

2009

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Legal Profession Amendment Bill 2009

EXPLANATORY STATEMENT

Presented by
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Overview of Bill

This Bill contains a number of simple amendments to the *Legal Profession Act 2006 (ACT)*. The purpose of the Bill is to enable the more effective operation of the provisions contained in Part 6.3 of the Act, relating to entry and search of premises for the purposes of investigating the affairs of legal practitioners and law practices. The Bill will also ensure that legal practitioners and law practices are entitled to compensation only for the unlawful or unreasonable actions of investigators.

The amendments will ensure that the licensing body (the Law Society of the Australian Capital Territory) is able to properly control the conduct of its investigators, and that the funds of the 'relevant councils' (the ACT Bar Association and the Law Society of the Australian Capital Territory) are not unduly exposed to claims for compensation.

The Bill generally adopts the approach taken in the QLD *Legal Profession Act 2007*, which ensures that the relevant council can require its investigators to act strictly in accordance with its directions, and that compensation is properly limited to the costs of compliance with the requirements of an investigator.

The right to compensation is limited to circumstances in which an investigator acts in an unlawful or unreasonable manner. This recognises that in this regulatory environment, in which a non-government regulator investigates the affairs of its own members, it is expected that audits, investigations and external interventions will occasionally be necessary to ensure that professional standards and the requirements of the Legal Profession Act are being met.

Human Rights Act 2004

Section 28 of the *Human Rights Act 2004* provides that human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.

Section 12 of the Human Rights Act sets out the right to privacy and reputation of a person. While the amendments contained in this Bill address the power of an investigator to enter and search private premises it is not the power, but the manner in which the investigator must conduct his or her duties, that is dealt with. The amendments allow conditions and limits to be placed on that conduct to protect not only the funds of the relevant councils, but also the right of practitioners and law practices not to have their affairs unduly interfered with.

Clause Notes

Clause 1. Name of Act – states the title of the Act as the *Legal Profession Amendment Act 2009*.

Clause 2. Commencement – provides for the commencement for the Act. The Act commences on the day after its notification day.

Clause 3. Legislation amended – this Act amends the *Legal Profession Act 2006*.

Clause 4. Appointment of investigators – New section 234 (3) and (4) – inserts new subsections 234 (3),(4) to provide that an investigator may be appointed subject to conditions stated in the appointment instrument, any notice given to the investigator, or in a regulation. The amendment allows the licensing body, in relation to a trust account investigation, to appoint a person as an investigator on the condition that a breach of conditions would result in termination of the appointment.

Clause 5. Appointment of investigators for complaint – New section 407(2) and (3) – inserts new subsections 407(2) and (3) to provide that an investigator can be appointed subject to any conditions stated in the appointment instrument, any notice given to the investigator, or in a regulation. The amendment allows the relevant council, in relation to a complaint investigation, to appoint a person as an investigator on the condition that a breach of conditions would result in termination of the appointment.

Clause 6. Section 521 – applies the definitions under this section to all of Chapter 6, rather than Part 6.1, of the Act.

Clause 7. Powers to enter premises – Section 530 (4) – replaces the term *relevant entity* with *licensing body*. Under the definitions in this Part, the term *licensing body* refers to the law society council.

Clause 8. New section 530(4A) - inserts a new subsection 530(4A), to ensure that the licensing body has control over the conduct of the investigator by imposing a set of conditions to which the investigator must adhere.

Clause 9. Compensation for exercise of enforcement powers – Section 549 (1) – substitutes a new subsection 549(1) to provide that legal practitioners and law practices are entitled to compensation only for loss or damage arising from the unlawful or unreasonable actions of investigators.

Clause 10. New section 549(5) - inserts subsection 549(5), which defines **conduct** as an act or omission to do an act, for the purposes of section 549.

Clause 11. Dictionary, new definitions – inserts new definitions for the following terms, to comply with current drafting practice:

Complaint investigation

IPL compliance audit

Trust account examination

Trust account investigation

Clause 12. Dictionary, definition of investigator – substitutes a new definition of investigator, to comply with current drafting practice.