



**LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT ACT  
1999**

**No. 84 of 1999**

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**ELIZABETHAE II REGINAE**

**A.D. 1999**

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**No. 84 of 1999**

**An Act to amend the Legal Practitioners Act 1981.**

*[Assented to 2 December 1999]*

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Legal Practitioners (Miscellaneous) Amendment Act 1999*.

(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.

**Amendment of s. 5—Interpretation**

3. Section 5 of the principal Act is amended—

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

"mortgage financing" means facilitating a loan secured by mortgage by—

- (a) acting as an intermediary to match a prospective lender and borrower; and
- (b) subsequently arranging the loan; and
- (c) receiving or dealing with payments for the purposes of, or under, the loan,

but does not include the provision of legal advice or the preparation of an instrument;;

- (b) by inserting in the definition of "trust money" in subsection (1) ", but does not include money received by a practitioner in the course of mortgage financing" after "equity".

**Insertion of s. 23AA**

4. The following section is inserted after section 23 of the principal Act:

**Employment of disqualified person**

**23AA.** (1) Subject to this section, if a legal practitioner is a party to an agreement or arrangement to employ or engage, in connection with the practitioner's legal practice—

- (a) a person whose practising certificate is under suspension (whether a practising certificate under this Act or an interstate practising certificate); or
- (b) a person whose name has been struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act (unless the person has been re-admitted),

the practitioner is guilty of an offence.

Maximum penalty: \$10 000.

(2) It is a defence to a charge of an offence under subsection (1) to prove that the defendant did not know, and could not reasonably be expected to have known, that the person's practising certificate was under suspension or that the person's name had been struck off a roll of legal practitioners.

(3) On application, the Tribunal may authorise a legal practitioner to be a party to an agreement or arrangement of a kind referred to in subsection (1), subject to conditions (if any) specified by the Tribunal.

(4) An application for such an authorisation may be made to the Tribunal by—

- (a) a legal practitioner; or
- (b) a person whose practising certificate is under suspension or whose name has been struck off a roll of legal practitioners.

(5) The Tribunal may grant such an authorisation in its discretion but only if satisfied—

- (a) that the person to be employed or engaged will not practise the profession of the law; and
- (b) that granting the authorisation on the specified conditions (if any) is not likely to create a risk to the public.

(6) For the purposes of a hearing of an application under this section, the Tribunal is constituted of a panel of three of its members chosen by the presiding member (one of whom may be the presiding member).

(7) The Tribunal must give to the Board, and to any person on whose application a hearing is to be held, not less than seven days written notice of the time and place at which it intends to conduct the hearing, and must afford the Board, and any such person, a reasonable opportunity to call and give evidence, to examine witnesses, and to make submissions to the Tribunal.

(8) Subject to this section, sections 80, 84, 84B, 85, 86 and 88 apply to a hearing of an application under this section in the same way as to proceedings before the Tribunal under Part 6.

(9) Where an application is granted by the Tribunal, and the Tribunal or the Supreme Court is satisfied that an appeal against the authorisation has been instituted, or is intended, it may suspend the operation of the authorisation until the determination of the appeal.

(10) Where the Tribunal has suspended the operation of an authorisation under subsection (9), the Tribunal may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

(11) A legal practitioner must comply with any conditions imposed on an authorisation by the Tribunal or the Supreme Court.

Maximum penalty: \$10 000.

(12) A legal practitioner is not guilty of an offence against this section in relation to an agreement or arrangement to which the practitioner is a party at the commencement of this section if—

- (a) the agreement or arrangement is authorised under this section on an application made within 12 months after that commencement; and
- (b) the legal practitioner complies with any conditions imposed on the authorisation.

#### **Substitution of s. 66**

5. Section 66 of the principal Act is repealed and the following section is substituted:

#### **Claims by legal practitioners**

**66.** (1) A legal practitioner who has paid compensation to any person for pecuniary loss suffered in consequence of a fiduciary or professional default by a partner, clerk or employee of the legal practitioner may make a claim under this Part in respect of the payment provided that, in the case of a fiduciary or professional default by a partner, the default consisted of a defalcation, misappropriation or misapplication of trust money or dishonest conduct.

(2) A claim of a kind referred to in subsection (1) is not a valid claim for the purposes of this Part unless the Society is satisfied that—

- (a) all legal or equitable claims in respect of the fiduciary or professional default (other than this claim against the guarantee fund) have been fully satisfied; and
- (b) the legal practitioner acted honestly and without negligence.

**Insertion of s. 95BA**

6. The following section is inserted after section 95B of the principal Act:

**Mortgage financing**

**95BA.** (1) On and from the commencement of this section, mortgage financing is not to be regarded as part of the practice of the profession of the law.

(2) A legal practitioner who engages in mortgage financing must inform each prospective lender and borrower, orally and in writing, that any loss suffered as a result of mortgage financing will not be compensated by the guarantee fund or covered by professional indemnity insurance required under this Act.

Maximum penalty: \$10 000.

(3) It is not the intention of the Parliament that any implication be drawn from this Act (or the Act that inserted this section) that mortgage financing when engaged in by a legal practitioner before the commencement of this section was part of the practice of the profession of the law.

**Transitional**

7. The amendments to the principal Act made by this Act do not affect—

- (a) any right to compensation under Part 5 of the principal Act for loss suffered as a result of mortgage financing where the instructions to engage in the mortgage financing were taken before the commencement of this Act; or
- (b) any right to compensation under the principal Act for loss suffered by a legal practitioner in consequence of a fiduciary or professional default by a partner, clerk or employee of the legal practitioner where the fiduciary or professional default was committed before the commencement of this Act.

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

E. J. NEAL Governor