

Legal Profession Practice (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 25 October 1995

(Brought in by Mrs Wade and Mr Gude)

A BILL

to amend the **Legal Profession Practice Act 1958** and for other purposes.

Legal Profession Practice (Amendment) Act 1995

The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is to amend the **Legal Profession Practice Act 1958**—

- (a) to require solicitors to pay a contribution to the Solicitors' Guarantee Fund;
- (b) to exclude certain claims against the fund;
- (c) to reduce the incidence of claims against the fund by imposing certain obligations on solicitors in relation to direct mortgages.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

2. Commencement

- (1) This Act, except section 9, comes into operation on the day on which it receives the Royal Assent.
- (2) Section 9 comes into operation on a day to be proclaimed. 5
- (3) If section 9 has not come into operation before 1 April 1996, it comes into operation on that day.

3. Principal Act

In this Act the **Legal Profession Practice Act 1958** is called the Principal Act. 10

No. 6291.
Printed to
No. 37/1993
and
subsequently
amended by
Nos 70/1993,
14/1994,
18/1994,
104/1994,
109/1994,
43/1995 and
48/1995.

4. Part IV definitions

In section 39 (1) of the Principal Act, after the definition of “bank” insert—

“**direct mortgage**” has the meaning given in section 51 (1);’ 15

5. New section 40AA inserted

After section 40 of the Principal Act insert—

“40AA. Direct mortgages

- (1) A solicitor must not receive for or on behalf of any person any payment or repayment of principal under a direct mortgage entered into on or after the commencement of section 5 of the **Legal Profession Practice (Amendment) Act 1995** in any form other than— 20

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(a) a cheque drawn by the lender or the mortgagor; or

(b) a bank cheque or bank draft—

payable to the order of the mortgagor or the lender.

(2) A solicitor who receives a cheque or draft referred to in sub-section (1) must forthwith pay the cheque or draft to the person to whose order it is payable or as such person directs.

(3) Any solicitor who—

(a) contravenes sub-section (1) or (2) is guilty of an offence and is liable to a penalty not exceeding 20 penalty units; or

(b) with intent to defraud contravenes sub-section (1) or (2) is guilty of an indictable offence and is liable to a penalty not exceeding 100 penalty units or to imprisonment for a term not exceeding 2 years or both.”.

6. Part V definitions

(1) In section 51 (1) of the Principal Act—

(a) **insert** the following definitions—

“**direct mortgage**” means a mortgage in relation to which—

(a) the mortgagee is a financial institution; or

(b) the lender and the mortgagor are the only parties to the document or documents creating, or setting out the terms of, the mortgage;

“**financial institution**” means—

(a) a bank; or

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- (b) a financial body within the meaning of the AFIC (Victoria) Code; or
- (c) a person (other than a solicitor) whose sole or principal business activities are the borrowing of money and the provision of finance; or 5
- (d) a person (other than a solicitor) who is, or is a member of a class of persons that is, prescribed as a financial institution for the purposes of this Part; 10

“**mortgage**” includes a charge, security, bill of sale, loan contract and any other document purporting to secure or regulate the repayment of money but does not include a terms contract of sale of land;’ . 15

- (2) After section 51 (2) of the Principal Act **insert**—
 - “(3) The Governor in Council may make regulations for or with respect to prescribing persons or classes of persons whose business activities include the borrowing of money or the provision of finance or both as financial institutions for the purposes of this Part.”. 20

7. Amendment of section 53

In section 53 (3) of the Principal Act, after paragraph (a) **insert**— 25

“(ab) all contributions paid to the institute under section 61A;”.

8. New sections 61A, 61B, 61C and 61D inserted

After section 61 of the Principal Act **insert**— 30

“61A. Additional contribution for 1996

- (1) Each person—

(a) who is or becomes a solicitor at any time during 1996; and

(b) who is a member of a class of persons specified in the determination of the Attorney-General under sub-section (2)—

must pay to the institute the contribution to the fund determined by the Attorney-General under sub-section (2) as the contribution payable by a person who is a member of that class.

(2) On or before 31 December 1995, the Attorney-General must determine the classes of persons required to pay a contribution under this section and the contribution payable by members of each class (not exceeding \$1500 per member), according to any or all of the following—

(a) the type of practising certificate held, or applied for, by members of the class;

(b) the date on which applications for a practising certificate are made by members of the class;

(c) the number and type of practising certificates (if any) previously held by members of the class;

(d) whether members of the class practise or will practise as solicitors solely on their own account, or in partnership with any other persons or upon terms of sharing with any other persons the remuneration for any business;

- (e) whether members of the class at any time during 1995 received money from a client to be lent on the security of a mortgage, other than a direct mortgage. 5
- (3) As soon as practicable after making the determination, the Attorney-General must—
- (a) cause notice of the determination to be published in the Government Gazette; and 10
- (b) give written notice of the determination to the institute.
- (4) The secretary must cause notice of the determination to be published in the next issue of the Law Institute Journal after the notice is received from the Attorney-General under sub-section (3) (b). 15
- (5) The secretary must give the Attorney-General on request any information required by the Attorney-General for the purpose of making the determination under sub-section (2). 20 25
- (6) The contribution payable by a person under this section is in addition to any contribution paid or payable by the person under section 59 and any levy paid or payable by the person under section 61. 30
- (7) Nothing in section 60 has the effect of freeing or discharging a person from liability to pay a contribution that is payable under this section. 35

61B. *When is contribution payable?*

A person must pay a contribution required to be paid under section 61A—

(a) in the case of a person who is a solicitor on 1 January 1996, on or before 31 March 1996;

(b) in the case of a person who becomes a solicitor after 1 January 1996 (whether or not the person was a solicitor at any time in the past), at the same time as the person applies for a practising certificate.

61C. *What happens if a person fails to pay?*

(1) If a person referred to in section 61B (1) (a) does not pay the contribution required to be paid by the person under section 61A by 31 March 1996, the person's practising certificate is, by force of this section, suspended until such time as the contribution is paid.

(2) The secretary must refuse to issue a practising certificate to a person referred to in section 61B (1) (b) until such time as the person pays the contribution required to be paid by the person under section 61A.

(3) This section applies despite anything to the contrary in Division 4 of Part V.

61D. *Employer must pay or reimburse employee*

(1) The employer of a person who is required to pay a contribution under section 61A may pay the contribution on behalf of the person.

- (2) If the employer of a person who is required to pay a contribution under section 61A does not pay the contribution on behalf of the person, the employer must, at the request of the person, reimburse the person the amount of the contribution paid by the person within 21 days after the request. 5

Penalty: 100 penalty units.”.

9. Claims against the Solicitors’ Guarantee Fund 10

In section 64 (4) of the Principal Act, at the end of paragraph (c) insert—

“; or

- (d) any defalcation arising out of anything done or omitted to be done by the solicitor, firm or member of the firm (as the case requires) in connection with a mortgage, other than a direct mortgage, for which the principal sum of money, or any part of it, was lent on or after the commencement of section 9 of the **Legal Profession Practice (Amendment) Act 1995** or, having been lent before that commencement, is re-lent on or after that commencement without having been repaid to the client who lent it; or 15 20 25
- (e) in respect of a defalcation arising out of the investment or re-investment of any money by the solicitor, firm or member of the firm (as the case requires) on or after the commencement of section 9 of the **Legal Profession Practice (Amendment) Act 1995** that is not— 30
- (i) merely incidental to the practice of a solicitor engaged in by the solicitor or the firm or any of the members of the firm; or
- (ii) done in the course of or in connection with the administration of the estate of a deceased person or a represented person or 35

protected person within the meaning of the
**Guardianship and Administration
Board Act 1986.”.**

