

LEGAL PRACTITIONERS (AMENDMENT) ACT 1987
No. 110

NEW SOUTH WALES



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LEGAL PRACTITIONERS (AMENDMENT) ACT 1987 No. 110

NEW SOUTH WALES



Act No. 110, 1987

An Act to amend the Legal Practitioners Act 1898 with respect to further legal education for solicitors and the establishment and management of the Solicitors' Mutual Indemnity Fund; and for other purposes. [Assented to 12 June 1987]

Legal Practitioners (Amendment) 1987

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 1987".

Amendment of Act No. 22, 1898

2. The Legal Practitioners Act 1898 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 2)

AMENDMENTS TO THE LEGAL PRACTITIONERS ACT 1898

(1) Section 70 (**Application for and issue of certificate**)—

Section 70 (4), (5)—

After section 70 (3), insert:

(4) The council may issue to an applicant a practising certificate that is subject to a condition requiring the holder to undertake and complete a specified course of further legal education.

(5) For the purposes of subsection (4), the Law Society Council shall arrange for the establishment and administration of courses of further legal education.

(2) Section 70A (**Certificates not to be issued in certain cases**)—

Omit the section.

SCHEDULE 1—*continued*AMENDMENTS TO THE LEGAL PRACTITIONERS ACT 1898—
continued(3) Section 71 (**Grounds for refusing certificate**)—

Section 71 (f)—

After section 71 (e), insert:

; or

(f) in the opinion of the council, have failed to comply with a condition of his or her practising certificate imposed under section 70 (4), or by regulations referred to in section 87 (1) (d), in relation to further legal education.

(4) Part IXA—

After Part IX, insert:

PART IXA

SOLICITORS' MUTUAL INDEMNITY FUND

Interpretation

74A. In this Part—

“approved insurance policy” means a policy of indemnity insurance that is an approved insurance policy as provided by section 74C;

“company” means the incorporated company formed as authorised by section 74B;

“Indemnity Fund” means the Solicitors' Mutual Indemnity Fund established by this Part;

“insurable solicitor” means a solicitor required by the regulations to be an insured solicitor.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE LEGAL PRACTITIONERS ACT 1898—
continued

Solicitors' Mutual Indemnity Fund

74B. (1) There shall be a Solicitors' Mutual Indemnity Fund consisting of—

- (a) the money paid on account of the Indemnity Fund by insurable solicitors either as annual contributions or as levies under this Part;
- (b) the interest or other income accruing from investment of the money in the Indemnity Fund;
- (c) any other money lawfully paid into the Indemnity Fund;
- (d) investments made under section 74E; and
- (e) such other assets as are acquired as part of the Indemnity Fund.

(2) The Law Society may cause to be formed under the Companies (New South Wales) Code an incorporated company with directors appointed by the Law Society Council and having power to manage the Indemnity Fund in accordance with this Part.

(3) The company may arrange with an insurer for insurance of the Indemnity Fund or any part of it.

(4) The Indemnity Fund is the property of the Law Society and may be used only for the purposes of this Part.

Solicitor to be insured etc.

74C. (1) The Law Society Council may not issue a practising certificate to an insurable solicitor unless it is satisfied that there is, or will be, in force with respect to the solicitor an approved insurance policy.

(2) A policy of indemnity insurance is an approved insurance policy if—

- (a) the policy is not to expire before the expiration of the practising certificate of the solicitor to whom the policy relates;

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SCHEDULE 1—*continued*AMENDMENTS TO THE LEGAL PRACTITIONERS ACT 1898—
continued

(b) the insurer and the terms of the policy have been approved by the Attorney General by order in writing given to the Law Society Council; and

(c) any conditions imposed by the order are complied with.

(3) The Law Society Council may not issue a practising certificate to an insurable solicitor whose application for the practising certificate is not accompanied by—

(a) an application for an approved insurance policy and the premium payable; and

(b) the contribution payable under section 74G.

Separate bank account

74D. The company shall maintain with a bank in New South Wales a separate account with the name "Solicitors' Mutual Indemnity Fund".

Investment of the Indemnity Fund

74E. (1) Money in the Indemnity Fund that is not immediately required for the purposes of the Fund may be invested—

(a) in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds;

(b) on deposit with the Treasurer;

(c) in the purchase of securities or shares listed on a stock exchange in Australia;

(d) in the acquisition of an interest in real estate in Australia;
or

(e) in bills of exchange drawn, accepted or endorsed by a bank.

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SCHEDULE 1—*continued*AMENDMENTS TO THE LEGAL PRACTITIONERS ACT 1898—
continued

(2) In this section—

“bank” means—

- (a) a bank constituted by a law of the State or of the Commonwealth or another State; or
- (b) a bank within the meaning of the Banking Act 1959 of the Commonwealth.

Payments from the Indemnity Fund

74F. (1) There shall be paid from the Indemnity Fund in such order as the company decides—

- (a) the expenses incurred by the company in carrying on its business;
- (b) such amount as the company determines towards meeting any difference between the indemnity provided by the approved insurance policy required by section 74C and the liability of a person insured under the policy; and
- (c) such other amounts as the company determines.

(2) The company may make determinations under subsection (1)—

- (a) that differ according to different circumstances; or
- (b) that are subject to compliance with conditions imposed by the company,

or that do both.

(3) The company may—

- (a) divide insured persons into classes approved by the Law Society Council; and
- (b) fix for each of the classes the maximum amount of a determination under subsection (1) (b).

SCHEDULE 1—*continued*AMENDMENTS TO THE LEGAL PRACTITIONERS ACT 1898—
*continued***Contributions**

74G. (1) An insurable solicitor is liable to pay to the Indemnity Fund an annual contribution of an amount determined by the company and approved by the Law Society Council.

(2) The company may—

- (a) divide solicitors into classes approved by the Law Society Council; and
- (b) under subsection (1) make a different determination for each of the classes.

(3) If a solicitor applies for a practising certificate that will be in force for part only of a year commencing on 1 July, the contribution is such proportion of the amount determined for the solicitor under subsection (1) as is borne to 1 year by the number of days for which the practising certificate will be in force.

(4) The contribution under subsection (1) that accompanies an application for a practising certificate shall be paid by the Law Society to the company for credit of the Indemnity Fund.

Levies

74H. (1) If the company is at any time of the opinion that the assets of the Indemnity Fund may be insufficient to meet its liabilities, the company may impose on each insurable solicitor a levy payable to the company on account of the Indemnity Fund.

(2) A levy shall be of such amount as the company determines and may differ according to the different factors in relation to which contributions under this Part have been determined.

(3) A levy is payable at the time, and in the manner, fixed by the company which may, in a special case, allow time for payment.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE LEGAL PRACTITIONERS ACT 1898—
continued

Failure to pay contribution or levy

74I. If, after being given written notice, an insurable solicitor fails to pay a premium, contribution or levy in accordance with this Part—

- (a) the company shall report the failure to the Law Society Council; and
- (b) while the failure continues, the solicitor's practising certificate is suspended.

Application of Part to other persons

74J. The company may apply this Part (sections 74C and 74I excepted) to persons who—

- (a) are not insurable solicitors;
- (b) are within a class of persons approved by the Law Society Council for the purposes of this section;
- (c) are insured under a policy of insurance that, if the persons were approved solicitors, would be an approved policy of indemnity insurance for the purposes of section 74C; and
- (d) pay to the Indemnity Fund such contributions and levies as the company determines and the Law Society Council approves.

(5) Section 83A (**Protection of council etc.**)—

- (a) After "council or" where firstly occurring, insert "the company formed and incorporated as authorised by section 74B or a director of the company or".
- (b) After "council or" where secondly occurring, insert "the company or a".
- (c) After "council or" where thirdly occurring, insert "the company or a director of the company or".

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SCHEDULE 1—*continued*

AMENDMENTS TO THE LEGAL PRACTITIONERS ACT 1898—
continued

(6) Section 87 (**Governor's power to make regulations**)—

(a) Section 87 (1) (c)—

Omit “and”.

(b) Section 87 (1) (d), (e)—

Omit section 87 (1) (d), insert instead:

(d) imposing by the regulations conditions to which an annual practising certificate is to be subject, including conditions requiring a solicitor to undertake and complete a prescribed course of further legal education; and

(e) the establishment and administration of courses of further legal education.