

LEGISLATIVE COUNCIL

Read 1° 15 September 1987

(Brought in by the Honourable J. H. Kennan)

A BILL

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

Legal Profession Practice (Professional Indemnity) Act 1987

The Parliament of Victoria enacts as follows:

Purpose.

- 5 1. The purpose of this Act is to make further provision relating to professional indemnity insurance and to make certain other amendments to the *Legal Profession Practice Act 1958*.

Commencement.

2. (1) Subject to sub-section (2), this Act comes into operation on a day to be proclaimed.
- 10 (2) Sections 4 (1) and 10 (2) shall be deemed to have come into operation on 1 January 1986.

Principal Act.

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

No. 6291.
Reprinted to
No. 10252 and
amended by
Nos. 38/1986,
59/1986
and 110/1986.

Validation of Professional Indemnity Insurance Regulations.

4. (1) The Professional Indemnity Insurance Regulations 1985 are hereby declared to be valid.

(2) Everything done or purporting to have been done under the Professional Indemnity Insurance Regulations 1985 before the date on which this Act receives the Royal Assent that, if the regulations had been valid, could have been done under those regulations shall be deemed to have been validly done. 5

Amendment of Principal Act.

5. Section 88A of the Principal Act is amended as follows: 10

(a) After the definition of "Committee" insert—

“Former solicitor” means a person who was at any time a solicitor insured under this Division and who has ceased to be a solicitor within the meaning of this Part;.

(b) In the definition of "Professional indemnity insurance" for "any description of civil liability (other than prescribed descriptions of civil liability)" substitute "civil liability". 15

Functions and powers of Committee.

6. (1) In section 88H of the Principal Act—

(a) in sub-section (1) (b) omit "and the regulations"; and 20

(b) in sub-section (2) (a) omit "subject to and in accordance with the regulations (if any)".

(2) After section 88H (2) of the Principal Act insert—

“(2A) The Committee, with the approval of the council, may determine— 25

(a) the amount of contribution payable by classes of solicitors, former solicitors or firms of solicitors for each class of contract of professional indemnity insurance; and

(b) the period for which professional indemnity insurance is provided for each class of contract; and 30

(c) the date on which contributions are payable; and

(d) the rate of interest payable on contributions not paid by the due date; and

(e) the date on which the number of employees of a solicitor or firm of solicitors should be assessed for the purpose of determining the contribution payable by that solicitor or firm of solicitors; and 35

(f) any other terms and conditions of any class of contract of professional indemnity insurance.”. 40

(3) After section 88H (3) of the Principal Act insert—

“(4) The Committee with the approval of the council, may exempt from compliance with this Division solicitors, former solicitors or firms of solicitors or classes of solicitors, former solicitors or firms of solicitors indefinitely or for a specified period and subject to such conditions as are determined by the Committee with the approval of the council and may, in like manner, revoke any such exemption.”

10 **Solicitors Liability Fund.**

7. (1) Section 88I of the Principal Act is amended as follows:

(a) In sub-section (4) (b) omit “in accordance with the regulations”;

(b) After sub-section (5) (b) insert—

“*(ba)* subject to sub-section (6), in a futures contract within the meaning of the *Futures Industry (Victoria) Code*, or”.

(2) After section 88I (5) of the Principal Act insert—

“*(6)* The Committee must not invest in any futures contract referred to in sub-section (5) (*ba*) except in accordance with guidelines approved for the time being by the council and the Minister.”.

Annual contributions.

8. Section 88K of the Principal Act is amended as follows:

(a) Omit “(1)”;

(b) After paragraph (a) insert—

“*(aa)* is a solicitor for whom a contribution is required to be paid by another person and the contribution has been paid; or”;

(c) In paragraph (b) omit “under the regulations”;

(d) Sub-section (2) is repealed.

Payment of certain amounts in respect of claims.

9. In section 88M (1) of the Principal Act omit “the regulations or”.

Regulations.

10. (1) In section 88N of the Principal Act—

(a) for “, the council and the institute” substitute “and the council”; and

(b) paragraphs (a), (b), (c) and (d) are repealed.

(2) The Principal Act is amended as follows:

(a) In section 15 (1), in paragraph (a) of the definition of misconduct, for “88A” substitute “88N”;

(b) In section 84 (1) for paragraph (ga) substitute—

“(ga) fails to pay an amount of contribution that he or she is liable to pay under Division 5A;”.

Institute may guarantee Committee.

11. For section 88O of the Principal Act substitute—

Institute may guarantee Committee.

“88O. The institute may, in relation to any contract or arrangement made, or liability undertaken, by the Committee under contracts of professional indemnity insurance with solicitors, former solicitors and firms of solicitors—

(a) enter into a guarantee with an insurer or other person against liability that may be incurred by the insurer or other person; or

(b) enter into a contract of indemnity with the Committee under which the institute indemnifies the Committee against liability that may be incurred by the Committee.”.

Amendment of sections 88 and 104B.

12. (1) In section 88 (2) of the Principal Act—

(a) after paragraph (c) insert—

“(d) shall be published in the *Government Gazette*”; and

(b) in paragraph (e) for “and publication” substitute “of publication”.

(2) In section 104B of the Principal Act for sub-section (1) substitute—

“(1) The council may apply to the court for the appointment of a receiver if the council is of the opinion—

(a) that any defalcation has been or may have been committed in relation to any trust account or trust fund of any solicitor; or

(b) that any person is unable to obtain payment of money or delivery of other property held or previously held by a solicitor for or on behalf of that person through—

(i) the mental or physical infirmity or death of the solicitor; or

(ii) the failure or inability of the solicitor to attend to his or her practice; or

- (iii) the striking off the roll of practitioners of the name of the solicitor or the suspension of the solicitor from practice; or
- 5 (iv) the cancellation or suspension of the solicitor's practising certificate; or
- 10 (v) the solicitor's contravention of or failure to comply with any Act, regulation or rule relating to his or her trust funds or trust accounts or the trust funds or trust accounts of any firm of solicitors of which he or she is a member."

Transitional provisions.

15 13. Division 5A of Part V of the Principal Act and regulations under that Division as in force immediately before the commencement of this section continue to have effect in relation to contracts of professional indemnity insurance entered into in accordance with that Division and those regulations before that commencement.

