



**LEGAL PRACTITIONERS (QUALIFICATIONS) AMENDMENT ACT
1998**

No. 12 of 1998

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SCHEDULE

Further Amendments of Principal Act



ANNO QUADRAGESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1998

No. 12 of 1998

An Act to amend the Legal Practitioners Act 1981.

[Assented to 2 April 1998]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Legal Practitioners (Qualifications) Amendment Act 1998*.

(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 striking out the definition of "approved auditor" and substituting the following definition:

"approved auditor"—*see section 33*;;

(b) by inserting after the definition of "Board" the following definition:

"Chief Justice" means the Chief Justice of the Supreme Court and includes an acting Chief Justice of the Supreme Court;;

(c) by inserting after the definition of "legal practitioner" the following definition:

"LPEAC" means the *Legal Practitioners Education and Admission Council* established under Division 1 of Part 2A;.

Insertion of Part 2A

4. The following Part is inserted after section 14A of the principal Act:

PART 2A
THE LEGAL PRACTITIONERS EDUCATION AND ADMISSION
COUNCIL AND THE BOARD OF EXAMINERS

DIVISION 1—THE LEGAL PRACTITIONERS EDUCATION AND
ADMISSION COUNCIL

Establishment of LPEAC

14B. (1) The *Legal Practitioners Education and Admission Council* ("LPEAC") is established.

(2) LPEAC—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued.

(3) Where an apparently genuine document purports to bear the common seal of LPEAC, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of LPEAC was duly affixed to that document.

(4) LPEAC has the powers of a natural person.

(5) LPEAC consists of—

- (a) the Chief Justice; and
- (b) the Attorney-General; and
- (c) three judges (each of whom is either a judge of the Supreme Court or a judge of the Federal Court) appointed by the Chief Justice; and
- (d) the Dean (or acting Dean) of the faculty or school of law at The University of Adelaide; and
- (e) the Dean (or acting Dean) of the faculty or school of law at The Flinders University of South Australia; and
- (f) a law student nominated in a manner determined by the Chief Justice and appointed by the Chief Justice; and
- (g) a legal practitioner appointed by the Attorney-General; and
- (h) four legal practitioners appointed by the Society (at least one of whom will, at the time of appointment, be a legal practitioner who is practising predominantly as a barrister).

(6) The Chief Justice and the Attorney-General may each appoint a person to act as his or her deputy at any meeting of LPEAC that the Chief Justice or the Attorney-General is unable to attend.

(7) The Chief Justice will be the presiding member of LPEAC.

Functions of LPEAC

14C. (1) LPEAC has the following functions:

- (a) to make rules prescribing—
 - (i) the qualifications for admission of a person as a barrister and solicitor of the Supreme Court; and
 - (ii) the qualifications for the issue and renewal of practising certificates, including requirements for post-admission education, training or experience;
- (b) to participate in the development of uniform national standards relating to the qualifications necessary for persons practising the profession of the law;
- (c) to keep the effectiveness of legal education and training courses and post-admission experience under review so far as is relevant to qualifications for legal practice;
- (d) to perform any other functions assigned to LPEAC by this Act.

(2) A rule made under this section may leave a matter to be determined according to the discretion of LPEAC or the Supreme Court.

(3) Subject to subsection (4), a rule requiring legal practitioners to undertake further education or training or obtain further experience may only be made under this section with the concurrence of the Attorney-General.

(4) A rule requiring legal practitioners who have been practising the profession of the law for less than two years to undertake further education or training or obtain further experience within a time specified in the rule, or providing for extensions of the specified time to be granted, may be made without the concurrence of the Attorney-General.

Conditions of membership

14D. (1) Subject to this Act, an appointed member of LPEAC (other than the member appointed as a law student) will be appointed for a term of office of three years and, on the expiration of a term of office, is eligible for reappointment.

(2) The member of LPEAC appointed as a law student will hold office for a term of one year.

(3) The Chief Justice may remove an appointed member of LPEAC from office for—

- (a) mental or physical incapacity to carry out official duties satisfactorily; or
- (b) neglect of duty; or
- (c) dishonourable conduct.

- (4) The office of an appointed member of LPEAC becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office; or
 - (c) resigns by written notice addressed to the Chief Justice; or
 - (d) in the case of a member who is a legal practitioner—ceases to be a legal practitioner or is disciplined under this Act or by the Supreme Court or under an Act or law of another State or Territory of the Commonwealth for regulating the conduct of persons practising the profession of the law; or
 - (e) in the case of a member appointed as a law student—ceases to be a law student; or
 - (f) is removed from office pursuant to subsection (3).

(5) On the office of a member of LPEAC becoming vacant, a person may be appointed in accordance with this Act to the vacant office but, where the office of a member of LPEAC becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

Procedures of LPEAC

14E. (1) Seven members of LPEAC (one of whom must be the presiding member or a judicial member of LPEAC) constitute a quorum of LPEAC, and no business may be transacted at a meeting of LPEAC unless a quorum is present.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of LPEAC is a decision of LPEAC.

(3) Subject to this section, each member of LPEAC is entitled to one vote on any matter arising for decision by LPEAC and, in the event of an equality of votes, the person presiding at the meeting is entitled to a second or casting vote.

(4) The member of LPEAC appointed as a law student is not to be counted for the purposes of determining whether a quorum is present and is not entitled to vote on any matter arising for decision by LPEAC.

(5) The presiding member will preside at any meeting of LPEAC at which the member is present and, in the absence of the presiding member, a judicial member chosen in a manner determined by the Chief Justice, will preside at the meeting.

(6) Subject to this Act, the business of LPEAC may be conducted in such manner as LPEAC may determine.

Validity of acts and immunity of members

14F. (1) An act or proceeding of LPEAC is not invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability attaches to a member of LPEAC for any act or omission by the member, or by LPEAC, in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties, under this Act.

Advisory Committees

14G. (1) LPEAC may appoint such advisory committees as LPEAC considers necessary for the purpose of providing LPEAC with expert advice on any matter to be determined by LPEAC.

(2) A member of an advisory committee holds office on terms and conditions determined by LPEAC.

(3) The procedures to be observed in relation to the conduct of the business of a committee will be—

- (a) as determined by LPEAC; or
- (b) insofar as the procedure is not determined under paragraph (a), as determined by the relevant committee.

Annual report

14H. (1) LPEAC must, on or before 31 October in each year, prepare and present to the Attorney-General a report on the operations of LPEAC for the last financial year.

(2) The Attorney-General must, within 12 sitting days after receiving a report from LPEAC, cause copies of the report to be laid before both Houses of Parliament.

DIVISION 2—THE BOARD OF EXAMINERS

Establishment of Board of Examiners

14I. (1) The *Board of Examiners* is established.

(2) The Board of Examiners will consist of 15 members appointed by the Chief Justice of whom—

- (a) one must be a Master of the Supreme Court; and
- (b) two must be persons nominated by the Attorney-General; and
- (c) 12 must be legal practitioners.

(3) A member of the Board of Examiners holds office on terms and conditions determined by the Chief Justice.

(4) The Chief Justice may appoint a person to be the deputy of the member of the Board of Examiners who is a Master of the Supreme Court and the deputy may, in the absence of the member, act in his or her place.

(5) The member of the Board of Examiners who is a Master of the Supreme Court will be the presiding member.

Functions of Board of Examiners

14J. The Board of Examiners has the functions and powers conferred on it under this Act or by LPEAC.

Procedures of Board of Examiners

14K. (1) Five members of the Board of Examiners (one of whom must be the presiding member or the presiding member's deputy) constitute a quorum of the Board, and no business may be transacted at a meeting of the Board of Examiners unless a quorum is present.

(2) Subject to this Act, the procedures to be observed in relation to the conduct of the business of the Board of Examiners will be—

- (a) as determined by LPEAC; or
- (b) insofar as the procedure is not determined under paragraph (a), as determined by the Board.

Validity of acts and immunity of members

14L. (1) An act or proceeding of the Board of Examiners is not invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability attaches to a member of the Board of Examiners for any act or omission by the member, or by the Board, in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties, under this Act.

Amendment of s. 15—Entitlement to admission

5. Section 15 of the principal Act is amended—

(a) by striking out subparagraph (i) of paragraph (c) and substituting the following subparagraph:

- (i) he or she has complied with—
 - (A) the rules of the Supreme Court relating to the admission of barristers and solicitors of the Supreme Court; and
 - (B) the rules made by LPEAC under this Act prescribing the qualifications for admission as a barrister and solicitor of the Supreme Court; or;

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) The Supreme Court must refer each application for admission and enrolment to the Board of Examiners for its report and recommendation on the application.

(3) The Board of Examiners may refer any matter raised by an application to LPEAC for its advice or, if the rules so provide, its determination.

(4) The Board of Examiners must, on or before the day on which its report and recommendation on an application is provided to the Supreme Court, provide the applicant with—

- (a) a copy of the report and recommendation; and
- (b) if the recommendation is that the application be rejected—a statement of the reasons for the recommendation.

(5) In this section—

"Board of Examiners" means the *Board of Examiners* established under Division 2 of Part 2A.

Substitution of s. 17A

6. Section 17A of the principal Act is repealed and the following section is substituted:

Conditions as to training, etc.

17A. (1) A practising certificate will, if the rules made by LPEAC under this Act so require, be issued or renewed subject to conditions determined by LPEAC—

- (a) requiring the holder of the certificate to undertake or obtain further education, training and experience required or determined under the rules; and
- (b) limiting the rights of practice of the holder of the certificate until that further education, training and experience is completed or obtained.

(2) LPEAC may, on such terms as it thinks fit, determine that such conditions will not apply, either wholly or in part, in relation to any practitioner or practitioners of a particular class.

(3) If the holder of a practising certificate issued or renewed subject to conditions under subsection (1) fails to satisfy LPEAC, in accordance with the rules, of compliance with the conditions, LPEAC may determine—

- (a) that further conditions (determined by LPEAC) are to be imposed; or
- (b) that the practising certificate is to be cancelled, or is not to be renewed, and no new practising certificate is to be issued to the person until stipulated conditions have been complied with,

(and a determination under this subsection takes effect on a date fixed by LPEAC).

(4) LPEAC may delegate any of its functions or powers under this section to the Board of Examiners.

(5) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and

(c) is revocable at will; and

(d) does not prevent LPEAC from acting in any matter.

(6) A decision of LPEAC or the Board of Examiners under this section may be appealed against to the Supreme Court by the person in relation to whom the decision was made or the Attorney-General or the Society.

(7) On such an appeal, the Supreme Court—

(a) may confirm, vary or reverse the decision of LPEAC or the Board of Examiners; and

(b) may make any consequential or ancillary order.

Repeal of s. 20A

7. Section 20A of the principal Act is repealed.

Amendment of s. 29—Alteration to memorandum or articles of association

8. Section 29 of the principal Act is amended by striking out subsections (2) and (3).

Amendment of s. 33—Audit of trust accounts, etc.

9. Section 33 of the principal Act is amended—

(a) by striking out from subsection (1)(a) "approved auditor" and substituting "auditor approved by the Supreme Court in accordance with the regulations (an "approved auditor")";

(b) by striking out subsections (2) and (3).

Amendment of s. 38—Regulations

10. Section 38 of the principal Act is amended by inserting after paragraph (a) the following paragraph:

(aa) prescribing qualifications for approved auditors generally or for specified classes of approved auditors; and.

Insertion of Division 14

11. The following Division is inserted immediately after section 52 of the principal Act:

DIVISION 14—MISCELLANEOUS

Rules of Supreme Court may assign functions or powers

52A. (1) The Supreme Court may, by rules of court, assign any functions or powers conferred on or vested in it under this Part—

(a) to a specified person or body; or

(b) to a person occupying a specified office or position.

(2) The rules of the Supreme Court may specify that an assignment of functions or powers under this section is subject to conditions and limitations.

(3) A decision made by a person or body acting in pursuance of an assignment of functions or powers under this section may, subject to the rules of the Supreme Court, be appealed against to the Supreme Court by the person in relation to whom the decision was made.

(4) On such an appeal, the Supreme Court—

- (a) may confirm, vary or reverse the decision; and
- (b) may make any consequential or ancillary order.

Amendment of s. 57—Guarantee fund

12. Section 57 of the principal Act is amended by inserting before paragraph (a) of subsection (4) the following paragraph:

- (aa) meeting any expenses incurred by LPEAC in exercising its functions and powers under this Act; and.

Amendment of s. 95—Application of certain revenues

13. Section 95 of the principal Act is amended—

(a) by striking out from subsection (1) "The Treasurer" and substituting "Subject to subsection (1aa), the Treasurer";

(b) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

- (a) an amount approved by the Attorney-General towards the Society's costs in exercising any powers or functions delegated to the Society under this Act; and;

(c) by inserting after subsection (1) the following subsection:

(1aa) If the Society collects practising certificate fees pursuant to an assignment of functions by the Supreme Court, the Society may retain a proportion of those fees approved by the Attorney-General for the purposes specified in subsection (1).;

(d) by striking out subsection (2) and substituting the following subsection:

(2) The Treasurer may, on the recommendation of the Attorney-General, make payments towards—

- (a) meeting any expenses incurred by LPEAC in exercising its functions and powers under this Act; and
- (b) defraying the costs of administering Part 6.

Further amendments of principal Act

14. The principal Act is further amended as set out in the schedule.

Transitional provision

15. (1) If, immediately before the commencement of section 6, a practising certificate is subject to conditions imposed under section 17A of the principal Act, those conditions will, on the commencement of section 6, be taken to be conditions imposed under section 17A of the principal Act as substituted by section 6.

(2) The *Legal Practitioners Education and Admission Council* may take action under section 17A of the principal Act as substituted by this Act in relation to non-compliance with any condition imposed under section 17A of the principal Act as in force before the commencement of section 6 as if the condition were a condition imposed under section 17A as so substituted (whether the non-compliance occurred before or after that commencement).

SCHEDULE
Further Amendments of Principal Act

Provision Amended	How Amended
Section 21(3)(h)	Strike out this paragraph.
Section 21(3)(m)	Strike out "licensed under the <i>Land Agents, Brokers and Valuers Act 1973</i> " and substitute "registered under the <i>Land Agents Act 1994</i> ". Strike out "registered manager or registered salesman in the agent's employment" and substitute "sales representative lawfully employed by the agent".
Section 21(3)(n)	Strike out "licensed under the <i>Land Agents, Brokers and Valuers Act 1973</i> " and substitute "registered under the <i>Land Agents Act 1994</i> ". Strike out "registered manager or registered salesman in the agent's employment" and substitute "sales representative lawfully employed by the agent".
Section 21(3)(o)	Strike out "licensed land broker" and substitute "conveyancer registered under the <i>Conveyancers Act 1994</i> ".
Section 21(3)(p)	Strike out "licensed land broker" and substitute "conveyancer registered under the <i>Conveyancers Act 1994</i> ".
Section 21(3)(q)	Strike out "licensed under the <i>Land Agents, Brokers and Valuers Act 1973</i> " and substitute "registered under the <i>Land Agents Act 1994</i> ". Strike out "licensed land broker" (first occurring) and substitute "conveyancer registered under the <i>Conveyancers Act 1994</i> ". Strike out "licensed land broker" (second and third occurring) and substitute, in each case, "conveyancer". Strike out from subparagraph (ii) " <i>Land Agents, Brokers and Valuers Act 1973</i> " and substitute " <i>Land and Business (Sale and Conveyancing) Act 1994</i> ".
Section 21(5)	Strike out from the definition of "business" " <i>Land Agents, Brokers and Valuers Act 1973</i> " and substitute " <i>Land and Business (Sale and Conveyancing) Act 1994</i> ".
Section 30	Strike out this section and substitute the following: Exemption from certain provisions of Corporations Law 30. The provisions of Part 3.7 of the <i>Corporations Law</i> do not apply to a company that is a legal practitioner.
Section 90(2)	Strike out " <i>Government Management and Employment Act 1985</i> " and substitute " <i>Public Sector Management Act 1995</i> ".
Section 96	Strike out subsections (1) and (4).

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

E. J. NEAL Governor