

**LEGAL PRACTITIONERS (AMENDMENT) ACT,
1980, No. 12**

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 12, 1980.

An Act to amend the Legal Practitioners Act, 1898, so as to require certain solicitors to be insured in relation to certain contingencies, and for other purposes. [Assented to, 11th April, 1980.]

Legal Practitioners (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

- Short title.** **1.** This Act may be cited as the “Legal Practitioners (Amendment) Act, 1980”.
- Principal Act.** **2.** The Legal Practitioners Act, 1898, is referred to in this Act as the Principal Act.
- Amendment of Act No. 22, 1898.** **3.** The Principal Act is amended in the manner set forth in Schedule 1.
- Saving.** **4.** Notwithstanding section 77 (1) of the Principal Act, as amended by this Act, where a charge or question relating to the alleged professional misconduct of a solicitor—
- (a) is heard, on or after the date of assent to this Act, by The Solicitors' Statutory Committee referred to in section 75 of that Act; and
- (b) relates only to alleged professional misconduct of the solicitor before that date,
- the solicitor shall not be liable to any greater fine than that to which he would have been liable if the charge or question had been heard immediately after the act or omission alleged to constitute the professional misconduct took place.
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Legal Practitioners (Amendment).

SCHEDULE 1.

Sec. 3.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3, definition of "Insurer"—

After the definition of "Court", insert :—

"Insurer" means an individual or body, whether corporate or not, who or which carries on insurance business in New South Wales or elsewhere.

(b) Section 3, definition of "Regulation"—

After the definition of "Prescribed", insert :—

"Regulation" means regulation under this Act.

(2) Section 14A—

After section 14, insert :—

14A. (1) In this section, a reference to a State includes a reference to—

Rights and
privileges
of Crown
Solicitor.

- (a) the Crown in right of the State; and
- (b) the Government of the State.

(2) The Crown Solicitor may, in his official capacity, act as solicitor for—

- (a) the State of New South Wales;
- (b) a person suing or being sued on behalf of the State of New South Wales;
- (c) a Minister of the Crown acting or purporting to act in his official capacity as such a Minister;
- (d) a body established by an Act or other law of New South Wales;

Legal Practitioners (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (e) an officer or temporary employee of—
 - (i) the Public Service or any other service of the State of New South Wales; or
 - (ii) a body established by an Act or other law of New South Wales;
- (f) a person holding office—
 - (i) under an Act or other law of New South Wales; or
 - (ii) by reason of his appointment to that office by the Governor or a Minister of the Crown; or
- (g) with the approval of the Attorney General, which approval the Attorney General is hereby empowered to grant in respect of any particular case or class of cases, any other person or body.

(3) The Crown Solicitor may, pursuant to subsection (2), act as solicitor for a person or body—

- (a) with or without charge to the person or body; and
- (b) where the person or body is a party in a matter that is not the subject of litigation, notwithstanding that he may be so acting for another person or body who or which is a different party in the matter.

(4) The Crown Solicitor may, in his official capacity, act as agent for—

- (a) a State of the Commonwealth (other than the State of New South Wales); or
- (b) a Territory of the Commonwealth.

Legal Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Section 41A—

After section 41, insert :—

41A. Notwithstanding sections 41 (1) and 42A (1), where a Crown Solicitor's Trust Account is established pursuant to the regulations, all moneys received by the Crown Solicitor for or on behalf of any person or body for whom or which he is acting pursuant to section 14A shall be paid into that Account and retained in that Account until paid to that person or body or disbursed as that person or body directs.

(4) (a) Section 42 (5A)—

After section 42 (5), insert :—

(5A) Where an inspector states in a report referred to in subsection (5) that in his opinion there are reasonable grounds to suspect that there has been an irregularity or professional misconduct in relation to any accounts which he was appointed to examine, he shall, if he furnishes the report to the council, at the same time furnish a copy of the report to the Attorney General.

(b) Section 42 (6)—

Omit the subsection.

(c) Section 42 (11)—

Before "Court", insert "Attorney General, the".

Legal Practitioners (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) Section 42B (3)—

Omit the subsection, insert instead :—

(3) Until demanded, any moneys referred to in subsection (1) may be invested by the Society in any securities authorised for the time being by the Trustee Act, 1925, or upon loan to the Treasurer at a rate of interest not less than the maximum rate for the time being payable by a bank in New South Wales on fixed deposits.

(6) Section 44A (2A)—

After section 44A (2), insert :—

(2A) Notwithstanding subsection (2), the Statutory Interest Account may be applied in such amounts, if any, as may be necessary to meet any lawful claim upon it arising out of any charge created under section 49A (2).

(7) Section 49 (e)—

Omit “section 82”, insert instead “section 82 (1)”.

(8) Section 49A—

After section 49, insert :—

49A. (1) If at any time there is insufficient money in the fund to pay the amount referred to in section 49 (b), the Society, with the approval of the Attorney General, which approval he is hereby empowered to grant, may borrow money for the purpose of paying that amount.

Power to
supplement
the fund.

Legal Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) For the purpose of its providing security in connection with its borrowing money pursuant to subsection (1), the Society may create a charge over the Statutory Interest Account kept under section 44A (1).

(9) Section 52 (1)—

After “than”, insert “the Crown Solicitor or”.

(10) Section 70A—

After section 70, insert :—

70A. (1) On and from a day to be appointed by the Governor and notified by proclamation published in the Gazette, the council may not issue a practising certificate or renewal of a practising certificate to a solicitor who is required by the regulations to be an insured solicitor unless, when it issues the certificate or renewal, the council is satisfied that a policy of indemnity insurance has been effected—

Certificates not to be issued in certain cases.

- (a) with respect to the solicitor; and
- (b) for the period for which the certificate or renewal, if issued, will be in force.

(2) In subsection (1), a reference to a policy of indemnity insurance is a reference to a policy of insurance the terms of which are approved for the time being by the Governor and which has been effected with an insurer or insurers so approved.

Legal Practitioners (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) The Governor may—

- (a) grant an approval for the purposes of subsection (2) generally or in respect of any particular case or class of cases;
- (b) impose such conditions as he thinks fit upon his grant of any such approval; and
- (c) revoke any such approval.

(4) Where, under subsection (3), the Governor grants or revokes an approval or imposes any condition on his grant of an approval, particulars of the approval so granted or revoked or of the condition so imposed shall be forthwith notified to the council.

(11) Section 77 (1)—

Omit “one thousand dollars”, insert instead “\$10,000”.

(12) Section 82 (3)–(6)—

After section 82 (2), insert :—

(3) The Society, by its council, may—

- (a) negotiate with insurers and other persons in relation to the provision of indemnity insurance to any solicitor or former solicitor with respect to civil liability that may arise in connection with—
 - (i) his practice or former practice; or
 - (ii) his administration of any trust or deceased estate of which he is or formerly was a trustee or executor;

Legal Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) make agreements and arrangements relating to the provision of any such insurance, including arrangements for the establishment and maintenance of an account into which any moneys received by the Society as a premium for any such insurance are to be paid;
- (c) where the regulations so require, cause records to be maintained in accordance with the regulations, being records relating to specified matters concerning any such insurance; and
- (d) subject to and in accordance with any regulations made with respect thereto, establish committees for the purpose of assisting it in the exercise of its powers under paragraph (a) or (b).

(4) The powers conferred on the Society by subsection (3) (a) and (b) to carry out negotiations and make agreements and arrangements with respect to the provision of indemnity insurance shall be exercised for the purpose of implementing any recommendations prescribed by the regulations in relation to the provision of that insurance.

(5) Subsection (4) does not prevent the exercise, in a manner that is not inconsistent with that subsection, by the Society of the powers referred to in that subsection for any other purpose it thinks fit.

(6) Any moneys paid into an account established under subsection (3) (b) may, pending their application pursuant to an agreement or arrangement made under that paragraph, be invested by the Society in any securities authorised for the time being by the Trustee Act, 1925, or upon loan to the Treasurer at a rate of interest not less than the maximum rate for the time being payable by a bank in New South Wales on fixed deposits.

Legal Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(13) (a) Section 82A (2A)—

After section 82A (2), insert :—

(2A) Where a person appointed under subsection (1) states in a report referred to in that subsection that in his opinion there are reasonable grounds to suspect that there has been an irregularity or professional misconduct in relation to any matter investigated by him, he shall, when he furnishes the report to the council, furnish a copy of the report to the Attorney General.

(b) Section 82A (7)—

Before “Court”, insert “Attorney General, the”.

(14) Section 84 (2)—

Omit the subsection, insert instead :—

(2) All moneys, including penalties, recovered or received by the Society pursuant to the provisions of this Act, other than—

- (a) moneys deposited with the Society pursuant to Part VII;
- (b) moneys required by section 44A (1) to be paid to the Statutory Interest Account kept by the Society;
- (c) moneys belonging to the Solicitors’ Fidelity Fund established under section 46; and
- (d) moneys received by the Society as premiums for insurance and required to be paid into an account established under section 82 (3) (b),

shall become part of the general funds of the Society.

Legal Practitioners (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(15) (a) Section 86 (1) (b) (via), (vib)—

After section 86 (1) (b) (vi), insert :—

(via) requiring solicitors and former solicitors to furnish to the Society, at such times or during such periods as may be prescribed, such information relating to the provision of indemnity insurance as may be required by the regulations;

(vib) providing that a finding by the Statutory Committee of a contravention of a requirement of regulations made under subparagraph (via) shall be deemed to constitute a finding of professional misconduct with respect to which the Statutory Committee may exercise any one or more of its powers under section 77 (1);

(b) Section 86 (1) (b) (vii)—

After “IX”, insert “and this Part”.

(c) Section 86 (1) (b) (viii)—

After “IX”, insert “and this Part”.

(16) (a) Section 87 (1)—

After “regulations”, insert “, not inconsistent with this Act, for or with respect to any matter that by this Act, including section 86, is required or permitted to be prescribed by regulations or that is necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act and, in particular,”.

Legal Practitioners (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 87 (1) (c), (d)—

After section 87 (1) (b), insert :—

- (c) requiring the establishment, in the Special Deposits Account in the Treasury, of a Crown Solicitor's Trust Account; and
- (d) recommending the terms and minimum requirements upon which indemnity insurance should be provided to solicitors and former solicitors.

(c) Section 87 (2A)—

After section 87 (2), insert :—

- (2A) Subject to subsection (2), the Governor may amend or rescind any regulation.
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