

NORTHERN TERRITORY OF AUSTRALIA  
LEGAL PRACTITIONERS AMENDMENT ACT 1987

No. 36 of 1987

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## NORTHERN TERRITORY OF AUSTRALIA

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No. 26 of 1987

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### AN ACT

to amend the *Legal Practitioners Act*

[Assented to 28 September, 1987]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Legal Practitioners Amendment Act 1987*.

2. COMMENCEMENT

This Act shall come into operation on 1 October 1987.

3. PRINCIPAL ACT

The *Legal Practitioners Act* is in this Act referred to as the Principal Act.

4. DEFINITIONS

Section 6 of the Principal Act is amended -

(a) by omitting the definition of "legal practitioner" and substituting the following:

"'legal practitioner' -

(a) except in Parts VII, VIII, IX and X, means a person whose name is on the Roll of Legal Practitioners; and

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(b) in Parts VII, VIII, IX and X, means a person whose name is on the Roll of Legal Practitioners and who holds an unrestricted practising certificate, save that -

(i) it does not in any of those Parts include a local Counsel or visiting Counsel; and

(ii) it does not in Part VII, VIII or IX include the Solicitor-General of the Northern Territory, a person acting in the name of the Solicitor for the Northern Territory, the holder for the time being of the office of Director of the Australian Legal Aid Office, Northern Territory, Commonwealth Attorney-General's Department, or the holder for the time being of the office of Director of Legal Services, Northern Territory, Commonwealth Attorney-General's Department;"

(b) by inserting after the definition of "Master" the following:

"'professional conduct rules' has the meaning given by section 45(2)(a)(ii);"

(c) by omitting the definition of "restricted practising certificate" and substituting the following:

"'restricted practising certificate' means a restricted practising certificate class 1, class 2 or class 3;" and

(d) by inserting after the definition of "restricted practising certificate class 2" the following:

"'restricted practising certificate class 3' means a practising certificate certifying to the entitlement of the holder, whilst in the employ of another person, to perform the functions of a legal practitioner to the extent authorized by regulations made for the purposes of section 22(3B);".

5. CERTAIN PRACTITIONERS TO HOLD PRACTISING CERTIFICATES

Section 22 of the Principal Act is amended by omitting subsection (3A) and substituting the following:

"(3A) Subject to the *Judiciary Act 1903* of the Commonwealth, a legal practitioner who is an officer or employee of a department, body or organization for the time being prescribed for the purposes of section 25(1)(c) shall not practise in the Territory as a legal

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practitioner unless he holds, or is in pursuance of section 30 to be deemed to hold, a current unrestricted practising certificate or restricted practising certificate class 1.

"(3B) A legal practitioner who is employed by another person otherwise than as mentioned in subsection (3) or (3A) shall not practise in the Territory as a practitioner unless -

- (a) he holds, or is in pursuance of section 30 to be deemed to hold, a current restricted practising certificate class 3; and
- (b) the functions he performs in that respect are of a description or descriptions which he is authorized to perform by regulations under this Act,

and regulations prescribing functions for the purposes of this subsection may make different provision with respect to different classes or descriptions of employment."

#### 6. LIMITATIONS ON ISSUE OF UNRESTRICTED PRACTISING CERTIFICATES

Section 25 of the Principal Act is amended -

- (a) by omitting from subsection (1)(c) "employee in the Department of Law" and substituting "officer or employee in a department (including a department of the Commonwealth or of a State of the Commonwealth), body or organization prescribed for the purposes of this paragraph";
- (b) by omitting subsection (1)(d);
- (c) by omitting from subsection (3) "in the Territory" and substituting "or its equivalent in a State or Territory"; and
- (d) by omitting from subsection (3) "again".

#### 7. REPEAL AND SUBSTITUTION

Section 27 of the Principal Act is repealed and the following substituted:

#### "27. GENERAL GROUNDS FOR REFUSAL, CANCELLATION OR SUSPENSION OF PRACTISING CERTIFICATES

"(1) The Law Society may refuse to issue a practising certificate, or may cancel a practising certificate or suspend it for a specified period, if the applicant for or holder of the certificate -

- (a) is undergoing imprisonment;

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- (b) has been convicted -
  - (i) in the Territory - of a crime, or of a simple offence involving dishonesty on his part; or
  - (ii) elsewhere - of an offence which would fall within subparagraph (i) if committed in the Territory;
- (c) is or has become bankrupt, has compounded with his creditors or made an assignment of his remuneration for their benefit, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (d) has contravened or failed to comply with a provision with respect to trust moneys or trust accounts contained in this or any other Act, in any regulations, or in the professional conduct rules;
- (e) being an employee of another legal practitioner, or of a firm of legal practitioners, has in the opinion of the Law Society -
  - (i) acted dishonestly in relation to the trust accounts of that practitioner or firm; or
  - (ii) by any act or omission caused (whether directly or indirectly) that practitioner or any member of that firm to contravene or fail to comply with any such provision as is mentioned in paragraph (d);
- (f) has contravened or failed to comply with, or is in any respect in default under, a provision relating to his practise as a legal practitioner contained in this or any other Act, in any regulations, or in the professional conduct rules;
- (g) has failed -
  - (i) to produce any book, account, document or writing when required to do so for the purposes of section 47(3) or 51(9); or
  - (ii) to comply with a summons issued by the Complaints Committee under section 51(1);
- (h) has failed to comply with an order of the Court, the Complaints Committee or the Law Society;

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- (j) has failed to pay, within the time specified for payment or, if no time was specified, within a reasonable time, a fine imposed on him, or any costs, fees or expenses ordered to be paid by him, under this Act; or
- (k) has in the opinion of the Law Society shown by his conduct in relation to his practise of the law (whether conduct in respect of a particular matter or a pattern of conduct) that he is not a fit and proper person to practise as a legal practitioner on his own account or in partnership.

"(2) The Law Society may also exercise its powers under subsection (1) where a report of an audit under Division 5 of Part VII or an examination under Division 6 of that Part discloses a deficiency in the trust moneys held by a legal practitioner, except where the deficiency was in the opinion of the Master excusable, and was made good before the date of the report.

"(3) Where the Law Society cancels or suspends a person's practising certificate, it shall give him notice in writing of the cancellation or suspension and the reasons therefor."

8. REPEAL OF SECTION 28

Section 28 of the Principal Act is repealed.

9. NOTICE OF CHANGE OF NAME OR ADDRESS

Section 33A of the Principal Act is amended by adding at the end the following:

"(2) The holder of a restricted practising certificate class 1 or a restricted practising certificate class 3 who -

- (a) commences employment with an employer other than the employer stated in the application for the practising certificate; or
- (b) ceases employment with the employer so stated or with any subsequent employer,

and the holder of a restricted practising certificate class 2 who -

- (c) commences to practise at an address other than that stated in the application for the certificate; or
- (d) ceases to practise at an address at which he was previously practising,

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shall, within 14 days of commencing or ceasing the employment in question or, as the case may be, so to practise, notify the Law Society of the fact and, in a case falling within paragraph (a) or (c), of the name and address of the new employer or the new address at which he practises."

10. REPEAL AND SUBSTITUTION

Section 45 of the Principal Act is repealed and the following substituted:

"45. MEANING OF PROFESSIONAL MISCONDUCT

"(1) In this Part, 'professional misconduct' means misconduct in a professional capacity.

"(2) Without prejudice to the generality of subsection (1), 'professional misconduct' includes in particular -

- (a) a legal practitioner's contravention of, or failure to comply with, a provision of -
  - (i) this Act or any regulations under this Act; or
  - (ii) any rules relating to the professional conduct of legal practitioners made by the Law Society and for the time being approved by the Attorney-General (in this Act referred to as the professional conduct rules),

where the contravention or failure was wilful or reckless;

- (b) an act or neglect by a legal practitioner in connection with his practise as such which constitutes a gross breach of duty to a client or the Court;
- (c) a failure by a legal practitioner to comply with an undertaking given by him for the purposes of this Act, or in connection with any inquiry, investigation or other proceeding under this Act, or in the course of his practise as a legal practitioner;
- (d) the making by a legal practitioner of a statement which purports to be one of fact and is to his knowledge false in a material particular, where the statement is made -
  - (i) to a client of the legal practitioner, in connection with a matter with respect to which the practitioner is acting for the client professionally;

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- (ii) to another legal practitioner, in the course of the first-mentioned practitioner's practise and with respect to a matter in respect of which he acts, or holds himself out as acting, for a client; or
- (iii) in the course of an inquiry or investigation under this Act concerning the professional conduct of the legal practitioner, and with respect to conduct relevant to that inquiry or investigation; and
- (e) the charging by a legal practitioner in respect of professional services rendered to a client of fees or costs which are in the circumstances grossly excessive."

11. FUNCTIONS AND POWERS OF LAW SOCIETY

Section 47(1) of the Principal Act is amended -

- (a) by inserting after paragraph (b) the following:
  - "(ba) where it finds a complaint proved, but is of the opinion that it is justified in doing so having regard to the circumstances of the case and the record of the legal practitioner against whom the complaint was made, record the finding but take no further action in the matter;"
- (b) by omitting from paragraph (c) "where, in its opinion, a complaint has substance but" and substituting "where it finds a complaint proved, but is of the opinion that the complaint";
- (c) by omitting from paragraph (c) "\$200" and substituting "\$2,000"; and
- (d) by omitting from paragraph (d) "lay charges" and substituting "subject to section 50(1A), lay charges".

12. APPEAL AGAINST FINDING, ADMONISHMENT OR FINE

Section 49 of the Principal Act is amended -

- (a) by omitting from subsection (1) "an admonishment or fine imposed under section 47(1)(c) by the Law Society" and substituting "a finding recorded by the Law Society under section 47(1)(ba) or an admonishment or fine imposed by the Law Society under section 47(1)(c)"; and
- (b) by inserting in subsection (2)(c) after "date of the" the words "recording of the finding or".



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13. APPEAL BY REHEARING

Section 49A of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) On the rehearing of a complaint, the Complaints Committee may -

- (a) confirm or quash a finding, admonishment or fine recorded or imposed by the Law Society; or
- (b) exercise any of its powers under section 50(4),

and the exercise by the Complaints Committee of a power under section 50(4) shall have effect in substitution for anything done by the Law Society in its disposal of the complaint."

14. CHARGES BEFORE COMPLAINTS COMMITTEE

Section 50 of the Principal Act is amended -

- (a) by omitting from subsection (1) "The Attorney-General, the Law Society" and substituting "The Attorney-General or, subject to subsection (1A) the Law Society";
- (b) by inserting after subsection (1) the following:

"(1A) A charge of professional misconduct in which the misconduct alleged consists solely of a contravention of, or failure to comply with, a provision of the professional conduct rules may be laid only by the Attorney-General or by the Law Society with the consent of the Attorney-General.";

- (c) by omitting subsection (4)(a)(i) and substituting the following:

"(i) where it is of the opinion that it is justified in doing so having regard to the circumstances of the case and the record of the legal practitioner, record a finding that that legal practitioner has been guilty of professional misconduct but take no further action in the matter;

- (ia) admonish or reprimand that legal practitioner;"; and

- (d) by inserting after subsection (4) the following:

"(4A) Where the conduct to which a charge under subsection (1) relates has been the subject of a complaint against the legal practitioner under section 46 -

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- (a) the powers of the Complaints Committee include power to confirm or quash a finding, admonishment or fine recorded or imposed by the Law Society under section 47(1)(ba) or (c); and
- (b) the exercise by the Complaints Committee of a power under subsection (4) has effect in substitution for anything done by the Law Society in its disposal of the complaint."

15. POWERS OF COMPLAINTS COMMITTEE

Section 51 of the Principal Act is amended -

- (a) by inserting in subsection (1) after "For the purposes of an" the words "appeal or";
- (b) by inserting in subsection (7) after "In the course of an" the words "appeal or"; and
- (c) by adding after subsection (7) the following:

"(8) The Complaints Committee may engage a legal practitioner and such other persons as it thinks fit for the purpose of assisting it in the exercise or performance of its powers or functions under this Act, and may in particular direct a legal practitioner or other person so engaged to investigate a matter that is the subject of an appeal under section 49(1) or a charge under section 50(1) or is incidental to such a matter.

"(9) A legal practitioner or other person who is investigating a matter under subsection (8) and is authorized in writing by the Complaints Committee to exercise the powers conferred by this subsection may at any reasonable time -

- (a) inspect books, accounts, documents or writings in the custody or control of -
  - (i) the legal practitioner or former legal practitioner by or against whom the appeal or charge in question has been lodged or laid; or
  - (ii) a person employed by that legal practitioner or former legal practitioner; and
- (b) make notes or copies of, or take extracts from, such books, accounts, documents or writings.

"(10) A legal practitioner or former legal practitioner, or person employed by a legal practitioner or former legal practitioner, who refuses without reasonable excuse to produce any book, account, document

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or writing when required to do so in the exercise of a power conferred by subsection (9) is guilty of an offence.

Penalty: \$5,000."

16. APPEAL TO SUPREME COURT

Section 51B of the Principal Act is amended -

(a) by omitting from subsection (1) "reprimand or order of the Complaints Committee administered or made" and substituting "finding, admonishment or fine confirmed by the Complaints Committee under section 49A(2)(a) or 50(4A)(a), or a finding recorded, admonishment or reprimand administered or order made by the Complaints Committee";

(b) by omitting from subsection (2) "date of the reprimand" and substituting "date on which the Complaints Committee confirmed the finding, admonishment or fine appealed against or, as the case may be, recorded, administered or made the finding, admonishment, reprimand";

(c) by inserting after subsection (2) the following:

"(2A) Where an appeal under subsection (1) puts in issue conduct of a legal practitioner which has been the subject of a complaint under section 46 or a charge under section 50(1), the Supreme Court shall hear the appeal by way of rehearing the complaint or charge."; and

(d) by omitting subsection (3)(a) and substituting the following:

"(a) confirm, vary or quash the finding, penalty or order appealed against, or substitute or make any finding, penalty or order that could have been made by the Complaints Committee;"

17. PROCEEDINGS BEFORE SUPREME COURT

Section 52 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) The Attorney-General or the Law Society may, whether or not acting on a recommendation of the Complaints Committee under section 50(4), institute disciplinary proceedings in the Supreme Court against a legal practitioner."

18. PRACTISING WHILST DISQUALIFIED

Section 52A of the Principal Act is amended -

(a) by inserting in paragraph (a) after "52(2)(b)" the words "or (7)"; and

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- (b) by omitting "\$500." and substituting "\$5,000 or imprisonment for 12 months."

19. REPEAL AND SUBSTITUTION

Section 119 of the Principal Act is repealed and the following substituted:

"119. COSTS AND DISBURSEMENTS NOT RECOVERABLE UNTIL STATEMENT DELIVERED

"(1) Except in a case to which section 129 applies, this section has effect with respect to proceedings by a legal practitioner to recover costs or disbursements for or in respect of work of a professional nature.

"(2) A legal practitioner may not commence proceedings unless he has delivered to the party to be charged -

- (a) an itemized statement of the costs or disbursements; or
- (b) a statement of the amount claimed in respect thereof as a lump sum,

being (in either case) a statement signed in accordance with subsection (7).

"(3) A statement referred to in subsection (2) may be an interim statement covering part only of the work which the legal practitioner has been retained or employed to do.

"(4) Where a legal practitioner has delivered an itemised statement of costs or disbursements in the first instance, he may commence proceedings for their recovery at any time after the expiry of one month after the statement was delivered.

"(5) Where a legal practitioner has in the first instance delivered a statement in lump sum form -

- (a) he may not commence proceedings until the expiry of one month after its delivery, and the person to be charged may at any time during that month request him for an itemized statement;
- (b) if during the month after delivery of the lump sum statement an itemized statement is requested, he may not commence proceedings until the expiry of one month after he has delivered that statement, but is not then bound in any proceedings by any amount or matter in the lump sum statement; and
- (c) if during the month after delivery of the lump sum statement an itemized statement is not requested, he may commence proceedings at any

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time thereafter, but the court may on the application of the party to be charged stay those proceedings until the expiry of one month after the practitioner has delivered an itemized statement.

"(6) Notwithstanding anything in subsection (4) or (5), where the Court is satisfied on the application of a legal practitioner that there are reasonable grounds for believing that a person to whom a statement has been delivered for the purposes of this section is about to leave the Territory, the Court may make an order authorizing the practitioner to commence proceedings at any time after delivery of the statement.

"(7) A statement delivered for the purposes of this section must be signed by the legal practitioner or, if the costs or disbursements are due to a firm, by a partner of the firm in either his own name or that of the firm.

"(8) Where it is proved that a statement referred to in subsection (2) was signed in accordance with subsection (7) and delivered in accordance with section 140, it is not necessary for the legal practitioner to prove the contents of the statement, and it shall be presumed unless the contrary is shown that the statement complies with this section."

20. TAXATION OF COSTS AND DISBURSEMENTS ON APPLICATION TO MASTER

Section 120 of the Principal Act is amended -

(a) by omitting from subsection (1) "a statement is delivered under this Part" and substituting "an itemized statement of costs or disbursements is delivered for the purposes of section 119";

(b) by omitting from subsection (2) "a statement is delivered under this Part" and substituting "the statement"; and

(c) by inserting after subsection (3) the following:

"(3A) A statement covering part only of the work which a legal practitioner has been retained or employed to perform may, notwithstanding that it has been already taxed pursuant to a notice under subsection (1), be taxed as part of the taxation pursuant to such a notice of a statement covering the whole of the work."

21. MATTERS TO BE CONSIDERED ON TAXATION

Section 123 of the Principal Act is amended -

(a) by omitting from subsection (3) "delivered in accordance with this Part"; and

(b) by adding after subsection (3) the following:

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"(4) Where a legal practitioner has, before delivering an itemized statement for the purposes of section 119, delivered a statement of the amount claimed in respect of the costs or disbursements in question as a lump sum, the practitioner is not on taxation bound by any amount or matter in the lump sum statement."

### 22. STAY OF PROCEEDINGS

Section 127 of the Principal Act is amended -

- (a) by omitting "delivered under this Part" and substituting "delivered for the purposes of section 119"; and
- (b) by inserting after "by force of this section" the words "and so long as the notice is not deemed under section 122(1) to have been withdrawn".

### 23. NEW SECTION

The Principal Act is amended by inserting after section 138 the following:

#### "138A. GENERAL OFFENCE

"A person who contravenes or fails to comply with a provision of this Act in respect of which no penalty is provided otherwise than by this section is guilty of an offence.

Penalty: \$2,000."

### 24. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

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SCHEDULE

Section 24

Provision	Amendment	
	omit	substitute
Section 23(c)(i)	"class 1"	"class 1 or a restricted practising certificate class 3"
Section 24(1)	"27, 27A and 28"	"27 and 27A"
Section 29	"REVOKE CANCELLATION"	"REVOKE CANCELLATION OR SUSPENSION"
Section 29(2)	"cancelled"	"cancelled or suspended"
Section 29(5) and (6)	"cancellation" (wherever occurring)	"cancellation or suspension"
Section 30(1)	"cancelled"	"cancelled or suspended"
Section 32(3)	"cancelled"	"cancelled or suspended"
Section 35(1)	"cancellation"	"cancellation or suspension"
Section 35(2)(a)	"cancelled"	"cancelled or suspended"
Section 35(3)	"cancellation"	"cancellation or suspension"
Section 103 (1)(c)(iii)	"cancellation"	"cancellation or suspension"
Section 103(2)	"order under section 47 that the name of a legal practitioner be removed from the Roll of Legal Practitioners or an order under section 47 or 48"	"order under section 52 that the name of a legal practitioner be struck off the Roll of Legal Practitioners, or the Court or the Complaints Committee makes an order under Part VI"
Section 124(1) and (2)	"delivered under this Part"	

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Provision	Amendment	
	omit	substitute
Section 125(1)	"delivered" (first occurring)	
Section 126	"under this Part"	"for the purposes of section 119"
Section 129(2)	"persons"	"person"