

Serial 151
Legal Practitioners Amendment Act 1999
Mr Burke

**A BILL
for
AN ACT**

to amend the *Legal Practitioners Act*

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NORTHERN TERRITORY OF AUSTRALIA
LEGAL PRACTITIONERS AMENDMENT ACT 1999

No. of 1999

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. of 1999

AN ACT

to amend the *Legal Practitioners Act*

[Assented to 1999]
[Second reading 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Legal Practitioners Amendment Act 1999*.

2. Commencement

This Act comes into operation on the date 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. Unqualified persons not to hold themselves out to be qualified

Section 131 of the Principal Act is amended—

- (a) by omitting "A person" and substituting "Except in accordance with Part XII, a person"; and

- (b) by omitting "\$2,000" and substituting "500 penalty units".

5. Preparation of certain documents by unqualified persons

Section 132 of the Principal Act is amended –

- (a) by omitting from subsection (1) "\$2,000" and substituting "500 penalty units"; and
- (b) by inserting after subsection (2)(a) the following:
- "(aa) if the person is permitted under Part XII to draw, or cause to be drawn, the instrument;"

6. Preparation of papers relating to application for probate

Section 133 of the Principal Act is amended –

- (a) by omitting from subsection (1) "\$2,000" and substituting "500 penalty units"; and
- (b) by inserting after subsection (2)(a) the following:
- "(aa) a person who is permitted under Part XII to take the instructions or prepare the papers;"

7. New Part

The Principal Act is amended by inserting after Part XI the following:

"PART XII – PRACTICE OF FOREIGN LAW

"Division 1 – Preliminary

"135. Object

"The object of this Part is to encourage and facilitate the internationalisation of legal services and the legal services sector by providing a framework for the regulation of the practice of foreign law in Australia by foreign-qualified lawyers as a recognised aspect of Australian legal practice.

"135A. Definitions

"In this Part, unless the contrary intention appears –

'Australia' includes the external Territories;

'Australian law' means the law of the Commonwealth or a State or Territory of the Commonwealth;

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'commercial legal presence' means an interest in a law firm practising foreign law;

'domestic lawyer' means a person (including a foreign lawyer) who is registered to practise law in the Territory;

'foreign law' means the law of a place outside Australia;

'foreign lawyer' means a person who is registered to practise law in a place outside Australia by a foreign registration authority;

'foreign registration authority' means the person or authority in a place outside Australia having the function conferred by law of registering persons to practise law in that place;

'home registration authority', in relation to a foreign lawyer, means the foreign registration authority stated in the lawyer's registration notice under section 135D(2)(b);

'law firm' means –

- (a) a person practising as a lawyer on the person's own account;
- (b) a partnership of 2 or more persons practising as lawyers; or
- (c) an incorporated legal practice that is permitted by a law of the Territory;

'locally registered foreign lawyer' means a person who is registered as a foreign lawyer under this Part;

'practising foreign law' means doing work, or transacting business, in the Territory concerning foreign law, being work or business of a kind that, if it concerned the law of the Territory, would ordinarily be done or transacted by a domestic lawyer;

'registered' –

- (a) when used in connection with a place outside Australia – means having all necessary licences, approvals, admissions, certifications or other forms of authorisation (including practising certificates) required by or under legislation for the carrying on of the practice of law in that place; or
- (b) when used in connection with the practice of law in the Territory (other than by or under this Act), means –

- (i) admitted to practise law in the Territory under the Legal Practitioners Rules or by virtue of the *Mutual Recognition Act 1992* of the Commonwealth; and
- (ii) holding a current practising certificate under this Act.

"135B. Operation of Part

"(1) This Part applies to a natural person (other than a domestic lawyer) who practises foreign law in the Territory.

"(2) Nothing in this Part requires a domestic lawyer to be registered as a foreign lawyer under this Part in order to practise foreign law in the Territory.

"Division 2 – Local registration of foreign lawyers

"135C. Registration requirement

"(1) A person must not practise foreign law in the Territory unless the person –

- (a) is a locally registered foreign lawyer and practises foreign law in the Territory in accordance with this Part;
- (b) is a foreign lawyer who practises foreign law in the Territory on a temporary basis or is subject to a migration restriction and who –
 - (i) does not maintain an office for the purpose of practising as a lawyer in the Territory; or
 - (ii) does not have a commercial legal presence in the Territory; or
- (c) is a domestic lawyer or is a person employed by a domestic lawyer to provide advice on foreign law to, and for use by, the domestic lawyer.

Penalty: 500 penalty units.

"(2) In this section, 'migration restriction' means a restriction imposed on a person who is not an Australian citizen under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person.

"135D. Registration notice

"(1) A foreign lawyer may lodge a written notice with the Law Society seeking registration as a foreign lawyer under this Part.

"(2) A notice under subsection (1) is to –

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- (a) state the lawyer's educational and professional qualifications;
- (b) specify the place outside Australia in which the lawyer is registered to practise law by a specified foreign registration authority and in relation to which the lawyer wishes to practise foreign law;
- (c) state that the lawyer is not the subject of any disciplinary proceedings in the place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration;
- (d) state that the lawyer is not a party in any pending criminal or civil proceedings that is likely to result in disciplinary action being taken against the lawyer in the place;
- (e) state that the lawyer's registration in the place is not cancelled or currently suspended as a result of any disciplinary action;
- (f) state that the lawyer –
 - (i) is not otherwise personally prohibited from carrying on the practice of law in the place or bound by any undertaking not to carry out the practice of law in the place; and
 - (ii) is not subject to any special conditions in carrying on that practice as a result of criminal, civil or disciplinary proceedings in the place;
- (g) specify any special conditions imposed as a restriction on the practice of law by the lawyer in the place or any undertaking given by the lawyer restricting the lawyer's practice of law in the place;
- (h) give consent to the making of inquiries of, and the exchange of information with, the home registration authority regarding the lawyer's activities in practising law in the place or otherwise regarding matters relevant to the notice; and
- (j) contain evidence that demonstrates the lawyer's intention to practise foreign law in the Territory and to establish an office or commercial legal presence in the Territory within a reasonable period after registration for that purpose.

"(3) A notice under subsection (1) is to be accompanied by an original instrument, or a copy of an original instrument, from the home registration authority in the place specified under subsection (2)(b) –

- (a) verifying the lawyer's educational and professional qualifications;

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- (b) verifying the lawyer's registration by the authority to practise law in the place and the date of registration; and
- (c) describing anything done by the lawyer in practising law in that place of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the lawyer's professional standing within the legal profession of that place.

"(4) The lawyer must certify in the notice under subsection (1) that the instrument accompanying the notice under subsection (3) is the original or a complete and accurate copy of the original, as the case may be.

"(5) If the foreign lawyer is, or has been in the 10 years immediately before the notice is lodged under subsection (1), registered to practise law, or has practised law, in a place outside Australia (other than the place specified under subsection (2)(b)), his or her notice under subsection (1) is to be accompanied by an affidavit specifying –

- (a) the place;
- (b) whether or not the lawyer is or has been the subject of any disciplinary proceedings in the place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to his or her registration or practise as a lawyer;
- (c) whether or not the lawyer is or has been a party in any pending criminal or civil proceedings that is likely to result in disciplinary action being taken against the lawyer in the place;
- (d) whether or not the lawyer's registration in the place has been cancelled or suspended as a result of any disciplinary action;
- (e) whether or not the lawyer –
 - (i) is or has been personally prohibited from carrying on the practice of law in the place or bound by any undertaking not to carry out the practice of law in the place; and
 - (ii) is or has been subject to any special conditions in carrying on that practice as a result of criminal, civil or disciplinary proceedings in the place;
- (f) whether or not there are or have been in the place any special conditions imposed as a restriction on the practice of law by the lawyer in the place or any undertaking given by the lawyer restricting the lawyer's practice of law in the place; and

- (g) that the lawyer consents to the making of inquiries of, and the exchange of information with, the foreign registration authority of the place regarding the lawyer's activities in practising law in the place or otherwise regarding matters relevant to the affidavit or the notice under subsection (1).

"(6) The Law Society may require the lawyer to verify the statements in a notice under subsection (1) or an affidavit under subsection (5) by a statutory declaration or other proof acceptable to the Law Society.

"(7) If an instrument under subsection (3) or (5) is not in English, it is to be accompanied by a certified translation in English.

"(8) A notice under subsection (1) is to be accompanied by proof that, for at least the 12 month period following the lodgement of the notice, the applicant will hold the professional indemnity insurance he or she is required to hold under section 135W.

"(9) The Law Society may conduct an investigation as it thinks fit in relation to an applicant for registration under this Part.

"135E. Fee for registration

"(1) A notice under section 135D is to be accompanied by the fee determined by the Law Society.

"(2) The fee under subsection (1) is not to be greater than the sum of—

- (a) the highest admission fee prescribed for the purposes of section 14A; and
- (b) the fee prescribed under section 32 in relation to an unrestricted practising certificate.

"135F. Entitlement to registration

"(1) A person is entitled to be registered under this Act as a foreign lawyer if—

- (a) the person lodges the notice and other documents required to be lodged in accordance with section 135D;
- (b) the Law Society is satisfied that the person is registered to practise law in a place outside Australia specified under section 135D(2)(b) in the notice;

- (c) the Law Society considers that an effective system exists in the place specified under section 135D(2)(b) for the regulation of the practice of law in the place;
- (d) the Law Society considers that the person is not, as a result of criminal, civil or disciplinary proceedings, subject to any special conditions in carrying on the practice of law in a place specified in a notice under section 135D(2)(b) or any undertakings concerning the person's practice of law in that place that would make it inappropriate to register the person;
- (e) the Law Society considers that the person is not a person whose practise of law in a place specified in an affidavit under section 135D(5) would make it inappropriate to register the person; and
- (f) the person demonstrates an intention to practise foreign law in the Territory and to establish an office or commercial legal presence in the Territory within a reasonable period after registration for that purpose.

"(2) Residence or domicile in the Territory is not a prerequisite for, or a factor in determining entitlement to, registration as a foreign lawyer under this Part.

"135G. Conditions

"(1) The Law Society may impose a condition on the registration of a foreign lawyer under this Part that is equivalent to a special condition of carrying on practice imposed on the lawyer by the home registration authority.

"(2) The Law Society may not impose any other conditions on registration of a foreign lawyer under this Part.

"135H. Notification of decision

"(1) The Law Society must give a foreign lawyer who lodges a notice in accordance with section 135D written notice of its decision –

- (a) to grant registration under this Part;
- (b) to grant registration subject to conditions; or
- (c) to refuse registration.

"(2) The Law Society may, within 28 days after a notice is lodged under section 135D, notify the foreign lawyer that the application for registration has not yet been determined because the Law Society has not completed the inquiries of or exchange of information with the home registration authority or a foreign

registration authority in respect of a place specified in an affidavit made by the foreign lawyer under section 135D(5).

"(3) The Law Society is to be taken to have refused registration if registration is not granted –

- (a) within 28 days after a notice is lodged under section 135D; or
- (b) if a notice is given to a foreign lawyer under subsection (2) – within 28 days after that notice is given to the foreign lawyer.

"135J. Duration of registration and annual fee

"(1) Registration under this Part is to be taken to have come into effect on and from the day on which the notice under section 135D was lodged.

"(2) Registration remains in force, unless sooner cancelled, for one year on and from the day on which it takes effect.

"(3) Registration may be renewed by payment of an annual fee determined by the Law Society.

"(4) A person's registration may only be renewed if he or she provides to the Law Society proof that, in respect of the period to which the renewal relates, he or she will hold the professional indemnity insurance required to be held by him or her under section 135W.

"(5) Payment of the annual fee is to be made on or before a date notified in writing to the locally registered foreign lawyer by the Law Society.

"(6) The annual fee is not to be greater than the fee payable by domestic lawyers under section 32 for the issue of an unrestricted practising certificate.

"135K. Register

"(1) The Law Society must keep, in the form it thinks fit, a register of persons registered as foreign lawyers under this Part.

"(2) The register is to be made available for public inspection during office hours of the Law Society.

"135L. Cancellation of registration

"(1) The Law Society may, by notice in writing to a locally registered foreign lawyer, cancel the lawyer's registration under this Part if it is of the opinion that there is sufficient reason for doing so.

"(2) Without limiting the grounds for cancellation, registration may be cancelled if –

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- (a) the foreign lawyer's home registration authority cancels registration of the foreign lawyer as a result of criminal, civil or disciplinary proceedings;
- (b) the foreign lawyer fails to comply with a requirement of this Act;
- (c) the registration of the foreign lawyer by the lawyer's home registration authority has lapsed;
- (d) the foreign lawyer has not established an office to practise foreign law or a commercial legal presence in the Territory within a reasonable period after registration;
- (e) the foreign lawyer fails to comply with a condition imposed on the lawyer's registration under this Part; or
- (f) the foreign lawyer's practice of law in a place specified in a notice under section 135D(5) would make it inappropriate to permit the lawyer to remain registered as a foreign lawyer.

"(3) Registration is not to be cancelled under subsection (1) unless the foreign lawyer has been given reasonable opportunity to make written submissions to the Law Society.

"(4) Registration is not to be cancelled on the ground specified in subsection (2)(c) if the lawyer demonstrates that the lapse did not result from any criminal, civil or disciplinary proceedings against the lawyer but from circumstances beyond the lawyer's control.

"(5) Registration as a foreign lawyer under this Part is automatically cancelled if the lawyer –

- (a) is registered as a domestic lawyer; or
- (b) requests cancellation.

"(6) Cancellation of registration at the request of a foreign lawyer does not affect the exercise by the Law Society or the Complaints Committee of a power relating to disciplinary proceedings brought against the lawyer before the cancellation.

"135M. Appeals

"(1) If the Law Society –

- (a) refuses to register, or renew the registration of, a foreign lawyer under this Part;
- (b) cancels the registration of a foreign lawyer under this Part; or

(c) takes any disciplinary action against a foreign lawyer under this Part, the foreign lawyer may appeal to the Supreme Court.

"(2) The Supreme Court may make an order in relation to the refusal, cancellation or disciplinary action that might be made in relation to an appeal by –

- (a) an applicant for registration as a domestic lawyer who is refused registration as a domestic lawyer under this Act;
- (b) a domestic lawyer whose practising certificate is cancelled under this Act; or
- (c) a domestic lawyer against whom disciplinary action has been taken under this Act by the Law Society or the Complaints Committee.

"Division 3 – Legal practice

"135N. Scope of practice

"(1) A locally registered foreign lawyer may provide only the following legal services:

- (a) doing any work, or transacting any business, in the Territory concerning the law of the place in which the lawyer is registered by the lawyer's home registration authority;
- (b) legal services (including appearances) in relation to arbitration proceedings in the Territory of a kind prescribed by the Regulations;
- (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of the place referred to in paragraph (a) is essential;
- (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in the Territory of a kind prescribed by the Regulations.

"(2) Nothing in this Part authorises a locally registered foreign lawyer to practise Australian law or to appear in a court (except on the lawyer's own behalf).

"(3) Despite subsection (2), a locally registered foreign lawyer may advise on the effect of an Australian law if the giving of advice on Australian law is necessarily incidental to the practice of foreign law and the advice is expressly based on the advice given on the Australian law by a domestic lawyer who is not an employee of the foreign lawyer.

"135P. Form of practice

"(1) A locally registered foreign lawyer may practise –

- (a) as a foreign lawyer on the lawyer's own account;
- (b) in partnership with other locally registered foreign lawyers or with domestic lawyers or both; or
- (c) as a member of an incorporated legal practice that is permitted by a law of the Territory.

"(2) An affiliation referred to in subsection (1) does not entitle the locally registered foreign lawyer to practise domestic law in the Territory.

"135Q. Application of professional ethical and practice standards

"A locally registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by a domestic lawyer in practising Australian law in the Territory, constitute professional misconduct within the meaning of section 45.

"135R. Offences and disciplinary action

"(1) A locally registered foreign lawyer who contravenes or fails to comply with a provision of this Part, other than section 135C or 135W, is not to be taken to have committed an offence against the provision.

"(2) Subject to subsection (3), Part VI applies to and in relation to a locally registered foreign lawyer who is alleged to have contravened section 135Q as if the registered foreign lawyer were a domestic lawyer who has engaged in or is alleged to have engaged in professional misconduct within the meaning of section 45.

"(3) In determining the action, if any, to be taken under Part VI in relation to a foreign lawyer who has contravened section 135Q, regard is to be had to whether the conduct of the lawyer was consistent with the standards of professional conduct of the legal profession in the place outside Australia in which the lawyer is registered by the home registration authority.

"(4) The Regulations may exempt a foreign lawyer or class of foreign lawyers from the application of a provision of Part VI.

"135S. Letterhead and other identifying documents

"(1) A locally registered foreign lawyer may describe himself or herself and a law firm with which the foreign lawyer is associated in any of the ways designated in section 135T.

"(2) A locally registered foreign lawyer must indicate on the lawyer's letterhead and any other document used when practising foreign law in the Territory to identify the lawyer as a lawyer the fact that the lawyer is a locally registered foreign lawyer.

"(3) A locally registered foreign lawyer may (but need not) indicate all States or Territories in which the lawyer (and any of the lawyer's partners) are registered as foreign lawyers on a document referred to in this section.

"(4) A locally registered foreign lawyer may (but need not) indicate all places outside Australia in which the lawyer is registered to practise law on a document referred to in this section.

"135T. Designation

"(1) A locally registered foreign lawyer may use any of the following designations:

- (a) the lawyer's own name;
- (b) the title the lawyer is authorised by law to use in the place outside Australia in which the lawyer is registered by the home registration authority;
- (c) subject to subsection (2), the name of any law firm outside Australia with which the lawyer is affiliated (whether as a partner or otherwise);
- (d) if the foreign lawyer is a member of a law firm in Australia that includes both locally registered foreign lawyers and domestic lawyers – a description of the firm that includes reference to both domestic lawyers and registered foreign lawyers.

"(2) A locally registered foreign lawyer who is a partner of a law firm outside Australia may use the name of the firm in practising, or in connection with the practice of, foreign law in the Territory only if –

- (a) the lawyer indicates on the lawyer's letterhead and any other document used in the Territory to identify the lawyer as a lawyer that the law firm practises only foreign law in the Territory;
- (b) the lawyer has provided the Law Society with a copy of the partnership agreement or other acceptable evidence that the lawyer is a partner of the law firm; and
- (c) use of the name complies with all requirements of the law of the Territory concerning use of business names and will not lead to

confusion with the name of an existing domestic or foreign law firm in the Territory.

"(3) A locally registered foreign lawyer who is a partner of a law firm may use the name of a firm in accordance with this section whether or not other partners in the firm are locally registered foreign lawyers.

"135U. Advertising

"(1) A locally registered foreign lawyer must comply with all advertising restrictions imposed –

- (a) by the Law Society on the practice of law by a domestic lawyer; and
- (b) by law on the practice of law by a domestic lawyer that are relevant to the practice of foreign law in the Territory.

"(2) Without limiting subsection (1), a locally registered foreign lawyer must not advertise, or use a description on the lawyer's letterhead or another document used in the Territory to identify the lawyer as a lawyer, in a way –

- (a) that might reasonably be regarded as –
 - (i) false, misleading or deceptive; or
 - (ii) suggesting that the locally registered foreign lawyer is a domestic lawyer; or
- (b) that contravenes a requirement of the Regulations.

"135V. Employment of domestic lawyers by foreign lawyers

"(1) A locally registered foreign lawyer may employ one or more domestic lawyers.

"(2) Employment of a domestic lawyer does not entitle a locally registered foreign lawyer to practise Australian law in the Territory.

"(3) A domestic lawyer employed by a locally registered foreign lawyer may practise foreign law but must not provide advice on Australian law to, or for use by, the foreign lawyer or otherwise practise Australian law in the Territory in the course of that employment.

"(4) Subsection (3) does not apply to a domestic lawyer employed by a law firm if –

- (a) a partner of the firm is a locally registered foreign lawyer; and
- (b) one or more partners of the firm is a domestic lawyer.

"(5) A period of employment by a locally registered foreign lawyer may not be used by a domestic lawyer to satisfy a requirement under this Act for the completion of a period of supervised practice by him or her before being admitted as a legal practitioner or granted a practising certificate.

"135W. Indemnity insurance

"(1) A locally registered foreign lawyer who practises foreign law in the Territory must have professional indemnity insurance that is equivalent to the coverage required by or under this Act to be maintained by domestic lawyers.

"(2) The penalty payable for an offence against subsection (1) is the penalty prescribed for breach of a requirement of the Regulations that a domestic lawyer take out and maintain professional indemnity insurance.

"135X. Trust accounts and Fidelity Fund contributions

"(1) Part VII applies to and in relation to a locally registered foreign lawyer who receives money on behalf of another person in the course of practising as a foreign lawyer in the Territory as if he or she were a domestic lawyer practising law in the Territory.

"(2) In Part VII as applied by subsection (1), a reference to money is not limited to a reference to money in the Territory.

"(3) Parts VIII and IX apply to and in relation to a locally registered foreign lawyer as if he or she were a domestic lawyer practising law in the Territory.

"(4) Section 138 applies to and in relation to a locally registered foreign lawyer who maintains or has maintained a trust account as if he or she were a domestic lawyer practising law in the Territory."

8. General offences

Section 138A of the Principal Act is amended –

- (a) by omitting "A person" and substituting "Subject to section 135R(1), a person"; and
- (b) by omitting "\$2,000" and substituting "50 penalty units".

9. Regulations

Section 141 of the Principal Act is amended by inserting before paragraph (d) the following:

- "(c) prescribing penalties, not exceeding 100 penalty units in the case of an individual and not exceeding 500 penalty units in the case of a body corporate; and".

10. Further amendments

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

SCHEDULE

Section 10

Provision	Amendment	
	omit	substitute
Section 16	"\$5,000"	"50 penalty units"
Section 35B(4)(g)	"\$5,000"	"50 penalty units"
Section 47(1)(c)	"\$2,000"	"50 penalty units"
Section 47B	"\$5,000"	"100 penalty units"
Section 47C	"\$5,000"	"100 penalty units"
Section 48E	"\$5,000"	"100 penalty units"
Section 50(4)(a)(ii) and (b)	"\$5,000"	"100 penalty units"
Section 51(3) and (10)	"\$5,000"	"50 penalty units"
Section 52A	"\$5,000"	"500 penalty units"
Section 71	"\$250"	"20 penalty units"
Section 74	"\$250"	"50 penalty units"
Section 76(3)	"\$250"	"50 penalty units"
Section 77(4)	"\$250"	"50 penalty units"
Section 78	"\$250"	"50 penalty units"
Section 104(3)	"\$500"	"50 penalty units"
Section 117	"\$500 or imprisonment for 6 months, or both"	"100 penalty units"
Section 134(1)	"\$2,000"	"500 penalty units"