the power to invest these moneys on interest bearing deposits with a bank in the Territory.

Section 21 - This section amends section 93 in relation to the grounds for the appointment of a receiver of the trust property of a solicitor or of a firm of solicitors by giving additional power to the Supreme Court to appoint a receiver in any case where it is satisfied that a solicitor has failed or refused to comply with the requirements of an examiner made in pursuance of section 60(1). In addition, sub-paragraph 93(1)(b)(iii), which empowered the Court to appoint a receiver where a solicitor's practising certificate has been cancelled and a person, to whom trust moneys held by that solicitor, is unable to obtain payment from him, has been repealed. A new sub-section 93(1A) is substituted which is not so restricted. It enables the Court to appoint a receiver, if it thinks the circumstances warrant it, in any case where a solicitor's practising certificate has been cancelled.

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Section 22 - This section provides for continuance in office under the new provisions relating to the constitution of the Admission Board of a member other than the Judge holding office before the new provisions come into force and for continued validity and effectiveness of any report made or approval given before the date of commencement of the new provisions.