



## NORTHERN TERRITORY OF AUSTRALIA

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No. 52 of 1982

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### AN ACT

To amend the *Legal Practitioners Act*

[Assented to 22 September 1982]

**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 1982*.

2. COMMENCEMENT

(1) Subject to sub-section (2), this Act shall come into operation on the day on which it is assented to by the Administrator.

(2) Section 15 shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

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 "Chief Judge";
- (b) by inserting after the definition of "Admission Board" the following:

"Chairman" means the person appointed under section 48(5)(a) as the Chairman of the Legal Practitioners Complaints Committee and includes the Deputy Chairman when acting as Chairman;

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'Complaints Committee' means the Legal Practitioners Complaints Committee established by section 48(1);";

(c) by inserting after the definition of "Court" the following:

"'Deputy Chairman' means the person appointed under section 48(5)(b) as the Deputy Chairman of the Legal Practitioners Complaints Committee;";

(d) by omitting the definitions of "Judge" and "legal practitioner" and substituting the following:

"'Full Court' means the Full Court within the meaning of the *Supreme Court Act*";";

(e) by inserting after the definition of "Law Society" the following:

"'legal practitioner' means a person whose name is on the Roll of Legal Practitioners, except in Parts VII, VIII, IX, X and XI, where it means a person whose name is on the Roll of Legal Practitioners and who holds an unrestricted practising certificate but in those Parts does not include a local Counsel or visiting Counsel;

"'local Counsel' means a person whose name is on the Roll of Legal Practitioners together with a notation in pursuance of section 16(2) that he is a local Counsel;";

(f) by inserting after the definition of "Roll of Legal Practitioners" the following:

"'Secretary of the Complaints Committee' means the person appointed under section 48D to be the Secretary of the Legal Practitioners Complaints Committee;"; and

(g) by inserting after the definition of "unrestricted practising certificate" the following:

"'visiting Counsel' means a person whose name is on the Roll of Legal Practitioners together with a notation in pursuance of section 16(3) that he is a visiting Counsel.".

5. NEW SECTION

The Principal Act is amended by inserting after section 14 the following:

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"14A. ADMISSION FEES

"(1) The Regulations may prescribe -

- (a) classes of applicants for admission; and
- (b) an admission fee in respect of a class of applicants for admission.

"(2) An applicant for admission under section 11, 12 or 13 shall pay to the Law Society the prescribed admission fee under sub-section (1) in respect of the class of applicants to which he belongs."

6. ROLL OF LEGAL PRACTITIONERS

Section 16 of the Principal Act is amended -

- (a) by inserting after sub-section (1)(a) "and";
- (b) by omitting sub-section (1)(b); and
- (c) by omitting sub-sections (2), (3) and (4) and substituting the following:

"(2) Where a person admitted to practise as a legal practitioner in the Territory satisfies the Master that he -

- (a) is a resident of the Territory; and
- (b) intends to practise in the Territory exclusively as a barrister and independently of another legal practitioner,

the Master shall enter in relation to the name of that person on the Roll a notation that he is a local Counsel.

"(3) Where a person admitted to practise as a legal practitioner in the Territory satisfies the Master that -

- (a) he ordinarily practises outside the Territory as a barrister and solicitor or as a barrister;
- (b) his principal place of business is outside the Territory; and
- (c) he intends to practise in the Territory exclusively as a barrister and independently of another legal practitioner,

the Master shall enter in relation to the name of that person on the Roll a notation that he is a visiting Counsel.

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"(4) A person whose name is entered on the Roll with a notation that he is -

- (a) a local Counsel; or
- (b) a visiting Counsel,

shall not practise in the Territory otherwise than as a barrister and independently of another legal practitioner.

Penalty: \$5,000.

"(5) A person may apply in writing to the Master for the removal of a notation under sub-section (2) or (3).

"(6) Where a person applies under sub-section (5) for the removal of a notation under sub-section (2) or (3), the Master shall remove the notation as soon as is practicable."

### 7. OATHS OR AFFIRMATIONS BY LEGAL PRACTITIONERS

Section 17 of the Principal Act is amended by omitting all words after "A person" up to, but not including, "an oath or affirmation" and substituting the following:

"shall, before being admitted to practise as a legal practitioner in pursuance of this Part, take or make before the Court".

### 8. APPLICATIONS FOR PRACTISING CERTIFICATES

Section 23 of the Principal Act is amended by omitting all words after "in writing addressed to" and substituting the following:

"the Law Society and shall state -

- (a) in the case of an application for an unrestricted practising certificate where the person practises or proposes to practise in the Territory -
  - (i) the address at which he practises or proposes to practise in the Territory; and
  - (ii) in partnership with other persons - the names of the other partners and the name under which the partnership is, or will be, carried on;
- (b) in the case of an application for an unrestricted practising certificate where the person is a visiting Counsel - his principal place of business; or

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- (c) in the case of an application for a restricted practising certificate - the name and address of the person's employer or proposed employer."

9. ISSUE OF PRACTISING CERTIFICATES

Section 24 of the Principal Act is amended -

- (a) by omitting sub-section (1) and substituting the following:

"(1) Subject to sections 25, 26, 27, 27A and 28 the Law Society shall, upon -

- (a) payment to it of the fee referred to in section 32(1); and
- (b) being satisfied that the contribution referred to in section 90 and levy (if any) referred to in section 101 have been paid,

issue to the applicant the practising certificate sought by the applicant."; and

- (b) by omitting from sub-section (2) -

- (i) "section 25, 26 and 27" and substituting "section 25, 26, 27 or 27A";

- (ii) "Master" and substituting "Law Society"; and

- (iii) "he" (twice occurring) and substituting "it".

10. LIMITATIONS ON ISSUE OF UNRESTRICTED PRACTISING CERTIFICATES

Section 25 of the Principal Act is amended by omitting -

- (a) from sub-section (1) all words after "are not less than 2 years -" and substituting the following:

- "(a) served in a State or Territory under articles of clerkship;

- (b) served as an employee of a legal practitioner in a State or Territory in the performance of work of a legal nature;

- (c) served as an employee in the Department of Law in the performance of work of a legal nature;

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- (d) served as an officer or employee of the Attorney-General's Department of the Commonwealth in the performance of work of a legal nature;
- (e) practised in a State or Territory as a legal practitioner either on his own account or in partnership with another person; or
- (f) served or practised, as the case may be, in any 2 or more of the capacities referred to in paragraphs (a), (b), (c), (d) and (e).";
- (b) from sub-section (2) -
  - (i) "Master" and substituting "Law Society"; and
  - (ii) "he" and substituting "it";
- (c) from sub-section (3) "Master" (twice occurring) and substituting "Law Society"; and
- (d) sub-section (4).

11. PERSON TO WHOM PRACTISING CERTIFICATE NOT TO BE ISSUED AND CANCELLATION OF PRACTISING CERTIFICATE

Section 27 of the Principal Act is amended -

- (a) by omitting from sub-section (1) "Master" (first occurring) and substituting "Law Society";
- (b) by inserting in sub-section (1)(c) after "where the deficiency was" the words ", in the opinion of the Master,";
- (c) by omitting from sub-section (2) "Master" (first occurring) and substituting "Law Society"; and
- (d) by omitting from sub-section (3) "Master" and "he" and substituting "Law Society" and "it" respectively.

12. NEW SECTION

The Principal Act is amended by inserting after section 27 the following:

"27A. RESTRICTION ON ISSUE OF PRACTISING CERTIFICATE

"Where legal practitioners are required, by the Regulations, to be insured against liabilities that may arise in the course of, or in relation to, legal practice, the Law Society shall not issue or renew a practising certificate unless the applicant for the issue or renewal

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of a practising certificate produces evidence, to the satisfaction of the Law Society, that throughout the term for which the certificate is to be issued or renewed the legal practitioner is or will be insured to the prescribed extent against such liabilities."

### 13. NEW SECTION

The Principal Act is amended by inserting after section 33 the following:

#### "33A. NOTICE OF CHANGE OF NAME OR ADDRESS

"The holder of an unrestricted practising certificate who -

- (a) commences to practise at an address, or under a name, other than that stated in the application for the practising certificate;
- (b) commences to practise, as a member of a partnership, under a name different from the name stated in the application for the practising certificate; or
- (c) ceases to practise at an address at which he was previously practising,

shall, within 14 days of commencing or ceasing so to practise, notify the Law Society and Master of the fact and of the new name or address, as the case may be."

### 14. NEW PART

The Principal Act is amended by inserting after section 35 and before Part V the following:

#### "PART IVA - PROFESSIONAL INDEMNITY INSURANCE

#### "35A. INTERPRETATION

"(1) In this Part, unless the contrary intention appears -

'authorized insurer' means a person who carries on insurance business and is for the time being approved by the Law Society for the purposes of this Part;

'professional indemnity insurance' means insurance against loss arising from claims in respect of any description of civil liability (other than a prescribed description of civil liability) incurred by a legal practitioner or former legal practitioner in connection with -

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- (a) his practice;
- (b) the practice of a firm of legal practitioners of which he is or formerly was a member;
- (c) a practising company of which he is or formerly was a director; or
- (d) a trust of which he is or formerly was a trustee,

or by an employee or former employee of that legal practitioner, firm, company or trust."

"(2) Nothing in this Part shall derogate from Division 2 of Part VIII.

"35B. PROFESSIONAL INDEMNITY INSURANCE

"(1) The Law Society and an authorized insurer may enter into an arrangement for or with respect to the provision by the authorized insurer to legal practitioners or former legal practitioners who are members of a class prescribed for the purposes of this Part, of professional indemnity insurance.

"(2) Where an arrangement is made under sub-section (1), the Law Society and the authorized insurer may -

- (a) do anything necessary or convenient for carrying out or giving effect to the arrangement; and
- (b) by subsequent arrangement, rescind or vary the arrangement.

"(3) An arrangement under sub-section (1) or (2) may include provisions with respect to -

- (a) the terms and conditions to which the provision of professional indemnity insurance is to be subject;
- (b) the amount of insurance cover to be provided;
- (c) the amount payable by way of premiums;
- (d) the circumstances in which insurance cover is to be limited or denied;
- (e) the period during which the professional indemnity insurance is to be provided;



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- (f) the issue of certificates to persons covered by professional indemnity insurance and the form of those certificates;
- (g) the payment by or on behalf of the authorized insurer to the Law Society for its own benefit of an amount by way of brokerage or profit commission;
- (h) the payment by or on behalf of the authorized insurer to the Law Society of an amount by way of reimbursement for expenses incurred by the Law Society in connection with the arrangement; and
- (j) other matters in connection with professional indemnity insurance agreed between the Law Society and the authorized insurer.

"(4) Without limiting the generality of section 141, the Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part, and in particular prescribing matters for or in relation to -

- (a) requiring legal practitioners and former legal practitioners, or persons who are members of a specified class of legal practitioners or former legal practitioners, to take out and maintain with an authorized insurer professional indemnity insurance on the terms and conditions specified in and in accordance with an arrangement under sub-section (1) or (2);
- (b) the issue of certificates in relation to professional indemnity insurance and the form of those certificates;
- (c) empowering the Law Society, with the prior approval of the Attorney-General -
  - (i) to exempt from compliance with the Regulations legal practitioners or former legal practitioners or persons who are members of a specified class of legal practitioners or former legal practitioners;
  - (ii) to grant an exemption referred to in sub-paragraph (i) indefinitely or for a specified period or subject to any other conditions determined by the Law Society; and

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- (iii) to revoke an exemption granted by the Law Society or vary conditions referred to in sub-paragraph (ii);
- (d) making provisions that, in consequence of a substantial change in the nature of the practice of a legal practitioner, are necessary;
- (e) providing for the making of such declarations by legal practitioners or former legal practitioners as may be necessary to determine premiums in relation to professional indemnity insurance and for the interrogation of a legal practitioner or former legal practitioner where the Law Society believes that a declaration is or may be false or inaccurate;
- (f) exempting arbitration agreements that are related to the arbitration of disputes between legal practitioners and insurers in relation to professional indemnity insurance from a statutory provision that would, apart from the exemption, have the effect of invalidating such an agreement or a provision of such an agreement; and
- (g) prescribing penalties, not exceeding \$5,000, for breach of, or noncompliance with, a regulation made in pursuance of this Part."

15. REPEAL AND SUBSTITUTION OF PART

Part VI of the Principal Act is repealed and the following substituted:

"PART VI - DISCIPLINE

*"Division 1 - Definition*

"45. DEFINITION

"In this Part, unless the contrary intention appears, 'professional misconduct' includes any neglect or undue delay in the conduct of the business of a client of a legal practitioner by the legal practitioner.

*"Division 2 - Proceedings before Law Society*

"46. COMPLAINT TO LAW SOCIETY

"A person may complain, in writing, to the Law Society regarding the professional conduct of a legal practitioner or former legal practitioner.

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"46A. DIRECTION BY ATTORNEY-GENERAL

"Where the Attorney-General believes that the professional conduct of a legal practitioner or former legal practitioner should be investigated, he may direct the Law Society to investigate the conduct.

"46B. INVESTIGATIONS

"The Law Society -

- (a) may, of its own motion;
- (b) shall, upon receipt of a complaint under section 46; and
- (c) shall, at the direction of the Attorney-General under section 46A,

investigate the professional conduct of a legal practitioner.

*"Division 3 - Functions and Powers of Law Society*

"47. FUNCTIONS AND POWERS OF LAW SOCIETY

"(1) The Law Society may -

- (a) receive, consider and investigate a complaint regarding the professional conduct of a legal practitioner;
- (b) where, in its opinion, the subject matter of a complaint is capable of resolution by conciliation - attempt to resolve the matter by conciliation;
- (c) where, in its opinion, a complaint has substance but may be adequately dealt with by either admonishing or fining the legal practitioner against whom the complaint was made - admonish the legal practitioner or fine him up to an amount of \$200;
- (d) lay charges of professional misconduct before the Complaints Committee; and
- (e) engage such persons as it thinks fit, including the Ombudsman, to assist it in carrying out its functions.

"(2) The Ombudsman may accede to a request of the Law Society, made under sub-section (1)(e), to assist it.

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"(3) Without limiting the generality of the powers of the Law Society under sub-section (1), it may, for the purposes of an investigation under section 46B, at any time during ordinary business hours -

- (a) inspect books, accounts, documents or writings in the custody or control of the legal practitioner or of a person employed by the legal practitioner; and
- (b) make notes or copies of, or take extracts from, such books, accounts, documents or writings.

"47A. POWER OF DELEGATION

"(1) The Law Society may, by instrument in writing, delegate to a person any of its powers or functions under this Division other than this power of delegation and the power to admonish, fine and lay charges before the Complaints Committee.

"(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purpose of this Act, be deemed to have been exercised by the Law Society.

"(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Law Society.

"47B. OFFENCE TO DELAY

"A person who -

- (a) wilfully delays or obstructs; or
- (b) being a legal practitioner, or a person employed by him, refuses without reasonable excuse to produce any book, account, document or writing when required to do so by,

the Law Society when it is investigating a complaint, or a delegate of the Law Society when the delegate is exercising a power of the Society under section 47(3), is guilty of an offence.

Penalty: \$5,000 or imprisonment for 12 months.

"47C. CONFIDENTIALITY

"A person, including a member or employee of the Law Society, engaged on work relating to a complaint on behalf of the Law Society shall not disclose information that comes to his knowledge by virtue of his office or position except -

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(a) in the course of discharging the duties or performing the functions of his office or position; or

(b) as may be authorized under this Act.

Penalty: \$5,000.

*"Division 4 - Legal Practitioners Complaints Committee*

"48. ESTABLISHMENT OF THE LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

"(1) There is hereby established a committee called the Legal Practitioners Complaints Committee.

"(2) The Complaints Committee shall consist of -

(a) the Ombudsman; and

(b) 6 other members appointed under sub-section (3).

"(3) The Attorney-General shall appoint to be members of the Legal Practitioners Complaints Committee -

(a) one person who is not a legal practitioner;

(b) 3 legal practitioners nominated by the Law Society (at least one of whom shall, at the time of his nomination, be a local Counsel); and

(c) 2 other legal practitioners.

"(4) A legal practitioner is not eligible to be appointed under sub-section (3) unless he holds a current practising certificate.

"(5) The Attorney-General shall appoint -

(a) one member of the Complaints Committee who is a legal practitioner of not less than 7 years standing to be the Chairman; and

(b) another member of the Complaints Committee who is a legal practitioner to be the Deputy Chairman,

of the Legal Practitioners Complaints Committee, for such term as is specified in the instrument of appointment.

"(6) Where the Chairman is absent from duty or from the Territory or unable to perform his duties, the Deputy Chairman shall act as Chairman.

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"(7) An act done by the Deputy Chairman in pursuance of sub-section (6) shall not be called in question on the ground that the occasion for the Deputy Chairman so acting had not arisen or had ceased.

"48A. APPOINTMENT &c., OF MEMBERS

"(1) Subject to this Act, a person appointed under section 48(3) shall be a member of the Complaints Committee -

- (a) for the period, not exceeding 3 years, specified in the instrument of his appointment; or
- (b) where no period is specified in the instrument of his appointment for 3 years from the date of appointment or such later date as is specified in the instrument.

"(2) A member of the Complaints Committee is eligible for re-appointment and such re-appointment may be made before the expiration of a current period of appointment.

"(3) The Attorney-General may terminate the appointment of a member of the Complaints Committee for misbehaviour or incapacity.

"(4) Where a member of the Complaints Committee -

- (a) in the case of a member who is a legal practitioner - ceases to hold a current practising certificate; or
- (b) becomes bankrupt,

the Attorney-General shall terminate the appointment of the member.

"(5) A member of the Complaints Committee may resign by written notice to the Attorney-General.

"48B. QUORUM, &c.

"(1) In proceedings before the Complaints Committee -

- (a) 4 members constitute a quorum;
- (b) decisions shall be by vote of the majority of members present and voting and, in the event of an equality of votes, the person presiding at the proceedings shall have a casting vote; and
- (c) the procedure to be followed shall be determined, subject to section 51D of this Act, by the Complaints Committee.

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"(2) The Chairman shall preside at proceedings of the Complaints Committee at which he is present and, in the absence of the Chairman and the Deputy Chairman, the members present shall elect a member who is a legal practitioner and is present to preside at the proceedings.

"48C. VALIDITY OF ACTS AND PROTECTION OF MEMBERS

"(1) Subject to section 48B(1)(a), the exercise of a power or the performance of a function of the Complaints Committee is not affected by reason only of there being a vacancy in the membership of the Complaints Committee or a defect in the nomination or appointment of a member.

"(2) A member of the Complaints Committee is not personally liable in respect of any matter or thing done if the matter or thing was done in good faith for the purpose of executing this Act or another Act conferring or imposing functions on the Complaints Committee.

"48D. SECRETARY OF COMPLAINTS COMMITTEE

"The Complaints Committee, with the prior approval of the Attorney-General, shall appoint a person to be the Secretary of the Legal Practitioners Complaints Committee.

"48E. CONFIDENTIALITY

"A member of the Complaints Committee or a person employed or engaged on work related to the affairs of the Complaints Committee shall not disclose information obtained in the course of his duties as a member or by virtue of the duties of his office or position unless that disclosure is made in the course of carrying out the duties as a member or of his office or position.

Penalty: \$5,000.

*"Division 5 - Appeals from the Law Society*

"49. APPEAL FROM ADMONISHMENT OR FINE

"(1) A legal practitioner may appeal to the Complaints Committee against an admonishment or fine imposed under section 47(1)(c) by the Law Society by lodging a notice of appeal with the Secretary of the Complaints Committee.

"(2) A notice of appeal under sub-section (1) shall -

- (a) be in writing;
- (b) state the grounds of appeal; and

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- (c) be lodged with the Secretary of the Complaints Committee within 21 days from the date of the imposition of the admonishment or fine which is the subject of the appeal.

"49A. APPEAL BY REHEARING

"(1) Where a legal practitioner appeals under section 49, the Complaints Committee shall hear the appeal by way of rehearing the complaint.

"(2) Subject to sub-section (3), the Complaints Committee when rehearing a complaint may exercise its powers under section 50(4).

"(3) Costs of an appeal under section 49 are in the discretion of the Complaints Committee.

*"Division 6 - Proceedings before Complaints Committee*

"50. CHARGES BEFORE COMPLAINTS COMMITTEE

"(1) The Attorney-General, the Law Society or a person who lodged a complaint under section 46 and who is not satisfied with the Law Society's disposal of the matter may lay a charge of professional misconduct against a legal practitioner or a person who, at the time of the alleged professional misconduct, was a legal practitioner.

"(2) A charge under sub-section (1) shall be -

- (a) laid before the Complaints Committee; and
- (b) in the prescribed form.

"(3) Where a charge has been laid under sub-section (2), the Complaints Committee shall -

- (a) summarily dismiss a charge which, in its opinion, is frivolous or vexatious; or
- (b) inquire into the professional conduct of the legal practitioner or former legal practitioner to whom the charge relates.

"(4) Where the Complaints Committee has inquired into the professional conduct of a legal practitioner or former legal practitioner under sub-section (3), and it is satisfied -

- (a) that the legal practitioner is guilty of professional misconduct it may -
  - (i) reprimand that legal practitioner;
  - (ii) order that legal practitioner to pay a fine not exceeding \$5,000;



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- (iii) by order, suspend the right of that legal practitioner to practise the profession of the law for a period not exceeding one year;
  - (iv) order that that legal practitioner shall not, during a period stipulated in the order (but not exceeding 6 months), practise the profession of the law otherwise than in accordance with conditions stipulated in the order; or
  - (v) recommend that disciplinary proceedings be commenced against that legal practitioner in the Supreme Court; or
- (b) that that former legal practitioner was, while he remained a legal practitioner, guilty of professional misconduct, it may order that former legal practitioner to pay a fine not exceeding \$5,000.

"(5) The Complaints Committee shall transmit the evidence taken by it upon the inquiry, together with a memorandum of its findings, to the Attorney-General and the Law Society as soon as is practicable.

"50A. NOTICE OF INQUIRY

"(1) The Complaints Committee shall give to a legal practitioner or former legal practitioner whose conduct is subject to inquiry under this Part, and to a person upon whose application an inquiry is to be held, not less than 7 days' written notice of the time and place at which it intends to conduct the inquiry, and shall afford such a person a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses and to make submissions to the Complaints Committee.

"(2) Where a person to whom notice has been given under sub-section (1) does not attend at the time and place fixed by the notice, the Complaints Committee may proceed with the inquiry in his absence.

"(3) A person whose conduct is subject to an inquiry under this Part, or upon whose application an inquiry is to be held, shall be entitled to be represented by counsel at the inquiry.

"51. POWERS OF COMPLAINTS COMMITTEE

"(1) For the purposes of an inquiry under this Part, the Complaints Committee may -

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- (a) by summons signed on its behalf by the Chairman, require the attendance before it of a person (including a party to the proceedings) whom the Complaints Committee thinks fit to call before it;
- (b) by summons signed on its behalf by the Chairman, require the production of books, papers or documents;
- (c) inspect books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them or of any of their contents;
- (d) require a person to make an oath or affirmation that he shall truly answer a relevant question put to him by the Complaints Committee, or by any person appearing before the Complaints Committee, (which oath or affirmation may be administered by a member of the Complaints Committee); or
- (e) require a person appearing before the Complaints Committee (whether he has been summoned to appear or not) to answer a relevant question put to him by a member of the Complaints Committee or by another person appearing before the Complaints Committee.

"(2) A summons may be issued under sub-section (1) on the application of a party to proceedings before the Complaints Committee, notwithstanding that the Complaints Committee has not met to authorize the issue of the summons.

"(3) Where a person -

- (a) who has been served with a summons requiring his attendance before the Complaints Committee, neglects or fails without reasonable excuse to attend in obedience to the summons;
- (b) who has been served with a summons requiring him to produce books, papers or documents before the Complaints Committee, neglects or fails without reasonable excuse to comply with the summons;
- (c) misbehaves himself before the Complaints Committee, wilfully insults the Complaints Committee or a member of the Complaints Committee or interrupts the proceedings of the Complaints Committee; or

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- (d) refuses to be sworn, to affirm or to answer a relevant question when required to do so by the Complaints Committee,

is guilty of an offence.

Penalty: \$5,000.

"(4) Where a person summoned under sub-section (1) -

- (a) refuses or fails to attend before the Complaints Committee as required by the summons; or
- (b) having attended, refuses to be sworn, to affirm or to answer a relevant question when required to do so by the Complaints Committee,

a certificate of the refusal or failure, signed by the Chairman, may be filed in the Supreme Court.

"(5) Where a certificate has been filed under sub-section (4), a party requiring the attendance of the person may apply (either *ex parte* or on notice) to the Supreme Court for an order directing that person to attend, to be sworn, to affirm or to answer questions and on that application the Court may make such orders as it thinks fit including an order for costs.

"(6) A person may be required by the Complaints Committee to answer a question notwithstanding that the answer to that question might tend to incriminate him, or to produce books, papers or documents notwithstanding that their contents might tend to incriminate him, but if that person objects to answering a question a note of that objection shall be taken down in the minutes of the proceedings, and the answer shall not be admissible against him in a criminal proceeding, except in proceedings for perjury.

"(7) In the course of an inquiry, the Complaints Committee may -

- (a) receive in evidence a transcript of evidence taken in proceedings before a court of the Commonwealth, a State or a Territory of the Commonwealth, and draw such conclusions of fact from the evidence as it thinks fit; and
- (b) adopt, as in its discretion it thinks fit, a finding, decision, judgment or reason for judgment, of such a court which may be relevant to the inquiry.

"51A. COSTS

"(1) The Complaints Committee may make such orders as to costs as it thinks fit against -

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- (a) a person upon whose application an inquiry has been held; or
- (b) a legal practitioner or former legal practitioner whose conduct has been subject to inquiry.

"(2) Costs of proceedings before the Complaints Committee may be taxed in the Supreme Court.

"(3) Where the Complaints Committee has ordered payment of a fine or costs, a certificate of the fine or costs shall be filed in the Supreme Court.

"(4) Where a certificate has been filed under sub-section (3), proceedings may be taken for the recovery of the fine or costs as if the certificate were a judgment of the Supreme Court.

"(5) The costs of discharging the functions and exercising the powers of the Complaints Committee under this Part and the costs of enforcing the rights conferred upon the Complaints Committee by this Part shall be payable out of the Fidelity Fund.

"51B. APPEAL

"(1) Subject to sub-section (2), a right of appeal to the Supreme Court shall lie against a reprimand or order of the Complaints Committee administered or made in the exercise or purported exercise of its powers or the performance or purported performance of its functions under this Act.

"(2) An appeal under sub-section (1) shall be instituted within one month from the date of the reprimand or order appealed against, but the Supreme Court may, where it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

"(3) The Supreme Court may, on the hearing of an appeal under sub-section (1) -

- (a) affirm, vary or quash the reprimand or order appealed against, or substitute or make a finding, reprimand or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Complaints Committee for further hearing or consideration or for re-hearing; or
- (c) make any further or other order as to costs or other matter that the case requires.

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"51C. OPERATION OF ORDER MAY BE SUSPENDED

"(1) Where an order under section 50(4) has been made by the Complaints Committee, and the Complaints Committee or the Supreme Court is satisfied that an appeal against the order has been, or is intended to be, instituted, it may suspend the operation of the order until the determination of the appeal.

"(2) Where the Complaints Committee has suspended under sub-section (1) the operation of an order, the Complaints Committee may terminate the suspension and, where the Supreme Court has suspended under sub-section (1) the operation of an order, the Supreme Court may terminate the suspension.

"51D. RULES OF COMPLAINTS COMMITTEE

"The Judges who are appointed under section 32(1) of the *Supreme Court Act* and are not additional Judges, or a majority of those Judges, may make rules, not inconsistent with this Act, for -

- (a) regulating the practice and procedure of the Complaints Committee;
- (b) conferring on the Complaints Committee additional powers necessary or convenient for carrying out its functions; and
- (c) making any other provision that is necessary or convenient for carrying into effect the provisions of this Part relating to the Complaints Committee.

*"Division 7 - Proceedings before the Supreme Court*

"52. PROCEEDINGS BEFORE SUPREME COURT

"(1) Where the Complaints Committee after inquiring into the professional conduct of a legal practitioner recommends that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court, the Attorney-General or the Law Society may institute disciplinary proceedings in the Supreme Court against the legal practitioner.

"(2) In any proceedings against a legal practitioner, however instituted, the Supreme Court may -

- (a) reprimand the legal practitioner;
- (b) suspend the right of the legal practitioner to practise the profession of the law for a specified period, or until further order of the Supreme Court;

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- (c) order that the legal practitioner shall not practise the profession of the law otherwise than in accordance with conditions specified in the order;
- (d) order that the name of the legal practitioner be struck off the Roll of Legal Practitioners; and
- (e) make other orders (including an order as to the costs of proceedings before the Court and the Complaints Committee) that it thinks fit.

"(3) Nothing in this Part shall derogate from the inherent jurisdiction of the Supreme Court to discipline legal practitioners.

"(4) In disciplinary proceedings the Supreme Court may refer a matter to a Judge or to the Complaints Committee for investigation and report.

"(5) In disciplinary proceedings -

- (a) the Supreme Court may, without further inquiry, accept and act upon a finding of the Complaints Committee or of a Judge to whom a matter has been referred for investigation and report under sub-section (4); and
- (b) the Supreme Court may -
  - (i) receive in evidence a transcript of evidence taken in any proceedings before a court of the Commonwealth, a State or a Territory of the Commonwealth, and draw such conclusions of fact from the evidence that it thinks fit; and
  - (ii) adopt, as it thinks fit, a finding, decision, judgment or reason for judgment of such a court that may be relevant to the proceedings.

"(6) Where the Supreme Court is satisfied, upon the application of the Attorney-General or the Law Society, that a legal practitioner is disqualified or suspended from practice under the law of the Commonwealth, a State or other Territory of the Commonwealth, it may, without further inquiry, impose under section 52(2) such disqualification or suspension as it thinks fit.

"(7) Where the Supreme Court is satisfied that a legal practitioner has been convicted of an offence of sufficient gravity to justify invoking the provisions of this sub-section, the Supreme Court may, of its own motion or on the application of the Attorney-General or the Law

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Society, suspend the legal practitioner from practice pending the investigation and determination of disciplinary proceedings or until a further order.

"52A. PRACTISING WHILST DISQUALIFIED

"A legal practitioner shall not -

- (a) practise the profession of the law whilst his right to do so is suspended under section 50(4)(a)(iii) or 52(2)(b); or
- (b) contravene or fail to comply with an order under section 50(4)(a)(iv) or 52(2)(c) made in respect of him.

Penalty: \$500."

16. GENERAL TRUST ACCOUNTS

Section 56 of the Principal Act is amended by adding at the end the following:

"(2) Where 2 or more legal practitioners practise in partnership in the Territory, it is sufficient compliance with sub-section (1) where a trust bank account is opened and maintained on behalf of the partnership under a title that includes -

- (a) the name or style of the partnership;
- (b) the full name of each partner in the partnership; and
- (c) words that indicate that it is the general trust bank account of the partnership."

17. REPEAL

Section 60 of the Principal Act is repealed and the following substituted:

"60. ADVICE OF OPENING OR CHANGE IN NAME OF TRUST BANK ACCOUNTS

"(1) A legal practitioner who opens a trust bank account in connection with his practice in the Territory shall, within 7 days after the account is opened, give notice under sub-section (2) to the Master.

"(2) A notice under sub-section (1) shall be in writing addressed to the Master informing him of the name and address of the bank at which the account is maintained and of the title under which it is maintained.

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"(3) When a change is made in the title under which a trust bank account is kept, the legal practitioner by whom it is maintained shall, within 7 days after the change, give notice in writing to the Master informing him of the title as so changed."

18. ACCOUNTING RECORDS

Section 63 of the Principal Act is amended by adding at the end the following:

"(4) Where 2 or more legal practitioners practise in partnership in the Territory, it is sufficient compliance with this section where the accounting or other records are kept on behalf of the partnership."

19. AUDIT OF TRUST ACCOUNTS

Section 67 of the Principal Act is amended by adding at the end the following:

"(2) Where 2 or more legal practitioners practise in partnership in the Territory and keep accounting or other records on behalf of the partnership, it is sufficient compliance with sub-section (1) where an auditor is engaged to audit the records kept on behalf of the partnership."

20. AUDITOR TO REPORT

Section 70 of the Principal Act is amended by omitting -

(a) sub-section (2) and substituting the following:

"(2) An auditor shall prepare a report of an audit in the prescribed form."; and

(b) from sub-section (3) "the 1 October" and substituting "1 September".

21. PROVISIONS APPLICABLE IN CASE OF DEFAULT OF AUDITOR

Section 72 of the Principal Act is amended -

(a) by omitting from sub-section (1)(b) "the 30 June" and substituting "30 June";

(b) by omitting from sub-section (1) "with his application for a practising certificate"; and

(c) by inserting after sub-section (1) the following:



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"(1A) A legal practitioner who is required by sub-section (1) to send a statutory declaration to the Master shall send a copy of the declaration to the Law Society."

### 22. PAYMENT OF INVESTMENT INCOME BY TRUST COMMITTEE

Section 84A(1) of the Principal Act is amended by inserting after "this Division" the words "and includes accretions realized from the investment of moneys".

### 23. ANNUAL CONTRIBUTIONS TO FUND

Section 90 of the Principal Act is amended by omitting sub-section (1) and substituting the following:

"(1) Subject to this Act, a legal practitioner shall, not later than each 30 September, pay to the Committee such contribution to the Fidelity Fund as is fixed by the Committee in respect of the period of 12 months commencing on the following 1 October."

### 24. RECEIVER TO REPORT TO COURT

Section 111(2) of the Principal Act is amended by omitting all words after "date of" and substituting "the appointment of the receiver or, in a case where a legal practitioner has died, the date of the death of the legal practitioner."

### 25. REPEAL

Part XII of the Principal Act is repealed.

### 26. FINES TO BE PAID INTO FIDELITY FUND

Section 139(1) of the Principal Act is amended by inserting after "Court" the words ", Law Society or Complaints Committee".

### 27. FURTHER AMENDMENTS

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

### 28. SAVINGS AND TRANSITIONAL

(1) A person may make a complaint under section 46 of the Principal Act as amended by this Act notwithstanding that the act or omission the subject of the complaint occurred before the commencement of section 15 of this Act.

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(2) Where a person has made a complaint under section 45 of the Principal Act as in force immediately before the commencement of section 15 of this Act, the complaint shall continue to be dealt with under the Principal Act as then in force as if section 15 of this Act had never come into operation.

SCHEDULE

Section 27

Provision	Amendment	
	omit	substitute
Sections 3 and 4	the whole of each section	
Section 8(1), (4) and (5)	"Chief Judge"	"Chief Justice"
Section 12(1)	"Judiciary Act" 1903-1973	"Judiciary Act 1903 of the Commonwealth"
Section 20(4)	the whole sub-section	
Section 22(1) and (3)	", after the expiration of the period of 3 months commencing on the date of commencement of this Part,"	
Section 22(4)	"after the expiration of the period of 3 months commencing on the date of commencement of this Part"	
Section 22(5) and (6)	the whole of each sub-section	

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Provision	omit	substitute
Sections 26, 28(2), 29(1), (2), (3), (4), 30(1) and (2)	"Master"	"Law Society"
Section 32(1)	"fixed by the Master, after obtaining and considering the recommendations of the Law Society,"	"prescribed"
Section 32(2)	"the 1 October"	"1 October"
Section 32(3)	"Master" (twice occurring)	"Law Society"
Sections 33, 34 and 35	"Master" (wherever occurring)	"Law Society"
Section 58(2)	", after the expiry of one month after the commencement of this Ordinance,"	
Section 64(2)	"the last preceding section"	"section 63"
Section 65	"QUARTERLY STATEMENTS OF TRUST MONEYS"	"HALF YEARLY STATEMENTS OF TRUST MONEYS"
Section 68(1) (a) and (2)(a)	"Companies Ordinance"	"Companies Act"
Section 69(3)	", other than the first audit after the commencement of this Ordinance,"	
Section 75(2)	"Companies Ordinance"	"Companies Act"
Section 75 (3)(c)	"trust moneys;"	"trust moneys; and"

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Provision	Amendment	
	omit	substitute
Section 84(1)	" <i>Companies Ordinance</i> "	" <i>Companies Act</i> "
Section 85	"committed by legal practitioner"	"committed by a legal practitioner"
Section 89(2)	" <i>Companies Ordinance</i> "	" <i>Companies Act</i> "
Section 101(1)	"20 dollars"	"\$100"
Section 101(4)	"100 dollars"	"\$500"
Section 102(1)	"'trust bank account' has the same meaning as in Part VII." (second occurring)	
Section 103(4)	"sub-section (1) or sub-section (2)"	"sub-section (1) or (2)"
Section 108 (1)(a)	"receiver"	"a receiver"
Section 119(1)	"Subject to the"	"Subject to"
Sections 131, 132 and 133(1)	"500 dollars"	"\$2,000"
Section 133(2)	" <i>Administration and Probate Ordinance</i> "	" <i>Administration and Probate Act</i> "
Section 134	"500 dollars"	"\$2,000"
Section 137(a)	" <i>Judiciary Act</i> 1903-1973"	" <i>Judiciary Act</i> 1903 of the Commonwealth"
Section 138 (2)(a)	" , whether before or after the commencement of this Ordinance,"	