



LEGAL PRACTITIONERS (REFORM) AMENDMENT ACT 1993

No. 22 of 1993

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ELIZABETHAE II REGINAE

A.D. 1993

No. 22 of 1993

An Act to amend the Legal Practitioners Act 1981.

[Assented to 8 April 1993]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Legal Practitioners (Reform) Amendment Act 1993*.
- (2) The *Legal Practitioners Act 1981* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Substitution of s. 6

3. Section 6 of the principal Act is repealed and the following section is substituted:

Fusion of the legal profession

6. (1) It is Parliament's intention that the legal profession should continue to be a fused profession of barristers and solicitors.

(2) The voluntary establishment of a separate bar is not, however, inconsistent with that intention, nor is it inconsistent with that intention for legal practitioners voluntarily to confine themselves to practice as solicitors.

(3) An undertaking by a legal practitioner to practise solely as a barrister or to practise solely as a solicitor is contrary to public policy and void (but this subsection does not extend to an undertaking contained in or implied by a contract or professional engagement to provide legal services of a particular kind for or on behalf of another person).

(4) Despite this section, an association of legal practitioners may be lawfully constituted on the basis that membership is confined to legal practitioners who practise solely in a particular field of legal practice or in a particular way.

(5) No contractual or other requirement may be lawfully imposed on a legal practitioner to join an association of legal practitioners.

Amendment of s. 14a—The Litigation Assistance Fund

4. Section 14a of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Any—

(a) communication between the Society, or any officer, employee or agent of the Society, and an applicant for assistance from the Litigation Assistance Fund;

or

(b) document in the possession of the Society concerning the affairs of an applicant for assistance from the Fund,

is privileged from production or disclosure in the same way and to the same extent as if it were a communication between legal practitioner and client.

Insertion of s. 17a

5. The following section is inserted after section 17 of the principal Act:

Conditions as to training, etc., to be imposed on issue of new practising certificates

17a. (1) A practising certificate will, if the rules of the Supreme Court so require, be issued subject to conditions—

(a) requiring the holder of the certificate to undertake such further training and to obtain such further experience as may be prescribed by the rules or by determination of the Board of Examiners of the Supreme Court;

and

(b) limiting the rights of practice of the holder of the certificate until that further training and experience is completed or obtained,

(but the rules may only require the imposition of such conditions on the issue of a practising certificate to a practitioner who has not previously held a practising certificate).

(2) The Board of Examiners may, on such terms as it thinks fit, exempt any practitioner, or practitioners of a particular class, from any such conditions either wholly or in part.

(3) If a person to whom a practising certificate was issued subject to conditions under subsection (1) fails to satisfy the Board of Examiners, in accordance with the rules, of compliance with the conditions, the Board may determine—

(a) that further conditions are to be imposed;

or

- (b) that the practising certificate is to be cancelled, or is not to be renewed, and no new practising certificate is to be issued to the previous holder of the certificate until stipulated conditions have been complied with,

(and, subject to any order of the Supreme Court to the contrary, a determination under this subsection takes effect on a date fixed by the Board).

(4) Subject to the rules of the Supreme Court, a person dissatisfied with a determination or decision of the Board of Examiners under this section, or the rules made for the purposes of this section, or the Society, may appeal against the determination or decision to the Supreme Court.

(5) On such an appeal, the Supreme Court—

- (a) may confirm, vary or reverse the determination or decision of the Board of Examiners;

and

- (b) may make any consequential or ancillary order.

Amendment of s. 21—Entitlement to practise

6. Section 21 of the principal Act is amended by inserting after paragraph (c) of subsection (4) the following paragraph:

- (d) an employed legal practitioner who provides legal advice, or legal services of a kind mentioned in subsection (2), for or on behalf of his or her employer or clients of his or her employer practises the profession of the law.

Amendment of s. 35—Obtaining information for purposes of audit or examination

7. Section 35 of the principal Act is amended—

(a) by striking out subsections (3) and (3a) and substituting the following subsection:

(3) The manager of any financial institution with which a legal practitioner or firm of legal practitioners has deposited or invested money must, on being required to do so by an approved auditor or inspector employed or appointed to make an audit or examination under this Division (who must, if the manager so requires, produce a copy of the instrument under which he or she is employed or appointed to make the audit or examination)—

- (a) provide full details of the deposit or investment and of any dealings with the money deposited or invested;

and

- (b) provide copies of accounts and other documentary material in the financial institution's possession relevant to the deposit or investment.;

(b) by inserting after the definition of "account" in subsection (5) the following definition:

"financial institution" means a bank, building society, credit union, insurance company, trustee company, broker or other body or person that carries on a business involving the acceptance of money on deposit or by way of investment;.

Amendment of s. 37—Confidentiality

8. Section 37 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) The duty of confidentiality imposed by this section does not prevent the Society, an officer or employee of the Society, or an auditor or inspector from divulging information arising out of an audit or inspection—

- (a) to a member of the police force of a State or Territory, or of the Commonwealth, investigating a matter, referred for police investigation by the Attorney-General, to which the information is relevant;
- (b) to an authority, or a member or officer of an authority, vested by the law of the State or the Commonwealth with powers of criminal investigation, to which the Attorney-General has referred for investigation a matter to which the information is relevant;

or

- (c) to a court in which criminal proceedings arising from matters subject to the audit or examination have been brought.

(5) If an auditor divulges information under subsection (4), the auditor may inform the Society and the practitioner or firm of practitioners by which he or she was employed to make the audit of that fact.

Amendment of s. 42—Costs

9. Section 42 of the principal Act is amended by striking out subsection (6) and substituting the following subsection:

(6) A legal practitioner may make an agreement in writing with a client for—

- (a) payment of a specified amount by way of legal costs (which may—but need not—consist of a daily, hourly or other time-related rate for professional work carried out by the legal practitioner on the client's behalf);
- (b) payment of legal costs in accordance with a specified scale;

or

- (c) subject to any limitations imposed by the Society's professional conduct rules or the regulations—payment of a contingency fee to be calculated on a basis set out in the agreement on fulfilment of a condition stated in the agreement.

Amendment of s. 52—Professional indemnity insurance scheme

10. Section 52 of the principal Act is amended by striking out subsections (3) and (4) and substituting the following subsections:

(3) The scheme, and any amendment to the scheme made by the Society with the approval of the Attorney-General, have the force of law and are binding on—

- (a) the Society;
- (b) the legal practitioners covered by the scheme;
- (c) the insurers and other persons to whom the scheme applies.

(4) The Society must keep a copy of the scheme and of any amendment to the scheme available for inspection at its public office and must, on request for a copy of the scheme or amendment and payment of a reasonable fee fixed by the Society, provide such a copy.

Amendment of s. 53—Duty to deposit trust money in combined trust account

11. Section 53 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) A legal practitioner must, within 14 days after 31 May, and within 14 days after 30 November, in each year, out of trust money held in the practitioner's trust account, deposit the appropriate amount in the combined trust account.

(1a) The appropriate amount is the amount (if any) necessary to ensure that the following formula is satisfied:

$$A_1 \geq \frac{2}{3} A_2$$

Where—

- A_1 is the amount held on the practitioner's behalf in the combined trust account
- A_2 is the lowest aggregate (determined by reference to the relevant bank statements) of the amount held in the practitioner's trust account and the amount (if any) simultaneously held in the combined trust account on the practitioner's behalf during the period of six months ending on 31 May or 30 November (as the case requires).

(2) The combined trust account is a composite account consisting of separate accounts established by the Society at each approved bank.;

(b) by striking out subsection (4) and substituting the following subsection:

(4) A legal practitioner—

(a) may withhold money from deposit under subsection (1) if—

(i) the money is necessary to meet an immediate claim on the practitioner's trust account or to establish or maintain a reasonable balance in the trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future;

and

(ii) the practitioner has, on or before the day on which a deposit under subsection (1) is required to be made, given written notice to the Society accordingly;

and

(b) is not obliged to deposit money under subsection (1) in relation to a particular period of six months if the lowest aggregate referred to in subsection (1a) was, during that period, less than \$1 000 (or some other sum fixed by regulation for the purposes of this subsection).;

(c) by striking out subsections (7) to (13) and substituting the following subsections:

(7) Where a legal practitioner establishes a trust account and has, at the time of establishing the account, no other trust account, the balance of the trust account during the first month after its establishment is, for the purposes of this section, to be ignored.

(8) A legal practitioner who fails to make the appropriate deposit by the last date for payment is personally liable to pay the Society, for the credit of the statutory interest account, interest on the outstanding amount at the prescribed rate for the period of the default but, if the appropriate deposit is made within seven days after that date, no liability for interest arises under this subsection.

(9) A legal practitioner may withdraw money held on the practitioner's account in the combined trust account if, and only if, the withdrawal is necessary to meet an immediate claim on the practitioner's trust account or to establish a reasonable balance in the trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future.

(10) If a legal practitioner withholds money from deposit under subsection (4)(a) or withdraws money under subsection (9), the auditor must, in the report on the audit for the relevant year, express an opinion on whether the withholding or withdrawal was justified, and if the amount exceeds the amount that could, in the auditor's opinion, be reasonably justified, on the amount of the excess (but before the auditor includes a statement expressing such an opinion in the report, the auditor must allow the legal practitioner a reasonable opportunity to comment on the proposed statement and may

make any modification to the proposed statement that the auditor considers justified in the light of the legal practitioner's comments).

(11) If the withholding or withdrawal of money is not justified, or exceeds an amount that could be reasonably justified, the legal practitioner is personally liable to pay to the Society, for the credit of the statutory interest account, interest on the amount withheld or withdrawn, or the amount of the excess, (as the case requires), from the date of the withholding or withdrawal until the amount on deposit in the combined trust account is restored to the level required by this section.

(12) The Society may, for any proper reason, remit interest payable under subsection (8) or (11) wholly or in part.

(13) The Society—

(a) may approve a bank for the purposes of this section if satisfied that the bank is prepared to pay a reasonable rate of interest on money deposited in the combined trust account;

and

(b) may revoke an approval previously given under this subsection.

(14) If the Society revokes the approval of a bank under subsection (13) the combined trust account, so far as it was kept at that bank, must be transferred to a bank that continues as an approved bank.

Repeal of s. 54

12. Section 54 of the principal Act is repealed.

Amendment of s. 56—Statutory interest account

13. Section 56 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The Society must pay into the statutory interest account all interest earned from deposits in the combined trust account.

Amendment of s. 57—Guarantee fund

14. Section 57 of the principal Act is amended by inserting after paragraph (e) of subsection (4) the following paragraph:

(ea) the legal costs payable by—

(i) a member of the Committee in relation to any action against the member arising from an honest act or omission in the performance or purported performance of a duty imposed by or under this Act;

or

- (ii) any person in relation to any action arising from an honest act or omission in the exercise or purported exercise of powers or functions under Division V of Part III or delegated by the Committee;.

Amendment of s. 60—Claims

15. Section 60 of the principal Act is amended by inserting after paragraph (a) of subsection (4) the following paragraph:

- (ab) in respect of a fiduciary or professional default occurring outside this State unless it occurs in the course of, or incidentally to—
 - (i) legal work arising from instructions given in this State;
 - or
 - (ii) legal work substantially carried out in this State.

Insertion of s. 67a

16. The following section is inserted in the principal Act after section 67:

Annual report

67a. (1) The Society must, on or before 31 October in each year, report to the Attorney-General on the administration of this Part during the preceding financial year.

(2) The report must state the amount of the payments from the guarantee fund during the financial year and the nature of the claims in respect of which payments were made.

(3) The Attorney-General must, within 12 sitting days after receiving a report under this section, cause copies of the report to be laid before both Houses of Parliament.

Amendment of s. 68—Establishment of the Legal Practitioners Complaints Committee

17. Section 68 of the principal Act is amended by striking out subsection (4).

Amendment of s. 73—Confidentiality

18. Section 73 of the principal Act is amended—

- (a) by striking out “or” from between paragraphs (a) and (b) of subsection (1);
- (b) by inserting after paragraph (b) of subsection (1) the following word and paragraph:
 - or
 - (c) in evidence before a court in which criminal proceedings arising from matters subject to a report of the Committee have been brought.;
- (c) by inserting after paragraph (ab) of subsection (2) the following paragraphs:

- (ac) a member of the police force of a State or Territory, or of the Commonwealth, investigating a matter subject to a report of the Committee, referred for police investigation by the Attorney-General, to which the information is relevant;
- (ad) an authority, or a member or officer of an authority, vested by the law of the State or the Commonwealth with powers of criminal investigation, to which the Attorney-General has referred for investigation a matter subject to a report of the Committee to which the information is relevant;

Amendment of s. 74—Functions of the Committee

19. Section 74 of the principal Act is amended—

- (a) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:
- (a) to receive, consider and investigate complaints of unprofessional conduct or overcharging by legal practitioners;;
- (b) by striking out from subsection (1)(c) “a complaint” and substituting “a complaint of unprofessional conduct”.

Insertion of heading

20. The following heading is inserted in the principal Act before section 76:

COMPLAINTS OF UNPROFESSIONAL CONDUCT

Amendment of s. 76—Investigations by Committee

21. Section 76 of the principal Act is amended—

- (a) by inserting before the definition of “prescribed person” in subsection (5) the following definition:
- “**financial institution**” means a bank, building society, credit union, insurance company or other body that carries on a business involving the acceptance of money on deposit or by way of investment;;
- (b) by striking out paragraph (d) of the definition of “prescribed person” in subsection (5) and the word “and” immediately preceding that paragraph and substituting the following paragraphs:
- (d) a financial institution with which the legal practitioner has deposited or invested money;
- or
- (e) an auditor or inspector employed or appointed to make an audit or examination of accounts of the legal practitioner under Division V of Part III.

Insertion of s. 77a

22. The following heading and section are inserted in the principal Act after section 77:

COMPLAINTS OF OVERCHARGING**Investigation of allegation of overcharging**

77a. (1) Subject to subsection (2), if a complaint of overcharging is made against a legal practitioner, the Committee must, unless the Committee is of the opinion that the complaint is frivolous or vexatious, investigate the complaint.

(2) The Committee may require a complainant to pay a reasonable fee, fixed by the Committee, for investigation of the complaint and decline to proceed with the investigation unless the fee is paid.

(3) For the purposes of an investigation the Committee may—

- (a) require the legal practitioner to make a detailed report to the Committee on the work carried out for the complainant;
- (b) require the legal practitioner to produce to the Committee documentary material relating to the work.

(4) A legal practitioner must comply with a requirement under subsection (3).

Penalty: Division 6 fine or division 6 imprisonment.

(5) At the conclusion of the investigation the Committee—

- (a) must report to the complainant and the legal practitioner on the results of the investigation;

and

- (b) may recommend that the legal practitioner reduce a charge or refund an amount to the claimant.

Amendment of s. 78—Establishment of the Tribunal

23. Section 78 of the principal Act is amended—

(a) by striking out from subsection (2) “12” and substituting “15”;

(b) by striking out subsection (3).

Amendment of s. 79—Conditions of membership

24. Section 79 of the principal Act is amended by striking out subsection (2).

Insertion of ss. 84a and 84b

25. The following sections are inserted in the principal Act after section 84:

Proceedings to be generally in public

84a. (1) Subject to subsection (2), an inquiry under this Part must be held in public.

(2) The Tribunal may, if satisfied that the interests of justice so require, order that an inquiry or part of an inquiry be conducted in private.

(3) If proceedings of the inquiry are held in private, the Tribunal must prepare a summary of the proceedings containing such information as may be disclosed consistently with the interests of justice.

(4) A copy of any such summary must be made available on request at the Tribunal's public office for inspection by any interested member of the public.

Tribunal's proceedings to be privileged

84b. Anything said or done in the course of the Tribunal's proceedings is protected by absolute privilege.

Insertion of Division VII

26. The following Division is inserted in the principal Act after section 90:

DIVISION VII—ANNUAL REPORTS**Annual reports**

90a. (1) The Committee and the Tribunal must each, on or before 31 October in each year, prepare and present to the Attorney-General and the Chief Justice a report on their proceedings for the last financial year.

(2) A report must contain—

- (a) a statement of the nature of the matters subject to investigation or inquiry;
- (b) information as to case management, and the number of uncompleted matters outstanding at the end of the financial year;

and

- (c) such other information as the Attorney-General may require.

(3) The Attorney-General must, within 12 sitting days after receiving a report from the Committee or the Tribunal under this section, cause copies of the report to be laid before both Houses of Parliament.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor