



New South Wales

# Legal Profession Amendment Act 1996 No 95

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New South Wales

## **Legal Profession Amendment Act 1996 No 95**

Act No 95, 1996

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An Act to amend the *Legal Profession Act 1987* with respect to the investigation and mediation of complaints against legal practitioners, the fixing and assessment of legal fees and other costs, the payment of money from the Solicitors' Fidelity Fund, the handling of money received by a solicitor and the admission of legal practitioners; to abolish the common law crime of being a common barrator; and for other purposes. [Assented to 26 November 1996]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Legal Profession Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Legal Profession Act 1987 No 109**

The *Legal Profession Act 1987* is amended as set out in Schedules 1–5.

**4 Amendment of other Acts**

Each Act specified in Schedule 6 is amended as set out in that Schedule.

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## **Schedule 1 Amendments relating to complaints and discipline**

(Section 3)

### **[ 1 ] Section 128 Application of Part**

Omit section 128 (2). Insert instead:

- (2) However, this Part does not apply:
  - (a) to a judicial officer within the meaning of the *Judicial Officers Act 1986*, or
  - (b) to a Justice of the High Court, or
  - (c) to a judge of a court created by the Parliament of the Commonwealth,

regardless of whether the unsatisfactory professional conduct or professional misconduct the subject of a complaint allegedly occurred before or after the person's appointment as such a judicial officer, Justice or judge.

### **[2] Section 141 Summary dismissal of complaints**

Omit section 141 (b). Insert instead:

- (b) if the complaint is vexatious, misconceived, frivolous or lacking in substance.

### **[3] Section 143 Consumer dispute**

Omit "client" wherever occurring in section 143.

Insert instead "person".

**[4] Section 148 Investigation of complaints by Council**

Insert after section 148 (2):

- (2A) The Law Society Council and the Bar Council may consult and cooperate when dealing with a complaint against a legal practitioner arising from the same, or related, facts as a complaint against another legal practitioner for which the other Council is the appropriate Council. For the purposes of this subsection, the Councils may exchange information concerning the complaints.

**[5] Section 152 Powers of Council or Commissioner when investigating complaint**

Omit section 152 (1). Insert instead:

- (1) For the purpose of investigating a complaint, a Council or the Commissioner may, by notice in writing served on any legal practitioner, require the legal practitioner to do any one or more of the following:
- (a) to provide written information, by a date specified in the notice, and to verify the information by statutory declaration,
  - (b) to produce, at a time and place specified in the notice, any document (or a copy of any document) specified in the notice,
  - (c) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.
- (IA) A Council or the Commissioner may inspect any document produced before the Council or Commissioner under this section and may retain it for such period as the Council or Commissioner thinks necessary for the purposes of an investigation in relation to which it was produced. A Council or the Commissioner may make copies of the document or any part of the document.

**[6] Section 152 (5)**

Insert after section 152 (4):

- (5) A legal practitioner must not mislead or obstruct a Council or the Commissioner in the exercise of any function under this Division. The wilful contravention of this subsection is capable of being professional misconduct.

**Note.** *Documents* has a wide meaning. The term is defined in the *Interpretation Act 1987* to mean any record of information. The term would include any file that was itself a record of information.

**[7] Section 158 Application for review**

Omit section 158 (1). Insert instead:

- (1) A complainant may apply to the Commissioner for a review of any of the following decisions made by a Council:
  - (a) a decision to dismiss a complaint made by the complainant,
  - (b) a decision to reprimand the legal practitioner because of the complaint,
  - (c) a decision to omit, from the allegations particularised in an information laid before the Tribunal in respect of a complaint, matter that was originally part of the complaint made to the Council.

**[8] Section 159 Reviews**

Omit section 159 (2). Insert instead:

- (2) The Commissioner may also review a Council's decision (of a type referred to in section 158 (1)) at the request of the Council or on the Commissioner's own initiative.

**[9] Section 160 Decision of Commissioner on review**

Insert after section 160 (1) (c):

- (c1) investigate any part of the complaint that was omitted by the Council from the allegations particularised in the information laid by the Council, or
- (c2) direct the appropriate Council to investigate, or re-investigate, any part of the complaint that was omitted by the Council from the allegations particularised in the information laid by the Council, or

**[10] Section 160 (2)**

Insert “, or to investigate part of a complaint” after “complaint” where firstly occurring.

**[11] Section 163 Composition of Tribunal**

Insert after section 163 (1) (b):

- (b1) in the case of two or more complaints concerning a solicitor and a barrister that have been joined in accordance with section 167 (4)—by 1 of its solicitor members, 1 of its barrister members and 1 of its lay members, or

**[12] Section 167 Institution of proceedings and hearings**

Omit “each such complaint” from section 167 (2).

Insert instead “each allegation particularised in the information”.

**[ 1 3 ] Section 167 (5)**

Insert after section 167 (4):

- (5) This includes the power to order, if it is in the interests of justice to do so, the joinder of
  - (a) more than one information against the same solicitor or barrister, or
  - (b) an information against one or more barristers and an information against one or more solicitors if all informations are founded on the same, or closely related, acts or omissions.

**[ 1 4 ] Section 167A**

Insert after section 167:

**167A Tribunal may vary an information**

- (1) The Tribunal may, on the application of a Council or the Commissioner who laid an information, vary the information laid so as to omit allegations or to include additional allegations if the Tribunal is satisfied, having regard to all the circumstances, that it is reasonable to do so.
- (2) Without limiting subsection (1), when considering whether or not it is reasonable to vary an information, the Tribunal is to have regard to whether varying the information will affect the fairness of the proceedings.

**[ 1 5 ] Section 171Q Protection from liability**

Omit section 171Q (1). Insert instead:

- (1) A matter or thing done or omitted to be done by:
  - (a) a Council, or
  - (b) any member of a Council, or
  - (c) any committee or subcommittee of a Council, or any member of a committee or subcommittee of a Council, or
  - (d) the Tribunal, or
  - (e) any member of the Tribunal, or

- (f) the Registrar of the Tribunal, or
- (g) the Commissioner, or
- (h) the Bar Association, or
- (i) the Law Society, or
- (j) a consultant engaged by the Commissioner pursuant to section 132 (4), or
- (k) a mediator to whom a dispute is referred under Division 4, or
- (l) any member of the staff of any of the above,

does not, if the matter or thing was done or omitted to be done in good faith for the purpose of the administration of this Part, subject any such member, the Commissioner, the Registrar, the consultant, the mediator or the member of staff personally to any action, liability, claim or demand.

**[ 1 6 ] Section 171R Certain persons not compellable witnesses**

Omit “neither competent nor” from section 171R (1).  
Insert instead “not”.

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## **Schedule 2 Amendments relating to legal fees and other costs**

(Section 3)

### **[1] Section 174A**

Insert after section 174:

#### **174A Application of Part to cross-vested matters**

- (1) The regulations may make provisions modifying the application of this Part to matters commenced in another jurisdiction and transferred to the Supreme Court of New South Wales under cross-vesting legislation of the Commonwealth or another State or Territory.
- (2) Without limiting subsection (1), the regulations may modify the application of this Part by removing an obligation that a legal practitioner would otherwise have (in relation to such matters) under this Part.

### **[2] Section 196 Regulations to provide for related costs**

Omit section 196 (1) (b). Insert instead:

- (b) fixing the costs payable for the enforcement of a lump sum debt or liquidated sum for damages,
- (b1) fixing the costs payable for the enforcement of a judgment by a judgment creditor,
- (b2) fixing the costs payable for legal services provided in respect of probate or the administration of estates,

### **[3] Section 203 How is an application to be made?**

Insert after section 203 (2):

- (3) The application must contain a statement by the applicant that there is no reasonable prospect of settlement of the matter by mediation.

**[4] Section 205 Mediation services**

Omit the section.

**[5] Section 206 Referral of matters to costs assessors**

Insert after section 206 (2):

- (3) If the proper officer is satisfied that it is inappropriate for a costs assessor to determine a particular application that has been referred to the costs-assessor, the proper officer may:
  - (a) revoke the referral of the application, and
  - (b) refer the application for assessment to another costs assessor.
- (4) An application that has been referred to another costs assessor under this section is to be dealt with as a new assessment or, if the proper officer so directs, by continuing the assessment.
- (5) When a referral has been revoked, the costs assessor to whom the application was initially referred must return all documents relating to the assessment of the application to the proper officer. This includes documents relating to any work done on the assessment and a statement of the amount calculated for costs in respect of any work done on the assessment.

**[6] Section 207 Costs assessor may require documents or further particulars**

Omit section 207 (1) and (2). Insert instead:

- (1) A costs assessor may, by notice in writing, require a person (including the applicant, the barrister or solicitor concerned, or any other barrister, solicitor or client) to produce any relevant documents of or held by the person in respect of the matter.

- (2) The costs assessor may, by any such notice, require further particulars to be furnished by the applicant, barrister, solicitor, client or other person as to instructions given to, or work done by, the barrister or solicitor or any other legal practitioner in respect of the matter and as to the basis on which costs were ascertained.

**[7] Section 207 (5)**

Omit the subsection. Insert instead:

- (5) If a person fails, without reasonable excuse, to comply with a notice under this section, the costs assessor may decline to deal with the application or may continue to deal with the application on the basis of the information provided.

**[8] Section 208F Assessment of costs—costs ordered by court or tribunal**

Insert after section 208F (1):

- (1A) An assessment must be made in accordance with the operation of the rules of the relevant court or tribunal that made the order for costs.

**[9] Section 208F (4)**

Omit “(including the costs of the costs assessor)”.

Insert instead “(including the costs of the parties to the assessment, and the costs assessor)”.

**[10] Section 208F**

Insert at the end of section 208F:

**Note.** Section 208JA provides for the recovery of the costs of a costs assessor.

**[11] Section 208H**

Omit the section. Insert instead:

**208H Effect of costs agreements in assessments of party/  
party costs**

- (1) A costs assessor may obtain a copy of, and may have regard to, a costs agreement.
- (2) However, a costs assessor must not apply the terms of a costs agreement for the purposes of determining appropriate fair and reasonable costs when assessing costs payable as a result of an order by a court or tribunal.

**[12] Section 208J Certificate as to determination**

Insert after section 208J (1):

- (1A) A costs assessor may issue more than one certificate in relation to an application for costs assessment. Such certificates may be issued at the same time or at different stages of the assessment process.

**[13] Section 208J (3)**

Insert “and with no further action,” after “money,”.

**[14] Section 208J (4)**

Insert after section 208J (3):

- (4) For this purpose, the amount of unpaid costs does not include the costs incurred by a costs assessor in the course of a costs assessment.

**[15] Section 208JA**

Insert after section 208J:

**208JA Recovery of costs of costs assessment**

- (1) This section applies when the costs of a costs assessor are payable by a party to the assessment (under section 182 (3), 208A (4) or 208F (4)).
- (2) On making a determination, a costs assessor may issue to each party a certificate that sets out the costs incurred by the costs assessor in the course of the costs assessment.
- (3) If the application for costs assessment has been dealt with by more than one costs assessor, the certificate can set out the costs of any other costs assessor.
- (4) The certificate is, on the filing of the certificate in the office or registry of a court having jurisdiction to order the payment of that amount of money, and with no further action, taken to be a judgment of that court for the amount of unpaid costs.
- (5) The proper officer of the Supreme Court may take action to recover the costs of a costs assessor.

**[16] Section 208M Appeal against decision of costs assessor by leave**

Insert after section 208M (4):

- (5) After deciding the questions the subject of the appeal, the Supreme Court or court or tribunal may, unless it affirms the costs assessor's decision, make such determination in relation to the application as, in its opinion, should have been made by the costs assessor.

**[17] Sections 208NA and 208NB**

Insert after section 208N:

**208NA Assessor can be a party to appeal**

A costs assessor can be made a party to any appeal against a determination or decision of the costs assessor only by the Supreme Court.

**208NB Notices of appeal**

A copy of every notice of appeal against a determination or decision of a costs assessor must be served on the proper officer of the Supreme Court by the party making the appeal.

**[18] Section 208O Costs fixed by regulations**

Omit “section 196 (1) (a) or (b)” from section 208O (1).  
Insert instead “section 196 (1) (a), (b), (b1) or (b2)”.

**[19] Section 208Q Referral of misconduct to Commissioner**

Insert after section 208Q (2):

(2A) A costs assessor may refer any failure by a legal practitioner to comply with a notice issued under section 207, or with any other provision of this Part, to the Commissioner.

**[20] Section 208SA**

Insert after section 208S:

**208SA Protection from liability**

A matter or thing done or omitted to be done by a costs assessor does not, if the matter or thing was done or omitted to be done in good faith for the purpose of the administration of this Part, subject any costs assessor personally to any action, liability, claim or demand.

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## **Schedule 3 Amendments relating to Solicitors' Fidelity Fund**

(Section 3)

### **[ 1 ] Section 76 Contributions**

Insert after section 76 (4):

- (4A) If a solicitor who has paid a contribution for a year ending on 30 June ceases to practise as a solicitor at any time before 30 June in that year, the Law Society may refund a part of the contribution at a rate determined by the Law Society Council.

### **[ 2 ] Section 80 Claims against Fidelity Fund**

Omit section 80 (4). Insert instead:

- (4) If a solicitor has failed to account or made a dishonest default, the Law Society Council may wholly or partly disallow a claim:
- (a) if satisfied that the claim does not have sufficient connection with practice as a New South Wales solicitor in Australia (for example, because the claim arises from the receipt or entrustment of money or valuable property that was received by or entrusted to a solicitor outside Australia and the act or omission giving rise to the claim occurred outside Australia), or
  - (b) if the person who made the claim knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission from which the failure to account or dishonest default arose, or
  - (c) if satisfied that the negligence of the person who made the claim contributed to the loss, or
  - (d) if satisfied that the conduct of the transaction with the solicitor was illegal, and the person who made the claim knew or ought reasonably to have known of that illegality, or

- (e) if satisfied that proper and usual records were not brought into existence during the conduct of the transaction (or were destroyed), and the person who made the claim knew or ought reasonably to have known that such records would not be kept or would be destroyed.

(4A) Subsection (4) does not limit the Law Society Council's power to otherwise disallow a claim.

**[3] Section 80A**

Insert after section 80:

**80A Reduction of claim**

A person is not entitled to recover against the Fidelity Fund in respect of a failure to account or dishonest default an amount greater than the balance of the pecuniary loss suffered by the person because of the failure to account or dishonest default after deducting the amount or value of all money or other benefits which in the opinion of the Law Society Council might but for the person's neglect or default have been received or recovered by the person from any source other than the Fidelity Fund in respect of the pecuniary loss.

**[4] Section 90D Proceedings against Law Society**

Omit section 90D (3). Insert instead:

- (3) A claimant may appeal to the Supreme Court against:
  - (a) a decision by the Law Society Council to wholly or partly disallow a claim, or
  - (b) a decision by the Law Society Council to reduce the amount allowed in respect of a claim, by virtue of section 80A, or
  - (c) a failure by the Law Society Council to determine a claim within such period as is prescribed by the regulations.

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## **Schedule 4 Amendments relating to legal practice**

(Section 3)

### **[ 1 ] Section 41 Solicitor to be insured and to make contributions**

Omit section 41 (1). Insert instead:

- (1) The Law Society Council must not issue a practising certificate to an insurable solicitor unless it is satisfied:
  - (a) that there is, or will be, in force with respect to the solicitor an approved insurance policy, and
  - (b) that any contribution or levy, or instalment of a contribution, that is payable by the solicitor under section 45 or 46 has been paid to the company.

### **[2] Section 41 (3)**

Omit the subsection.

### **[3] Section 44 Payments from the Indemnity Fund**

Insert at the end of section 44 (1) (a):

- , and
- (a1) premiums in respect of any approved insurance policy required by section 41, and

### **[4] Section 45 Contributions**

Omit section 45 (4). Insert instead:

- (4) A contribution required to be paid under this section must be paid to the company on account of the Indemnity Fund.
- (5) The company may permit a contribution to be paid by instalments under an arrangement approved by the Law Society Council.

**[5] Section 47 Failure to pay contribution or levy**

Omit “premium, contribution or levy”.

Insert instead “contribution, instalment of a contribution, or levy”.

**[6] Section 61**

Omit the section. Insert instead:

**61 Money received by solicitor on behalf of another**

- (1) A solicitor who, in the course of practising as a solicitor, receives money on behalf of another person:
  - (a) must pay the money, within the time prescribed by the regulations, into a general trust account in New South Wales at a bank, building society or credit union and must hold the money in accordance with the regulations relating to trust money, or
  - (b) if the person on whose behalf the money is received directs that it be paid or delivered to a third party free of the solicitor’s control, must ensure that the money is paid or delivered:
    - (i) before the end of the next working day or, if that is not practicable, as soon as practicable after the next working day, or
    - (ii) no later than the day allowed by the solicitor’s authority or instructions (if that day is later than the day allowed under subparagraph (i)), or
  - (c) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account or to a third party, must pay the money as directed and (if the money is to be held under the direct or indirect control of the solicitor) must hold the money in accordance with the regulations relating to controlled money.

- (2) In any of those three cases, the solicitor must hold the money exclusively for, and must disburse the money in accordance with the directions of, the person on whose behalf it is held.
- (3) This section:
- (a) does not prevent a solicitor from depositing money with the Law Society in compliance with section 64, but this section continues to apply to any money so deposited that is repaid to the solicitor, and
  - (b) does not prevent a solicitor from withdrawing or receiving, from trust money or controlled money:
    - (i) reimbursement for disbursements paid by the solicitor, or
    - (ii) money for disbursements to be paid by the solicitor, or
    - (iii) money due, or to accrue due, to the solicitor for costs,so long as the procedure prescribed by the regulations is followed, and
  - (c) does not affect any enforceable lien or claim that a solicitor has to any money, and
  - (d) does not prevent a solicitor from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or a controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied), and
  - (e) does not prevent a solicitor from holding, or disposing of, a cheque or other negotiable instrument payable to a third party if the solicitor does so on behalf of a client and in accordance with directions given by the client, and
  - (f) does not affect an authority that a solicitor has and that, apart from this section, is irrevocable.

- (4) A lien referred to in subsection (3) (d):
- (a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid, and
  - (b) may not be exercised unless the solicitor has delivered a bill of costs and disbursements to the client on whose behalf the money is held.
- (5) Money received by a solicitor on behalf of another person:
- (a) is not available for payment to a creditor of the solicitor, and
  - (b) is not liable to be taken in execution of any judgment, order or other process of any court or tribunal at the instance of a creditor of the solicitor,
- unless the creditor is the person on whose behalf the money is held by the solicitor.
- (6) If a Crown Solicitor's Trust Account is established as prescribed by the regulations, this section applies to money received by the Crown Solicitor from a person for whom, or a body for which, the Crown Solicitor acts.
- (7) If a trust account kept by a solicitor is, as authorised by or under the regulations, operated on by a person other than the solicitor, section 53 of the *Trustee Act 1925* does not apply to the person in relation to the operation on the trust account.
- (8) It is professional misconduct for a solicitor to wilfully contravene subsection (1) or (2).
- (9) In this section:
- controlled money*** means money required to be dealt with in accordance with subsection (1) (c) that, while under the direct or indirect control of the solicitor by whom or on whose behalf it is received, is for the time being held otherwise than in a general trust account at a bank, building society or credit union.

*trust money* means money required to be dealt with in accordance with subsection (1) (a).

- (10) A reference in subsection (1) to a third party does not include a reference to an associate of a solicitor.

**[ 7 ] Section 92 Supreme Court may appoint receiver**

Insert at the end of section 92 (1) (b):

, or

- (c) that the solicitor's practising certificate has been suspended,

## **Schedule 5 Miscellaneous amendments**

(Section3)

**[1] Section 3 Definitions**

Omit the definition of *bank* from section 3 (1).

**[2] Section 3 (1), definition of “money”**

Insert “, building society or credit union” after “bank” wherever occurring.

**[3] Part 2, Division 3, heading**

Omit “Character”.  
Insert instead “Suitability of candidate for admission”.

**[4] Section 11 Character and suitability of candidates**

Insert “and is otherwise suitable for admission” after “character”.

**[5] Section 12 Declaration en character and suitability**

Insert “and is otherwise suitable for admission” after “character” wherever occurring in section 12 (1) and (2).

**[6] Section 13 Early consideration of character and suitability**

Insert “or suitability for admission” after “character” in section 13 (1).

**[7] Section 13 (2)**

Omit the subsection.

**[8] Section 13A**

Insert after section 13:

**13A Admission Board may refer certain matters to Supreme court**

- (1) The Admission Board may refer to the Supreme Court any application for admission as a legal practitioner if, in the opinion of the Admission Board, it would be more practical in the circumstances of the case for the Supreme Court to consider whether or not the candidate is of good fame and character or is otherwise suitable for admission.
- (2) The Supreme Court has the same powers as the Admission Board to deal with an application and its decision on an application is taken to be a decision of the Admission Board.
- (3) On a referral under this section, the Supreme Court may make such order or declaration as it thinks fit.
- (4) Nothing in this section affects the operation of section 17.

**[9] Section 15 Binding effect of declaration**

Omit “section 14”. Insert instead “section 13A or 14”.

**[10] Section 16 Representation by Councils**

Insert “at an inquiry under section 13A or” after “Supreme Court” in section 16 (1).

**[11] Section 16 (3)**

Insert “, or before the Supreme Court under section 13A,” after “Board”.

**[12] Section 42 Separate account**

Insert “, building society or credit union” after “bank”.

**[13] Section 43 Investment of Indemnity Fund**

Insert “, building society or credit union” after “bank” in section 43 (e).

**[14] Section 59A**

Insert after section 59:

**59A Payment of costs of Advisory Council**

Any costs incurred in respect of the Advisory Council, including remuneration payable under Schedule 3, are to be paid (in accordance with section 67) from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund.

**[15] Section 64 Deposit of trust funds with Law Society**

Insert after section 64 (2):

(2A) Money is taken to have been deposited with the Law Society if it is deposited in the name of the Law Society with a bank, building society or credit union nominated by the Law Society in accordance with this section.

**[16] Section 65 Repayment of deposit with Law Society**

Insert at the end of section 65 (3) (b):

, or

(c) in an account with any bank, building society or credit union.

**[17] Section 67 Statutory Interest Account**

Insert “, building society or credit union” after “bank” in section 67 (1).

**[18] Section 67 (3)**

Insert after section 67 (3) (b):

- (b1) the costs of an inspection or investigation of the affairs of a solicitor or solicitors under section 55 (1) (including all costs incurred by the Law Society Council or on its behalf by its members, employees or agents in relation to any such inspection or investigation to the extent that such costs have not been recovered under section 55 (8)),
- (b2) the costs incurred in respect of the Advisory Council in exercising its functions for the purposes of this Act (see section 59A),
- (b3) the expenses of the management of a solicitor’s practice under Part 8A (see section 114G) including any reimbursement for damages (under section 114F),
- (b4) the costs incurred in respect of the costs assessors’ rules committee in exercising its functions for the purposes of this Act (see section 208R (4A)),

**[19] Section 67 (3E)**

Insert after section 67 (3D):

- (3E) The fact that money is paid out of the Statutory Interest Account by virtue of subsection (3) does not preclude the recovery of that money in accordance with this Act from any person liable to pay the money. Any such money recovered must be paid to the credit of the Statutory Interest Account.

**[20] Section 69 Relief for financial organisation**

Insert “, building society or credit union” after “bank” wherever occurring.

**[21] Section 71 Separate account**

Insert “, building society or credit union” after “bank” in section 71 (1).

**[22] Section 73 Payments from the Fidelity Fund**

Omit section 73 (1) (e).

**[23] Section 82 Special provisions relating to failure to account**

Insert “, building society or credit union” after “bank” in section 82 (1).

**[24] Section 97 Stop order on account**

Omit “a bank account” from section 97 (1).  
Insert instead “an account with a bank, building society or credit union”.

**[25] Section 97 (1)**

Omit “the bank”.  
Insert instead “the bank, building society or credit union”.

**[26] Section 97 (2) (a), (3), (4) and (5)**

Insert “, building society or credit union” after “bank” wherever occurring.

**[27] Section 99 Improper dealing with property**

Omit “a bank account” from section 99 (1) (a).  
Insert instead “an account with a bank, building society or credit union”.

**[28] Section 114F Manager may be reimbursed for damages**

Omit “from the Fidelity Fund” from section 114F (2).  
Insert instead “(in accordance with section 67) from the Statutory Interest Account”.

**[29] Section 114G Payment of expenses of management**

Omit “from the Fidelity Fund” from section 114G (1).  
Insert instead “(in accordance with section 67) from the Statutory Interest Account”.

**[30] Section 114K Termination of management**

Omit “Fidelity Fund”. Insert instead “Statutory Interest Account”.

**[31] Section 172D Registration and incorporation**

Omit “Corporate Affairs Commission” from section 172D (1).  
Insert instead “Director-General of the Department of Fair Trading”.

**[32] Section 172D (1)**

Omit “that Commission”. Insert instead “the Director-General”.

**[33] Section 172D (2)**

Omit “Corporate Affairs Commission is to certify under its seal”.  
Insert instead “Director-General of the Department of Fair Trading is to certify under the Director-General’s hand”.

**[34] Section 208R Rules of procedure for applications**

Insert after section 208R (4):

- (4A) Any costs incurred in respect of the committee are to be paid (in accordance with section 67) from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund.

**[35] Section 211 Protection from liability**

Omit “done or suffered”.

Insert instead “done, suffered or omitted to be done”.

**[36] Schedule 8 Savings, transitional and other provisions**

Insert at the end of clause 1A (1):

*Legal Profession Amendment Act 1996*

**[37] Schedule 8, clause 37 (1A)**

Insert after clause 37 (1):

- (1A) For the removal of doubt, Part 10 as substituted by the *Legal Profession Reform Act 1993* applies to the conduct of a barrister that occurred before the commencement of the *Legal Profession Act 1987* on 1 January 1988 and applies to any complaint made by any person, or initiated by the Bar Association, in respect of such conduct (whether the complaint was made or initiated before or after that commencement).

**[38] Schedule 8, Part 8**

Insert after clause 47:

**Part 8 Provisions consequent on enactment of  
Legal Profession Amendment Act 1996**

**48 Claims against Fidelity Fund**

- (1) Section 80 (4), as substituted by Schedule 3 [2] to the *Legal Profession Amendment Act 1996*, does not apply to a claim made before the commencement of that amendment.
- (2) Section 80A does not apply to a claim made before the commencement of Schedule 3 [3] to the *Legal Profession Amendment Act 1996*.

#### **49 Amendments relating to complaints**

An amendment made to Part 10 by Schedule 1 to the *Legal Profession Amendment Act 1996* applies to complaints made before the commencement of that amendment in the same way as it applies to complaints made after that commencement.

#### **50 Variation of information**

Section 167A applies to an information laid before the commencement of Schedule 1 [14] to the *Legal Profession Amendment Act 1996* in the same way as it applies to an information laid after that commencement.

#### **51 Protection from liability**

The amendments made to section 171Q apply to confer protection from liability on a person or body in respect of any matter or thing done or omitted to be done before the commencement of Schedule 1 [15] to the *Legal Profession Amendment Act 1996* in the same way as they apply in respect of a matter or thing done or omitted to be done after that commencement.

#### **52 Appeal against decision of cost assessor**

Section 208M applies to an appeal against a decision made before the commencement of Schedule 2 [16] to the *Legal Profession Amendment Act 1996* in the same way as it applies to an appeal against a decision made after that commencement.

## **Schedule 6 Amendment of other Acts**

(Section 4)

### **6.1 Defamation Act 1974 No 18**

#### **[1] Section 17J Matters arising under Legal Profession Act 1987**

Omit section 17J (1) (a). Insert instead:

- (a) for a publication to or by any of the following:
  - (i) the Bar Council,
  - (ii) a member of the Bar Council as such a member,
  - (iii) a committee or subcommittee of the Bar Council, or any member of a committee or subcommittee of the Bar Council,
  - (iv) the Law Society Council,
  - (v) a member of the Law Society Council as such a member,
  - (vi) a committee or subcommittee of the Law Society Council, or any member of a committee or subcommittee of the Law Society Council,
  - (vii) the Bar Association,
  - (viii) the Law Society,
  - (ix) the Legal Services Commissioner,
  - (x) the Legal Services Tribunal,

- (xi) any member of the staff of any of the above as such a member,

for the purpose of the making or referral of a complaint, or the investigation, hearing or review of a complaint, under Part 10 of the *Legal Profession Act 1987*, and

**[2] Section 17J (2)**

Omit section 17J (2). Insert instead:

- (2) This section extends to all publications made on or after 1 January 1988 (the date of commencement of this section) regardless of whether the body or person who made the publication, or to whom the publication was made, was at the relevant time a body or person referred to in subsection (1) (a).

**6.2 Maintenance and Champerty Abolition Act 1993 No 88**

**[1] Long title**

Omit “maintenance and champerty” where firstly occurring.  
Insert instead “maintenance, champerty and barratry”.

**[2] Section 1 Name of Act**

Omit “Maintenance and Champerty”.  
Insert instead “Maintenance, Champerty and Barratry”.

**[3] Section 4A**

Insert after section 4:

**4A Abolition of crime of being a common barrator (barratry)**

The offence of being a common barrator that but for this section would be punishable by the common law is abolished.

[Minister's second reading speech made in—  
Legislative Council on 24 October 1996  
Legislative Assembly on 30 October 1996]