

Serial 78
Legal Practitioners Amendment (Community Legal Centres) Bill 2002
Dr Toyne

**A BILL
for
AN ACT**

to amend the *Legal Practitioners Act*



NORTHERN TERRITORY OF AUSTRALIA
LEGAL PRACTITIONERS AMENDMENT (COMMUNITY LEGAL
CENTRES) ACT 2002

No. of 2002

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2002

AN ACT

to amend the *Legal Practitioners Act*

[Assented to 2002]
[Second reading 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Legal Practitioners Amendment (Community Legal Centres) Act 2002*.

2. Commencement

This Act comes into operation on the date, or respective dates, 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. Interpretation

Section 6 of the Principal Act is amended –

- (a) by inserting after the definition of "Chairperson" in subsection (1) the following:

" 'community legal centre' has the meaning in section 135XB;"; and

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- (b) by omitting from the definition of "Law Society" in subsection (1) "of the".

5. Certain practitioners to hold practising certificates

Section 22 of the Principal Act is amended –

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

"(3) A legal practitioner who is employed in the Territory –

- (a) by another legal practitioner or by a firm of legal practitioners;
- (b) by an interstate legal practitioner who has established a practice in the Territory; or
- (c) by a community legal centre,

must not practise in the Territory as a legal practitioner unless he or she holds, or is in pursuance of section 30 deemed to hold, a current unrestricted practising certificate or restricted practising certificate class 1.";

- (b) by omitting from subsection (3A) "organization" and substituting "organisation"; and
- (c) by omitting from subsection (5) "services is" and substituting "services (including a community legal centre) is".

6. Limitations on issue of unrestricted practising certificates

Section 25 of the Principal Act is amended –

- (a) by omitting from subsection (1)(c) "organization" and substituting "organisation";
- (b) by inserting after subsection (1)(c) the following:

"(d) served as an employee of a community legal centre in the Territory in the performance of work of a legal nature under the supervision of a legal practitioner who held at the relevant time an unrestricted practising certificate;" and

- (c) by adding at the end the following:

"(4) Notwithstanding subsections (1) and (2), the Law Society may issue an unrestricted practising certificate to a legal practitioner if it is satisfied –

- (a) that during the period of 5 years immediately preceding the date of the application for the practising certificate the legal practitioner has, for a period of not less than 2 years or for periods which in the

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aggregate are not less than 2 years, gained experience in a State or Territory or in New Zealand in the performance of work of a legal nature; and

- (b) that the experience gained by the legal practitioner is of a kind that would ordinarily have been gained if he or she had served as an employee of a legal practitioner in the Territory."

7. Professional indemnity insurance

Section 35B of the Principal Act is amended by omitting from subsection (4)(c) "Society, with the prior approval of the Attorney-General –" and substituting "Society –".

8. New section

The Principal Act is amended by inserting after section 35B in Part IVA the following:

"36. Notification and review of exemptions

"(1) If the Law Society grants an exemption or varies conditions of an exemption in pursuance of regulations made for the purposes of section 35B(4)(c), the Law Society must, as soon as practicable –

- (a) publish details of the exemption or variation in the *Gazette*; and
- (b) notify the Attorney-General of those details.

"(2) An exemption or a variation of conditions of an exemption referred to in subsection (1) remains in force until revoked or varied under this Act.

"(3) Within 60 days of receiving notification under subsection (1), the Attorney-General –

- (a) must review the decision of the Law Society to grant or vary conditions of the exemption; and
- (b) if the Attorney-General considers it to be in the public interest, he or she may revoke or vary that decision by notice in the *Gazette* specifying the date on which the revocation or variation is to take effect.

"(4) The Attorney-General must provide the Law Society with copies of all reviews under subsection (3).

"(5) A decision by the Attorney-General to revoke or vary a decision of the Law Society under this section takes effect according to its terms."

9. Operation of order may be suspended

Section 51C of the Principal Act is amended by omitting from subsection (1) "(4AB)" and substituting "(4AB) or section 135XG(2)".

10. New Part

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

"PART XIII – COMMUNITY LEGAL CENTRES

"135XA. Interpretation

"In this Part, unless the contrary intention appears –

'employ' means to employ under a contract of employment or service or under an employment agreement;

'engage' means to use the services of, whether or not for reward or remuneration;

'supervising legal practitioner' means a supervising legal practitioner referred to in section 135XC.

"135XB. Community legal centres

"(1) An organisation is a community legal centre if –

(a) it is a body corporate that is funded or expected to be funded to a significant level by donations or by grants from government, charitable or other organisations;

(b) it holds itself out as being an organisation that provides legal services as referred to in paragraph (c), whether or not those are the only services it provides;

(c) it provides legal services, not for the purpose of deriving a profit –

(i) to persons or organisations lacking the financial means to obtain privately funded legal services;

(ii) to persons or organisations in respect of a legal matter that is expected to raise issues of public interest or to be of general concern to disadvantaged groups in the community;

(iii) to persons or organisations having a special need due to their location or the nature of the legal matter; or

(iv) to persons having a significant physical or social disability;

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- (d) it –
 - (i) employs a supervising legal practitioner and notifies the Law Society of that fact and of the name of the supervising legal practitioner; or
 - (ii) temporarily engages a supervising legal practitioner in accordance with section 135XD;
- (e) it holds professional indemnity insurance under Part IVA; and
- (f) it has given the Law Society the prescribed information (if any) and the prescribed fee (if any).

"(2) A department, body or organisation prescribed for the purposes of section 25(1)(c) is not a community legal centre.

"135XC. Supervising legal practitioners

"(1) A community legal centre must, subject to subsection (2), employ a supervising legal practitioner to be responsible for the provision of legal services at the community legal centre.

"(2) A community legal centre may, if given approval under section 135XD, temporarily engage a supervising legal practitioner to be responsible for the provision of legal services at the community legal centre during that temporary engagement.

"(3) A supervising legal practitioner employed or temporarily engaged by a community legal centre must hold an unrestricted practising certificate or an interstate practising certificate of a type or class that corresponds to an unrestricted practising certificate.

"(4) A community legal centre is not precluded from employing or temporarily engaging as the supervising legal practitioner a person –

- (a) on the board of management (however described) of the community legal centre; or
- (b) involved in the management of the community legal centre,

if the person holds a practising certificate referred to in subsection (3).

"(5) This Act applies in relation to a supervising legal practitioner temporarily engaged by a community legal centre as if he or she were employed by the community legal centre.

"135XD. Temporary engagement of supervising legal practitioner

"(1) A community legal centre may apply in writing to the Law Society for approval to temporarily engage a legal practitioner or an interstate legal practitioner named in the application to be the centre's supervising legal practitioner.

"(2) The Law Society may in writing approve an application by a community legal centre under this section only if the Law Society is satisfied –

- (a) that it is not practicable for the community legal centre to employ a supervising legal practitioner;
- (b) that the legal practitioner or interstate legal practitioner named in the application will be able to properly supervise the provision of legal services at the community legal centre; and
- (c) that the benefits of the temporary engagement to the clients (or potential clients) of the community legal centre will outweigh the disadvantage that would be caused to those clients if the community legal centre were unable to provide legal services.

"(3) An approval under this section is for the period, not exceeding 12 weeks, specified in the approval.

"(4) A community legal centre given approval under this section may apply to the Law Society for further approvals, which may be given only in accordance with subsection (2) and for the period referred to in subsection (3).

"(5) If the Law Society refuses to approve an application under this section it must, as soon as practicable –

- (a) publish particulars of the refusal in the *Gazette*; and
- (b) notify the Attorney-General of those particulars.

"(6) Within 30 days of receiving notification under subsection (5), the Attorney-General –

- (a) must review the decision of the Law Society; and
- (b) may, by notice in the *Gazette*, revoke that decision and approve the application if he or she considers it is in the public interest to do so.

"(7) The Attorney-General must provide the Law Society with a copy of the reasons for a revocation and approval under subsection (6).

"135XE. Entitlement to recover costs

"Despite section 135XB(1)(c), a community legal centre is entitled, subject to section 22(5) and the Regulations, to recover costs and disbursements in respect of legal services it provides.

"135XF. Trust accounts

"(1) Part VII applies, with the necessary modifications and subject to subsection (2) and the Regulations, in relation to a community legal centre –

- (a) as if a reference in that Part to a legal practitioner were a reference to the supervising legal practitioner at the community legal centre; and
- (b) as if a reference in that Part to the practice of a legal practitioner were a reference to the provision of legal services by the community legal centre.

"(2) A community legal centre must not operate a trust bank account under Part VII unless the centre's supervising legal practitioner is a signatory to that account.

"135XG. Discipline

"(1) Part VI applies, with the necessary modifications and subject to the Regulations, in relation to a community legal centre –

- (a) as if a reference in that Part to a legal practitioner were a reference to a community legal centre; and
- (b) as if a reference in that Part to practising the profession of the law were a reference to providing legal services.

"(2) The Complaints Committee may, having regard to the circumstances of the case and if in its opinion it is justified in doing so, order that a person –

- (a) on the board of management (however described) of a community legal centre; or
- (b) involved in the management of a community legal centre,

must not operate or be involved in the management of a community legal centre for the period specified in the order.

"(3) A person in respect of whom an order is made under subsection (2) may appeal to the Supreme Court against the order not later than one month after it is made.

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"(4) In proceedings instituted under subsection (3), the Supreme Court may make the orders it thinks fit.

"(5) Subject to section 51C, a person in respect of whom an order is in force under subsection (2) must not operate or be involved in the management of a community legal centre.

Penalty: 500 penalty units or imprisonment for 12 months.

"(6) This section does not affect the operation of Part VI in relation to the supervising legal practitioner of a community legal centre or any other legal practitioner employed or engaged by the community legal centre.

"135XH. Provisions applicable to community legal centres

"Parts IVA, VIII, VIIIA, XI and XIII apply, with necessary modifications and subject to the Regulations, in relation to a community legal centre as if a reference in those Parts to a legal practitioner were a reference to a community legal centre.

"135XI. Regulations relating to this Part

"The Regulations may provide for the following matters:

- (a) the employment or temporary engagement of supervising legal practitioners and the employment or engagement of other legal practitioners by community legal centres;
- (b) the duties, obligations and liabilities of supervising legal practitioners and other legal practitioners employed or engaged by community legal centres;
- (c) the information to be contained in applications, approvals and notices;
- (d) the manner in which the Law Society is to exercise its powers and perform its functions under this Part;
- (e) professional indemnity insurance to be held by community legal centres;
- (f) the recovery of costs and disbursements by community legal centres;
- (g) the operation of trust bank accounts by community legal centres;
- (h) disciplinary matters in relation to community legal centres;

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- (i) the manner in which specified provisions of this Act are to apply in relation to community legal centres, supervising legal practitioners and legal practitioners employed or engaged by community legal centres."

11. Further amendments

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

12. Transitional provision

On and after the commencement of section 6, a period of time applicable under section 25(1)(d) of the Principal Act or referred to in section 25(4) of the Principal Act may include a period that occurred wholly or partly before that commencement.

SCHEDULE

Section 11

Provision	Amendment	
	Omit	substitute
Section 49A(2)(b)	section 50(4)	section 50
Section 56(1)	practitioner, shall, for the purposes of his or her practice,	practitioner must, for the purposes of dealing with moneys referred to in section 55(1),
Section 79(1) and (3)	the whole subsection	
Section 79(6)	has – (a) in the period of 6 months immediately before the date fixed for the purposes of section 80(1); or (b) in any year,	has in any year
Section 80(1) and (4)	the whole subsection	
Section 89A	the whole section	
Section 133(2)(e) and (f)	1981	