

1997

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LEGAL PRACTITIONERS (AMENDMENT) BILL (NO 2) 1997

EXPLANATORY MEMORANDUM

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LEGAL PRACTITIONERS (AMENDMENT) BILL (No 2) 1997

BACKGROUND

The *Legal Practitioners Act 1970* (the Principal Act) provides, among other things, for the regulation of the legal profession.

The Legal Practitioners (Amendment) Bill (No 2) 1997 will amend the Principal Act in a range of matters but principally to provide for the Mutual Recognition Scheme in respect of the legal profession, to adopt the Uniform Admission Rules proposed by the Consultative Committee of State and Territory Law Admitting Authorities in the Territory and to clarify the scheme for the issue of practising certificates. In summary the Bill will -

- . provide for admission to practise as a 'legal practitioner' and amendments consequential to this;
- . implement nationally agreed Uniform Admission Rules (other than the Rules relating to overseas practitioners except for New Zealand practitioners) in the Territory;
- . provide for the issue by the Law Society, and for the conditions for the issue, of practising certificates;
- . provide that a New Zealand legal practitioner may apply for the issue of an unrestricted practising certificate on the basis of admission plus a 6 month period of practise in the Territory;
- . provide for the Act to take account of the operation of the Mutual Recognition Scheme in the Territory in respect of the legal profession;
- . in lieu of \$1 000, provide that, where a solicitor holds \$5 000 of client's money, the solicitor is to seek instructions from the client as to the investment of that money if it is likely to be held for 3 months or more;
- . provide for review by the Administrative Appeals Tribunal of a decision of the Law Society as to a provider of and the terms of a policy of professional indemnity insurance;
- . remove the requirement for the title of a partnership trust bank account to contain the full names of the partners;
- . provide for a receipt for trust money received via electronic transfer or direct payment to be provided to a client as soon as is practicable,
- . require the specifications for a receipt provided to a client in respect of trust moneys received; and
- . require a solicitor to obtain a statement for a bank trust account, and to reconcile that statement, at least once a month.

The Legal Practitioners (Consequential Amendments) Bill 1997 will amend references in other legislation as a consequence of the change in the references in the Principal Act from 'barrister and solicitor' to 'legal practitioner' implemented by the Bill.

FINANCIAL CONSIDERATIONS

There are no financial implications.

DETAILS OF THE LEGAL PRACTITIONERS (AMENDMENT) BILL (NO 2) 1997

TITLE

Clauses 1 and 3 will provide for the citation of the amending Act and the Principal Act

COMMENCEMENT

Clause 2 will provide for commencement of the amending Act

Subclause 2(1) will provide for the commencement of clauses 1, 2 and 3 on gazettal.

Subclause 2(2) will provide that the remaining provisions are to commence on a day or on the respective days fixed by the Minister by notice in the *Gazette*. This provision will allow for the commencement either of all the remaining provisions together or for the commencement of the remaining provisions on different days

Subclause 2(3) will provide for the automatic commencement at the end of a period of 6 months from the day on which the amending Act is notified in the *Gazette* of the provisions referred to in subclause 2(2) if they have not been commenced within that time.

INTERPRETATION

Clause 4 will provide for the amendment of section 3, the interpretation section, of the Principal Act

Subclause 4(a) will omit the definition of "barrister and solicitor"

Subclause 4(b) will insert definitions of -

'Court' to mean the Supreme Court,

'indemnity fund' to mean a fund approved under section 83,

'legal practitioner' to mean a person whose name is on, or is to be taken as being on, the Roll of Legal Practitioners;

'Mutual Recognition Act' to mean the *Mutual Recognition Act 1992* of the Commonwealth; and

'professional indemnity insurance' to mean a policy of insurance approved under section 76 or taken to have been approved under section 77

HEADING TO PART VI

Clause 5 will repeal the heading to Part VI of the Principal Act and substitute a new heading which indicates that Part VI provides for the admission or enrolment of legal practitioners

SUBSTITUTION

Clause 6 will repeal sections 11, 12 and 13 of the Principal Act which deal with the admission or enrolment of legal practitioners and substitute new sections 11, 12 and 13.

APPLICATION FOR ADMISSION OR ENROLMENT

New section 11 provides for an application for admission or enrolment as a legal practitioner.

New subsection 11(1) provides that a person who meets the requirements prescribed for admission in Rules of Court may apply to the Court for admission as a legal practitioner. The Supreme Court Rules will prescribe the Uniform Admission Rules as the Rules for the admission or enrolment of Australian and New Zealand persons seeking to practice law in the Territory.

New subsection 11(2) provides that subsection 11(1) does not apply to a person who is entitled to practise law in a place outside the Territory. The intention is that legal practitioners from outside the Territory who wish to be entitled to practise in the Territory should apply for registration under the Mutual Recognition Act or, where they are entitled to practise as an interstate legal practitioner under Part XVA, practise under that Part.

New subsection 11(3) provides for an application to the Court for enrolment in the Territory to be made by a New Zealand legal practitioner.

New subsection 11(4) provides that an application for admission or enrolment is to be in accordance with the Rules of Court.

ENROLMENT OF PERSONS ENTITLED TO REGISTRATION UNDER THE MUTUAL RECOGNITION ACT

New section 12 deals with the enrolment of persons entitled to registration under the *Mutual Recognition Act 1992 (Cth)* and provides that where a person has lodged a notice under section 19 of that Act with the Court that lodgement is to be taken to be the making of an application for enrolment and that the person on whose behalf the notice was lodged is to be taken to be the applicant for enrolment.

COPIES OF APPLICATIONS TO THE ADMISSION BOARD AND THE LAW SOCIETY

New section 13 provides that the Registrar of the Court is to forward copies of applications under new sections 11 and 12 to the Admission Board and to the Law Society.

REPORT BY THE ADMISSION BOARD - OTHER CASES

Clause 7 will amend section 14 of the Principal Act (subsequent upon new sections 11 and 12) to provide for a report by the Admission Board to the Supreme Court on applications other than those made under sections 11 or 12. New subsection 14(4) provides that, subject to subsection 14(5), the Admission Board is to furnish a copy of its report to the applicant and to the Law Society. New subsection 14(5) provides that, where the application is to be heard by the Court, the Admission Board is to furnish a copy of its report to the applicant not less than 3 days before the day of the hearing.

SUBSTITUTION

Clause 8 will repeal sections 15 and 16 of the Principal Act, which deal with the objection by the Law Society to an application for admission or enrolment and entry onto the Roll, and substitute new sections 15, 16, 16A, 16B, 16C and 16D.

RESPONSE TO APPLICATIONS BY LAW SOCIETY

New section 15 deals with a response from the Law Society to an application for admission or enrolment. It provides that the Society may furnish information to the Registrar regarding an application, object to an application for admission or enrolment under subsection 11(3), that is, from a New Zealand practitioner, and, in the case of an application for enrolment made under section 12 (an application in the form of a notice under the Mutual Recognition Act), draw the attention of the Registrar to any grounds for the postponement or refusal of the enrolment of an applicant

ENROLMENT OF NEW ZEALAND PRACTITIONERS - ACTION BY THE REGISTRAR AND THE LAW SOCIETY

New section 16 provides for action which may be taken by the Registrar of the Supreme Court and by the Law Society in respect of an application for enrolment by a New Zealand practitioner.

New subsection 16(1) provides that, if the Registrar is satisfied that a New Zealand practitioner applicant is entitled to apply and is of good fame and character, the applicant is entitled to have his or her name entered on the Roll of Legal Practitioners.

New subsection 16(2) provides that, before considering an application from a New Zealand practitioner, the Registrar is to have regard to any information given, or objection made, by the Law Society.

New subsection 16(3) provides that, if the Law Society so requests, the Registrar is to refer an application for enrolment from a New Zealand practitioner to the Court.

New subsection 16(4) provides that, where the Registrar is not satisfied that a New Zealand practitioner applicant is entitled to apply and is of good fame and character (and will not, therefore enrol the practitioner) the Registrar may, or, where the applicant so requests, shall, refer the application to the Court.

New subsection 16(5) provides that, where the Registrar refers an application to the Court, the Registrar is to notify the applicant and the Law Society of the referral.

New subsection 16(6) provides that an application which is referred to the Court is to be taken to be an application for admission as a legal practitioner. This provision allows the Court, under new section 16B, if satisfied that the applicant is entitled to apply and is of good fame and character, to direct that the applicant is entitled to be enrolled

ENROLMENT OF PRACTITIONERS UNDER THE MUTUAL RECOGNITION ACT - ACTION BY THE REGISTRAR AND THE LAW SOCIETY

New section 16A provides for the action to be taken by the Registrar and the Law Society in respect of an application for enrolment under the Mutual Recognition Act.

New subsection 16A(1) provides that, where the Registrar considers that there are grounds under the Mutual Recognition Act for postponement or refusal of an enrolment sought under section 12, the Registrar shall,

within 14 days of the making of the application, refer the application to the Court.

New subsection 16A(2) provides that, in considering an application for enrolment under the Mutual Recognition Act, the Registrar is to have regard to any grounds for postponement or refusal of the enrolment drawn to the Registrar's attention by the Law Society.

New subsection 16A(3) provides that, if the Law Society so requests, the Registrar is to refer an application for enrolment under the Mutual Recognition Act to the Court.

New subsection 16A(4) provides that a request made by the Law Society under new subsection 16A(3) is to be made within 14 days of the making of the application.

New subsection 16A(5) provides that, where an application is referred to the Court, the Registrar is to notify the applicant and the Law Society of the referral

New subsection 16A(6) provides that an application for enrolment under the Mutual Recognition Act which is referred to the Court is to be taken to be an application to the Court for admission as a legal practitioner. This provision allows the Court, under new section 16B, if satisfied that the applicant is entitled to apply and is of good fame and character, to direct that the applicant is entitled to be enrolled.

ADMISSION OR ENTITLEMENT TO ENROLMENT OR REGISTRATION

New section 16B provides that, where the Court is satisfied that an applicant for admission as a legal practitioner is entitled to admission and is of good fame and character, the Court is to admit the applicant as a legal practitioner, and that the Law Society is entitled to be heard by the Court on the application.

New subsection 16B(1) provides for the Court to admit an applicant for admission.

New subsection 16B(2) provides for the Court, by virtue of subsection 16(6), to direct that a New Zealand applicant is entitled to be enrolled.

New subsection 16B(3) provides for the Court, by virtue of subsection 16A(6), to direct that a person is entitled to registration under the Mutual Recognition Scheme.

New subsection 16B(4) provides that the Law Society is entitled to be heard by the Court in relation to an application for admission.

ROLL OF LEGAL PRACTITIONERS

New section 16C requires the Registrar to keep a roll in accordance with any applicable Rules of Court to be known as the Roll of Legal Practitioners and that the Roll of Legal Practitioners includes the Roll of Legal Practitioners - Mutual Recognition Scheme.

ENTRY OF NAMES ON THE ROLL OF LEGAL PRACTITIONERS

New section 16D requires the Registrar to enter the names of persons admitted or enrolled onto the Roll of Legal Practitioners and the date on which the entry on the Roll was made. The provision includes the requirement that the Registrar enter on the Roll the name of a person entitled to enrolment under the Mutual Recognition Scheme when the person becomes so entitled, and the date on which the person became so entitled.

SUBSTITUTION

Clause 9 will repeal Part VII of the Principal Act and substitute a new Part VII to provide for the issue of practising certificates

PART VII - SOLICITORS' PRACTISING CERTIFICATES

New Part VII contains 6 Divisions

NEW DIVISION 1

New Division 1 contains new section 21.

INTERPRETATION

New section 21 provides for the interpretation of the term 'public employment' when used in new Part VII. The meaning of this term is adapted from subparagraph 24(a)(iii) of the Principal Act and is inserted to refer to the areas of public employment of a legal nature which qualify a practitioner for the grant of an unrestricted practising certificate

NEW DIVISION 2

New Division 2 deals with the requirement to hold a practising certificate and contains new section 22.

PRACTISING CERTIFICATES REQUIRED

New section 22 deals with the requirements in respect of practising certificates and is adapted from section 21 of the Principal Act.

New subsection 22(1) provides that a legal practitioner shall not practise as a solicitor on his or her own account or in partnership with another legal practitioner unless he or she holds a current unrestricted practising certificate

New subsection 22(2) provides that, for the purpose of the requirement in subsection 22(1), a person is not to be taken to be in practise as a solicitor only by reason of that person being a member of a partnership whose practice is conducted by another member or members of the partnership

New subsection 22(3) provides that a legal practitioner practising as a solicitor must not employ another legal practitioner to function as a solicitor unless that other legal practitioner holds a current practising certificate or is entitled to practise as an interstate legal practitioner.

New subsection 22(4) provides that a legal practitioner is not entitled to recover any costs or disbursements in respect of any professional legal work done by him or her if, at the time the work was done, he or she did

not hold a current unrestricted practising certificate or was not an interstate legal practitioner entitled to practise in the Territory.

New subsection 22(5) provides that, in this section, a reference to a person who holds a type of practising certificate is to be taken to include a person named in an order under subsection 31(4) or 36D(5), that is, who is to be taken to hold a practising certificate by order of the Court until the entitlement of the person to hold a practising certificate has been decided by the Court.

NEW DIVISION 3

New Division 3 deals with applications for the issue of practising certificates and contains new sections 23 and 24.

RESTRICTIONS ON PERSONS WHO MAY APPLY

New section 23 provides for applications for practising certificates.

New subsection 23(1) provides that an application for the issue of a practising certificate may only be made by a legal practitioner, that is, by a person whose name is entered on, or is taken to be entered on, the Roll of Legal Practitioners

New subsection 23(2) provides that a legal practitioner whose practising certificate has been suspended is not entitled to apply for the issue of a practising certificate while the suspension is in force. This provision is expressed to be subject to subsection 28(2). Subsection 28(2) gives a discretion to the Law Society to issue a restricted practising certificate to a person whose unrestricted practising certificate has been suspended in certain circumstances.

APPLICATIONS FOR PRACTISING CERTIFICATES

New section 24 provides that an application for the issue of a practising certificate is to be in a form approved by the Law Society and is to be signed by the applicant.

NEW DIVISION 4

New Division 4 provides for the issue of practising certificates by the Law Society and contains sections 25 to 34.

ISSUING AUTHORITY

New section 25 provides for the Law Society to issue practising certificates. Practising certificates are to be issued by the Law Society subject to this Division.

ISSUE OF CERTIFICATES - GENERALLY

New section 26 provides for the circumstances in which the Law Society may not issue a practising certificate or may refuse to issue a practising certificate.

New subsection 26(1) provides that the Law Society is not to issue a practising certificate to a person unless the person has paid the fee for the issue of a practising certificate. This provision is adapted from section 32 of the Principal Act.

New subsection 26(2) is adapted from subsections 27(1) and (2) of the Principal Act and provides that the Law Society may refuse to issue a practising certificate to a person if the person fails to pay any fines, costs, fees or expenses to the Law Society, is subject to disciplinary proceedings or has been sentenced to a term of imprisonment.

ISSUE OF UNRESTRICTED PRACTISING CERTIFICATES

New section 27 deals with qualifications for the issue of unrestricted practising certificates

New subsection 27(1) provides that the Law Society is to issue an unrestricted practising certificate to an applicant if the Society is satisfied that the applicant is qualified according to an item in the Table. The Table provides for **Items 1 to 7** which give the circumstances in which the Law Society is to issue an unrestricted practising certificate.

Item 1 is a new element and provides for the issue of an unrestricted practising certificate to a person who is the holder of an unrestricted practising certificate for a period that will expire on 30 June of the year in which an application for a further unrestricted practising certificate is made.

Practising certificates are issued annually. This provision will make it clear that a person who holds an unrestricted practising certificate for one year may be issued with a further unrestricted practising certificate.

Item 2 is based on section 24 of the Principal Act. However, the Principal Act does not make provision for a person who has held a unrestricted practising certificate in the past to apply for the issue of an unrestricted practising certificate after a period of not holding such a certificate. This provision is intended to make it clear that the status of a person who has held an unrestricted practising certificate within the last 5 years can be such that he or she is entitled to apply for an unrestricted practising certificate, not as a first application nor as a 'renewal', but on the basis of a previous grant of such a certificate and of the person's current professional skill.

Item 3 provides that a person who has not previously held an unrestricted practising certificate is entitled to the grant of such a certificate if he or she meets certain qualifications. This provision deals with a first grant of an unrestricted practising certificate to a legal practitioner and is adapted from sections 24 and 24A of the Principal Act.

Item 3 (a) applies the Item to a person who has not previously held an unrestricted practising certificate

Item 3(b) provides for the qualification of the relevant work of a legal nature performed in the preceding 5 years and is adapted from paragraph 24(a) of the Principal Act.

Item 3(c) requires the attainment of a level of professional skill and experience such that it is appropriate that an unrestricted practising certificate be issued to the person.

Item 4, alternatively to **Item 3**, provides for the qualifications of practical legal experience and training required for the issue of an unrestricted practising certificate in a person who has not previously held such a certificate. With the addition of **Item 4(c)** requiring the attainment of a level of professional skill and experience such that it is appropriate that an unrestricted practising certificate be issued to the person, this provision is adapted from paragraph 24(b) of the Principal Act.

Item 5 provides for the qualification of professional experience as a barrister in the Territory or a State or another Territory during the period of 5 years immediately preceding an application for an unrestricted practising certificate and replicates subsection 24A(1) of the Principal Act.

Item 6 provides for the issue of an unrestricted practising certificate to a person who has previously held a practising certificate (that is, either an unrestricted practising certificate or a restricted practising certificate) and has gained such experience that an unrestricted practising certificate should be granted to the person. This provision is adapted from subsection 24A(2) of the Principal Act

Item 7 provides for the qualifications necessary for the grant of an unrestricted practising certificate to a New Zealand barrister and solicitor and is adapted from section 24B of the Principal Act. Section 24B requires a New Zealand applicant to have practised for a period of not less than 5 years as a legal practitioner in New Zealand. The admission rules (to be provided for by Rules of Court) will require this period of practise for an application for admission from a New Zealand practitioner. **Item 7** requires a period of 6 months' practice in the Territory so that a New Zealand practitioner admitted to practise in the Territory will be familiar with local conditions before conducting a solicitor's practice in the Territory.

New subsection 27(2) provides that the Law Society is not to issue an unrestricted practising certificate unless the applicant has paid any contribution to the Fidelity Fund and any levy payable under section 147.

New subsection 27(3) provides that, subject to subsection 27(4), the Law Society is not to issue an unrestricted practising certificate unless satisfied that the person has, or will have, professional indemnity insurance for the period for which the certificate is sought.

New subsection 27(4) allows the Law Society to issue an unrestricted practising certificate to a solicitor without the solicitor having professional indemnity insurance for the period if satisfied that the practice of the solicitor is such that professional indemnity insurance is not required to be held by the solicitor.

New subsection 27(5) gives the Law Society a discretion to refuse to issue an unrestricted practising certificate if the applicant has not complied with the requirements in relation to an auditor's report (adapted from paragraph 27(3)(c) of the Principal Act); or an auditor's report discloses a deficiency in trust money held by him or her, and which he or she has not made good (adapted from paragraph 27(3)(d) of the Principal Act).

New subsection 27(6), which requires the Law Society to refuse to issue an unrestricted practising certificate to a person if the person is bankrupt, or has entered into insolvency arrangements, is adapted from section 26 of the Principal Act.

New subsection 27(7) prohibits the Law Society from issuing an unrestricted practising certificate to a person unless satisfied that the person has an adequate a knowledge of accounts and legal ethics. This provision replicates the requirement in section 25 of the Principal Act.

ISSUE OF RESTRICTED PRACTISING CERTIFICATES

New section 28 deals with the issue of a restricted practising certificate. This is a new provision

New subsection 28(1) provides that the Law Society is to issue a restricted practising certificate to a person applying under section 24 if satisfied that the applicant is qualified to hold such a certificate.

New subsection 28(2) gives the Law Society a discretion to issue a restricted practising certificate to a person whose unrestricted practising certificate has been suspended, or has been cancelled by reason of insolvency or a sentence of imprisonment.

ISSUE OF PRACTISING CERTIFICATES TO PRACTITIONERS ENROLLED UNDER THE MUTUAL RECOGNITION ACT

New section 29 is a new provision and deals with the issue of practising certificates to practitioners who have gained enrolment under the Mutual Recognition Act

New subsection 29(1) provides for the issue of a practising certificate to a person entered on the Roll who has lodged a notice with the Law Society under section 19 of the Mutual Recognition Act and paid the fee required for the application and any amount payable to the Fidelity Fund or levy required by an indemnity fund.

New subsection 29(2) requires the Law Society to issue to an applicant qualified under subsection 29(1) a practising certificate of the type (that is, either a restricted or an unrestricted practising certificate) which corresponds most closely to the type of certificate the application holds under the law of the applicant's home State or Territory.

New subsection 29(3) requires the Law Society to issue a further practising certificate to a person who holds a practising certificate issued under the Mutual Recognition Scheme.

NOTICE OF REFUSAL TO ISSUE A PRACTISING CERTIFICATE

New section 30 requires the Law Society to give a written notice to the applicant of the grounds for a refusal to issue a practising certificate to the applicant. This provision replicates section 28 of the Principal Act.

POWERS OF THE COURT RELATING TO THE ISSUE OF PRACTISING CERTIFICATES

New section 31 provides for an application to the Supreme Court where the Law Society has refused to issue a practising certificate. This provision replicates section 29 of the Principal Act.

APPLICATION TO THE COURT BY A PERSON NOT QUALIFIED UNDER SUBSECTION 27(1)

New section 32 is adapted from section 29 of the Principal Act and provides for an application to the Court by a person who does not qualify for the issue of an unrestricted practising certificate under subsection 27(1). Where the Court is satisfied that the applicant has an appropriate level of professional skill and experience the Court may, by order, direct the Law Society to issue an unrestricted practising certificate to the applicant. In making such an order, the Court may also order that the practising certificate have effect subject to specific conditions. The Law Society is to be the respondent in such an application and the Court may make an order as to the costs of the application.

ISSUE OF CERTIFICATES CONDITIONALLY OR UNCONDITIONALLY

New section 33 provides that the Law Society may issue a practising certificate unconditionally or subject to conditions. This is a new provision and is an extension of subsection 23A(2) of the Principal Act which allows the Law Society to issue an unrestricted practising certificate to a legal practitioner without requiring the practitioner to have professional indemnity insurance for the period of the certificate if the nature of the practice of the practitioner is such that professional indemnity insurance is not necessary.

New subsections 33(1), (2) and (3) allow the Law Society to impose, add to, vary or revoke conditions imposed on an unrestricted or on a restricted practising certificate whether or not the practising certificate was issued conditionally or unconditionally initially (or whether the conditions were imposed by order of the Court). New subsection 33(5) provides that the specifications relevant to a condition imposed are those specified in the practising certificate.

New subsection 33(4) indicates the type of conditions which may be imposed on the issue of a practising certificate. These include -

- (a) restricting the holder of the practising certificate to certain specified classes of work;
- (b) prohibiting the holder from engaging in certain specified classes of work;
- (c) requiring the holder to undertake all work, or certain specified classes of work, subject to specified supervision;
- (d) requiring the holder to perform only certain specified types of employment or only in the employment of a specified person,
- (e) requiring the holder to undertake certain specified education or training;
- (f) requiring the holder to cease employing a certain employee or employees; or
- (g) requiring the holder to effect a specified type of insurance.

POWERS OF THE COURT RELATING TO CONDITIONS ON PRACTISING CERTIFICATES

New section 34 is a new provision which follows the power given to the Law Society to impose conditions on the issue of a practising certificate in that it provides for an application to be made to the Court as to the imposition or variation of a condition by the Law Society. On an application, to which the Law Society is to be the respondent, the Court may make orders in relation to a condition, including the removal or the variation or substitution of a condition imposed by the Law Society, which take effect from a date specified by the Court

NEW DIVISION 5

New Division 5 deals with the surrender of practising certificates and contains new section 35

SURRENDER OF PRACTISING CERTIFICATE

New section 35 provides that the holder of a practising certificate may surrender his or her practising certificate to the Law Society from the date specified by the Law Society in its acknowledgment of the surrender. Subsection 35(2) provides that the Law Society need not accept the surrender of the practising certificate. In circumstances in which there is the possibility of disciplinary action in respect of the holder of the practising certificate, the latter provision allows the Law Society to cancel the practising certificate rather than accept the surrender of the certificate.

New subsection 35(4) provides, where the surrender of a practising certificate is accepted by the Law Society, for the Law Society to refund the appropriate proportion of the fee paid for the issue of the practising certificate and of any contribution made to the Fidelity Fund by the solicitor surrendering the practising certificate.

New subsection 35(5) provides for a refund made to be an amount of fees and contributions proportional to the remaining period for which the certificate was issued.

New subsection 35(6) ensures that the surrender of a practising certificate does not affect any liability (other than liability for fees, contribution to the Fidelity Fund or levy paid in respect of the period of the practising certificate) of the solicitor incurred or accrued in the period prior to the surrender of the practising certificate.

NEW DIVISION 6

Division 6 deals with the suspension and cancellation of practising certificates by the Law Society and contains new sections 36 to 36D.

SUSPENSION

New section 36 provides for the suspension of a practising certificate by the Law Society for a period not exceeding 12 months.

New subsection 36(1) is adapted from paragraph 27(2)(b) of the Principal Act and provides that the Law Society may suspend the practising certificate of a legal practitioner for up to 12 months if the legal practitioner owes any fines, costs, fees or expenses to the Law Society, or is subject to disciplinary proceedings.

New subsection 36(2) is adapted from paragraph 27(3)(b) of the Principal Act and provides that the Law Society may suspend the unrestricted practising certificate of a legal practitioner for up to 12 months where the legal practitioner has not maintained indemnity insurance or paid an amount levied in relation to an indemnity fund or has not complied with the requirements in relation to an auditor's report or a report discloses deficiencies in trust money held by the legal practitioner and those deficiencies have not been made good.

New subsection 36(3) is a new provision requiring the Law Society to revoke the suspension if the legal practitioner has paid an amount levied in relation to an indemnity fund.

New subsection 36(4) is adapted from paragraph 27(4)(a) of the Principal Act and provides that a legal practitioner whose practising certificate is suspended is to be taken not to hold a practising certificate during the period of suspension.

CANCELLATION

New section 36A deals with the cancellation of a practising certificate by the Law Society.

New subsection 36A(1) provides for the automatic cancellation of a practising certificate where the name of the holder of that practising certificate is removed from the Roll of Legal Practitioners (adapted from subsection 31(3) of the Principal Act) or where the right to practise of the holder of the certificate is suspended (adapted from subsection 31(4) of the Principal Act).

New subsection 36A(2) is adapted from paragraph 26(b) of the Principal Act and requires the Law Society to cancel an unrestricted practising certificate if the holder of the certificate becomes bankrupt or enters into insolvency arrangements

New subsection 36A(3) is adapted from paragraph 27(1)(b) of the Principal Act and provides that the Law Society may cancel a practising certificate held by a legal practitioner who has been sentenced to a term of imprisonment

NOTICE OF CANCELLATION OR SUSPENSION

New section 36B is adapted from section 28 of the Principal Act and provides for the Law Society to give to the relevant legal practitioner a written notice of and the ground for its suspension or cancellation of a practising certificate.

DELIVERY OF CANCELLED CERTIFICATE TO THE LAW SOCIETY

New section 36C deals with the delivery of a cancelled practising certificate to the Law Society and the return by the Law Society of a practising certificate and is adapted from section 36 of the Principal Act. The provision requires the Law Society to return a practising certificate to a person where a cancellation is revoked or the Court orders that the person is to be taken to be the holder of a practising certificate

POWERS OF THE COURT RELATING TO CANCELLATION OR SUSPENSION OF PRACTISING CERTIFICATES

New section 36D provides for the power of the Court, on application, to revoke the cancellation or suspension of a practising certificate and is adapted from sections 29 and 30 of the Principal Act. New subsection 36D(5) provides that the Court may order that the person is to be taken to be the holder of the practising certificate specified in the order until the application to the Court is determined

NEW DIVISION 7

New Division 7 contains sections 36E to 36H and provides for various matters relating to the issue of practising certificates.

FEES FOR PRACTISING CERTIFICATES

New section 36E provides for a fee to be fixed by and payable to the Law Society for the grant of a practising certificate. This provision is adapted from section 32 of the Principal Act. New subsection 36E(2) provides that the fee is to be proportional where a certificate is granted for less than a full year. New 36E(3) provides for allowance to be made in respect of the fee or an amount paid to the Fidelity Fund for a period in the previous year in which a practising certificate was cancelled

DATE OF EFFECT AND TERM OF PRACTISING CERTIFICATES

New section 36F provides for the date of the effect and the term of a practising certificate and is adapted from subsections 31(1) and 31(2) of the Principal Act

REGISTER OF HOLDERS OF PRACTISING CERTIFICATES

New section 36G requires the Law Society to keep a register of the holders of practising certificates and is adapted from section 33 of the Principal Act

NOTICE OF CHANGE OF CIRCUMSTANCES

New section 36H, which is adapted from section 34 of the Principal Act, requires the holder of a practising certificate to notify the Law Society of any relevant change in respect of his or her practice.

INTERPRETATION

SUBSTITUTION

Clause 10 will repeal sections 75A, 76, 77 and 78 of the Principal Act, which deal with professional indemnity insurance, and substitute new sections 76, 77 and 78.

APPROVAL OF INDEMNITY INSURANCE

New section 76 provides that the Law Society may approve an insurer or the terms of a policy of professional indemnity insurance for solicitors offered by an insurer and may impose conditions as it sees fit on an approval or vary or revoke any such approval. This provision is adapted from subsection 78(2) of the Principal Act.

INDEMNITY INSURANCE TAKEN TO BE APPROVED

New section 77 is a new provision and provides that, where the rules or conditions applicable to the contributors of an indemnity fund require a contributor to hold a policy of professional indemnity insurance, the terms of that policy are to be taken to be approved by the Law Society.

MAINTENANCE OF INDEMNITY INSURANCE

New section 78 requires a solicitor issued with an unrestricted practising certificate to maintain professional indemnity insurance cover for the period of that practising certificate. The requirement includes the payment by a solicitor who is a contributor of an indemnity fund of any levy raised by that fund. Subsection 78(2) requires the holder of an unrestricted practising certificate to notify the Law Society if his or her policy of professional indemnity insurance ceases to be in force before the expiration of the practising certificate.

REPEAL

Clause 11 will repeal section 81 of the Principal Act. Section 81 provides for appeals to the Supreme Court in relation to the approval by the Law Society of professional indemnity insurance policies and providers. Appeals in relation to those matters are to be to the Administrative Appeals Tribunal as is provided for in new section 198A which will be inserted by clause 19.

SUBSTITUTION

Clause 12 will repeal Part X of the Principal Act and substitute new Part X - Indemnity Funds - which will contain new sections 82 and 83. Part X currently provides for the Solicitors' Mutual Indemnity Fund. That Part is repealed and replaced by new Part X to provide for 'an indemnity fund' and allow the Law Society to approve one or more funds the purpose of which is to provide indemnity insurance for legal practitioners practising as solicitors.

INTERPRETATION

New section 82 provides for 'indemnity fund' to mean a fund established to assist in meeting claims, not being claims involving a dishonest act (in respect of which a claim against the Fidelity Fund may be made), made against a solicitor in respect of the conduct of his or her practice

APPROVAL OF FUNDS

New section 83 provides that the Law Society may approve an indemnity fund whether or not it is established under the law of a State or Territory.

INTERPRETATION

Clause 13 will insert a definition of 'banking day' for the purposes of trust account requirements to mean a day on which a bank is open for business other than a day which is a Saturday, Sunday or public holiday.

TRUST ACCOUNTS

Clause 14 will amend section 90 of the Principal Act by removing paragraph 90(2)(b) The effect is that the title of a trust bank account will no longer be required to contain the full name of each partner in a partnership.

PAYMENT INTO TRUST BANK ACCOUNT

Clause 15 will amend section 91 of the Principal Act.

Subclauses 15(a), (b) and (c) make technical drafting amendments.

Subclause 15(d) inserts new subsection 91(2) to provide a requirement that, where money is directly or electronically paid or transferred into an account operated by a solicitor in connection with his or her practice, the solicitor is to cause that money to be paid into a trust account maintained by the solicitor on the next banking day after the day on which the solicitor becomes aware of the payment.

INSTRUCTIONS CONCERNING CERTAIN TRUST MONEYS

Clause 16 will amend section 93 of the Principal Act to provide that, where it is reasonably likely that a solicitor will hold a sum of money of a client of, or in excess of, \$5 000 for more than 3 months, the solicitor must seek instructions from the client as to whether that money should be paid into a special trust account or otherwise invested for the client by the solicitor At present, the solicitor must seek instructions from the client as to whether that money should be paid into a special trust account in respect of an amount of \$1 000.

SUBSTITUTION

Clause 17 will repeal section 99 of the Principal Act and substitute new section 99 to provide for requirements relating to the giving of a receipt for trust money received by a solicitor.

New subsection 99(1) requires, subject to section 99, a solicitor to give a receipt for trust money received.

New subsection 99(2) provides that, subject to subsection 99(3), a receipt is to be numbered and include details of the amount, date paid, name of the person on whose behalf the payment is made and of the matter to which the payment relates.

New subsection 99(3) provides that, where records of matters are usually maintained by a solicitor on computer and the matter to which a payment relates has not yet been entered on the computer or the computer is not operational at the time the money is received, the solicitor is to issue an interim receipt which contains the details required in subsection 99(2) and, as soon as is practicable after the matter is entered on the computer or access to the computer is available, forward a receipt to the payer of the money.

New subsection 99(4) provides that, where a solicitor issues a receipt for trust money, he or she is to keep a copy of the receipt issued or of the particulars required to be specified in the receipt under paragraph 99(2)(b).

New subsection 99(5) provides that, where a payment is made by direct deposit or by electronic transfer into an account operated by a solicitor in connection with his or her practice, the solicitor, as soon as he or she becomes aware of that payment, is to take reasonable steps to identify the payer and forward to that person a receipt in accordance with subsection 99(2).

INSERTION

Clause 18 will insert new section 99B after section 99A of the Principal Act.

MONTHLY STATEMENTS RELATING TO TRUST MONEYS

New section 99B provides for the monthly reconciliation of bank statements.

New subsection 99B(1) requires a solicitor to obtain a statement each month for each bank account maintained by him or her in connection with his or her practice.

New subsection 99B(2) requires a solicitor to carry out a reconciliation of each monthly bank statement within 7 days of receiving the statement.

INSERTION

Clause 19 will insert new sections 198A and 198B into the Principal Act to provide for review by the Administrative Appeals Tribunal of decisions or determinations of the Law Society. The new provisions will include decisions or determinations of the Law Society as to the approval of the provider, and terms, of a professional indemnity insurance policy and as to claims made against the Fidelity Fund among those reviewable by the Administrative Appeals Tribunal. Review by the Administrative Appeals Tribunal of decisions or determinations of the Law Society in relation to a claim against the Fidelity Fund were provided for under sections 146A and 146B of the Principal Act which are to be repealed in the Schedule.

REVIEW BY TRIBUNAL

New section 198A provides for the decisions or determinations of the Law Society which may be appealed to the Administrative Appeals Tribunal and is adapted from sections 81 and 146A of the Principal Act

NOTIFICATION OF DECISIONS

New section 198B requires that notification according to that required under the *Administrative Appeals Tribunal Act 1989* is to be provided to an applicant by the Law Society and is adapted from section 146B of the Principal Act.

FURTHER AMENDMENTS

Clause 20 will provide for the further amendment of the Principal Act as set out in the Schedule.

TRANSITIONAL

Clause 21 will provide for transitional provisions consequent upon the amendment of the Principal Act.

SCHEDULE

The Schedule will make other amendments to the Principal Act consequential upon the Bill.

LEGAL PRACTITIONERS (CONSEQUENTIAL AMENDMENTS) BILL 1997

The Legal Practitioners (Consequential Amendments) Bill 1997 will amend certain laws in consequence of the replacement of the term 'barrister and solicitor' with 'legal practitioner' in the Principal Act by the Legal Practitioners (Amendment) (No 2) Bill 1997.

A definition of 'legal practitioner', 'barrister' and 'solicitor' will be inserted into the *Interpretation Act 1967* and definitions of 'barrister and solicitor' deleted from the interpretation provisions in other legislation.

References in legislation to 'attorney', 'barrister', 'barrister and solicitor', 'counsel', 'legal representative' or 'solicitor' will be deleted where the reference is appropriately to a legal practitioner (as opposed, for instance, to a reference to an 'attorney' meaning a person holding power of attorney) and references to 'legal practitioner' substituted.

In making these changes to the terminology in legislation, there is no intention that the law be altered.

DETAILS OF THE LEGAL PRACTITIONERS (CONSEQUENTIAL AMENDMENTS) BILL 1997

TITLE

Clause 1 will provide that the title of the enactment is to be the *Legal Practitioners (Consequential Amendments) Act 1997*.

COMMENCEMENT

Clause 2 will provide that the Bill is to commence on the day on which the Legal Practitioners (Amendment) Bill (No 2) 1997 commences.

AMENDMENT OF ACTS

Clause 3 will provide that the Acts specified in Schedule 1 are amended as set out in that Schedule.

AMENDMENT OF REGULATIONS

Clause 4 will provide that the regulations specified in Schedule 2 are amended as set out in that Schedule.

AMENDMENT OF RULES

Clause 5 will provide that the rules specified in Schedule 3 are amended as set out in that Schedule.