

LEGAL PROFESSION (AMENDMENT) ACT 1989 No. 138

NEW SOUTH WALES



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LEGAL PROFESSION (AMENDMENT) ACT 1989 No. 138

NEW SOUTH WALES



Act No. 138, 1989

An Act to amend the Legal Profession Act 1987 in relation to practising certificates, fees and costs, the management of solicitors' practices and the constitution of certain bodies; and for other purposes. [Assented to 12 October 1989]

Legal Profession (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Legal Profession (Amendment) Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) The provisions of Schedule 1 (3) and (4), and section 3 in its application to those provisions, are to be taken to have commenced on 1 July 1988.

Amendment of Legal Profession Act 1987 No. 109

3. The Legal Profession Act 1987 is amended as set out in Schedules 1 - 6.

Consequential amendments to other Acts

4. Each Act specified in Schedule 7 is amended in the manner set out in that Schedule.

**SCHEDULE 1 - AMENDMENTS CONCERNING BARRISTERS'
PRACTISING CERTIFICATES**

(Sec. 3)

(1) Section 25 (**Practising as barrister**):

From section 25 (1) omit "a date determined by the Attorney General in consultation with the Bar Council and notified by the Governor by proclamation published in the Gazette", insert instead "1 July 1988".

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SCHEDULE 1 - AMENDMENTS CONCERNING BARRISTERS'
PRACTISING CERTIFICATES - *continued*

(2) Section 27 (**Application by barrister for practising certificate**):

From section 27 (2) omit ", after the date notified under section 25,".

(3) Section 32:

Omit the section, insert instead:

Issue of practising certificates to barristers

32. (1) A barrister:

- (a) who was admitted as a barrister before 1 July 1988;
- (b) who was practising as a barrister immediately before that date; and
- (c) who:
 - (i) had, before that date, read with another barrister under arrangements accepted by the Bar Association; or
 - (ii) had satisfactorily completed an appropriate period as a pupil before that date or who has satisfactorily completed an appropriate period as a pupil since that date,

is entitled to an unrestricted practising certificate.

(2) A barrister:

- (a) who is admitted as a barrister on or after 1 July 1988; and
- (b) who has satisfactorily completed an appropriate period as a pupil,

is entitled to an unrestricted practising certificate.

(3) A barrister:

- (a) who was admitted as a barrister before 1 July 1988 or who is admitted as a barrister on or after 1 July 1988; and

SCHEDULE 1 - AMENDMENTS CONCERNING BARRISTERS'
PRACTISING CERTIFICATES - *continued*

(b) who is a pupil whose period as a pupil is incomplete, is entitled to a practising certificate, subject to a condition requiring the holder to serve a specified period satisfactorily as a pupil.

(4) The Attorney General, if admitted as a barrister, is entitled to an unrestricted practising certificate.

(5) A barrister:

(a) who was admitted as a barrister before 1 July 1988 or who is admitted as a barrister on or after 1 July 1988; and

(b) who:

(i) is required to practise as a barrister as the holder of a statutory office under the Crown established by an Act;

(ii) is parliamentary counsel under a contract of service, or a contract for services, with the Crown;

(iii) is a barrister, or a member of a class or description of barristers, determined by the Bar Council for the purposes of this subsection; or

(iv) is a barrister, or a member of a class or description of barristers, prescribed by the regulations for the purposes of this subsection,

is entitled to a practising certificate which, at the discretion of the Bar Council, may be an unrestricted practising certificate or may be subject to such conditions as the Bar Council thinks fit, including:

(c) a condition requiring the holder to practise as a barrister as the holder of a statutory office under the Crown established by an Act;

(d) a condition requiring the holder to practise as a barrister only as parliamentary counsel under a

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SCHEDULE 1 - AMENDMENTS CONCERNING BARRISTERS'
PRACTISING CERTIFICATES - *continued*

contract of service, or a contract for services, with the Crown; or

- (e) any other condition determined by the Bar Council.
- (6) A barrister:
 - (a) who was admitted as a barrister before 1 July 1988 or who is admitted as a barrister on or after 1 July 1988;
 - (b) who, before being admitted as a barrister, had been admitted as a barrister in a jurisdiction outside New South Wales; and
 - (c) who practises mainly as a barrister in a jurisdiction outside New South Wales,

may be issued with a practising certificate which, at the discretion of the Bar Council, may be an unrestricted practising certificate or may be subject to such conditions as the Bar Council thinks fit.

(7) An entitlement that a barrister may have under subsection (5) or (6) does not restrict an entitlement that the barrister may have under any other subsection.

(8) An entitlement under this section of a barrister is subject to sections 27 and 35 (1), (1A) and (1B) and Part 10.

(9) In this section, "pupil" means a pupil in accordance with the rules of the Bar Association as in force from time to time.

(4) Section 35 (**Refusal, suspension or cancellation of practising certificate**):

After section 35 (1), insert:

(1A) The Bar Council may refuse to issue a practising certificate applied for by a barrister who is entitled to a practising certificate under section 32 but who is unable to satisfy the Council that he or she intends to practise as a barrister during the period for which the certificate, if issued, would be in force.

**SCHEDULE 1 - AMENDMENTS CONCERNING BARRISTERS'
PRACTISING CERTIFICATES - *continued***

(1B) The Bar Council may cancel, or by order suspend, a practising certificate held by a barrister who is not, in the opinion of the Council, practising as a barrister.

(1C) Subsections (1A) and (1B) do not apply to the Attorney General.

(5) **Schedule 8 (Savings and transitional provisions):**

From the definition of "notified date" in clause 4 omit "the date notified under section 25", insert instead "1 July 1988".

**SCHEDULE 2 - AMENDMENTS CONCERNING MANAGERS
FOR SOLICITORS' PRACTICES**

(Sec. 3)

(1) **Section 3 (Definitions):**

After the definition of "legal practitioner" in section 3 (1), insert:

"manager", in relation to a solicitor's practice, means a manager appointed for the time being under Part 8A;

(2) **Section 73 (Payments from the Fidelity Fund):**

After "this Part" in section 73 (1) (f), insert "or in respect of amounts paid or payable for the purposes of Part 8A".

(3) **Section 92 (Supreme Court may appoint receiver):**

After section 92 (5), insert:

(6) Nothing in this Part prevents a manager of a solicitor's practice from being appointed as a receiver of the solicitor's property.

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SCHEDULE 2 - AMENDMENTS CONCERNING MANAGERS
FOR SOLICITORS' PRACTICES - *continued*

(4) After Part 8, insert:

PART 8A - MANAGERS

Definitions

114A. (1) In this Part, the expressions "firm of solicitors" and "solicitor" have the same meanings as they have in Part 8.

(2) In this Part, the expression "expenses", in relation to a solicitor's practice, has the same meaning as it has in Part 8, but as if a reference in the definition of that expression in section 91 to a receiver were a reference to the manager of the solicitor's practice.

(3) In this Part, the expression "property", in relation to a solicitor, has the same meaning as it has in Part 8, and includes the property of the solicitor's practice.

Appointment of manager

114B. (1) The Law Society Council may appoint a manager for a solicitor's practice if it forms an opinion of the kind referred to in section 92 (2), or takes an action of the kind referred to in section 92 (3), in respect of the solicitor or, in the case of a firm of solicitors, in respect of each member of the firm.

(2) A person is not eligible to be appointed as the manager of a solicitor's practice unless the person is a solicitor who holds an unrestricted practising certificate.

(3) A person may not act as a solicitor in respect of a practice for which a manager has been appointed otherwise than as an employee of the manager.

(4) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the practice for which the manager is appointed.

SCHEDULE 2 - AMENDMENTS CONCERNING MANAGERS
FOR SOLICITORS' PRACTICES - *continued*

Powers of manager

114C. (1) The manager of a solicitor's practice may, subject to the terms of his or her appointment:

- (a) act as a solicitor on behalf of the existing clients of the practice;
- (b) accept instructions from, and act as a solicitor on behalf of, new clients;
- (c) dispose of, and otherwise deal with, any property in relation to the solicitor;
- (d) exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the practice;
- (e) incur such expenses as are reasonably related to the conduct of the practice; and
- (f) do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a) - (e),

as if he or she were the solicitor to whom the practice belongs.

(2) The manager of a solicitor's practice may not exercise any of the functions conferred by this section in relation to the affairs of a client of the practice unless the consent of the client has been obtained to the manager's exercise of those functions.

Management continues under receivership

114D. (1) The manager of a solicitor's practice may continue to exercise his or her functions under this Part even if a receiver is appointed under Part 8 in respect of the solicitor's property.

(2) The manager of a solicitor's practice for which a receiver is appointed must comply with any lawful direction given by the receiver in connection with the conduct of the practice.

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**SCHEDULE 2 - AMENDMENTS CONCERNING MANAGERS
FOR SOLICITORS' PRACTICES - *continued***

Acts of manager to be taken as acts of solicitor

114E. (1) An act done by the manager of a solicitor's practice is, for the purposes of any proceedings or transaction that relies on that act, to be taken to have been done by the solicitor.

(2) Nothing in this section subjects a solicitor to any personal liability in relation to any act done by the manager of the solicitor's practice.

Manager may be reimbursed for damages

114F. (1) The Law Society may reimburse a manager for any damages and costs recovered against the manager, or an employee or agent of the manager, for an act or omission in good faith and the purported exercise of a function under this Act.

(2) Reimbursement under this section is to be by way of payment from the Fidelity Fund.

(3) Neither the manager of a solicitor's practice nor the Law Society Council are liable for any loss incurred by the solicitor as a consequence of any act or omission of the manager or the Council in the conduct of the solicitor's practice if it was done or omitted in good faith and in purported exercise of a function under this Act.

Payment of expenses of management

114G. (1) So much of the expenses of the management of a solicitor's practice as have not otherwise been paid to the manager out of the receipts of the practice are to be paid to the manager by the Law Society from the Fidelity Fund.

(2) An amount paid under this section is recoverable by the Law Society as a debt owed by the relevant solicitor.

**SCHEDULE 2 - AMENDMENTS CONCERNING MANAGERS
FOR SOLICITORS' PRACTICES - *continued***

Manager to report to the Law Society

114H. (1) The manager of a solicitor's practice must:

- (a) at such times as are fixed by the Law Society Council; and
- (b) in accordance with any directions given by the Law Society Council,

report to the Council on the management of the practice.

(2) A report is to include such information as the Law Society Council directs.

(3) On the conclusion of the management of a solicitor's practice, the manager must, when giving the Law Society Council his or her final report, lodge with the Council all the records of the manager that relate to the management.

Application of Part 6

114I. (1) Part 6 applies to the accounts kept by a manager in the same way as it applies to those kept by any other solicitor.

(2) Trust accounts and controlled money accounts concerning a particular practice under management are to be maintained separately from the trust accounts and controlled money accounts of any other practice under management.

Office accounts

114J. The regulations may make provision with respect to:

- (a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a solicitor's practice in connection with the conduct of the practice; and
- (b) the purposes for which money in any such account may be expended.

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**SCHEDULE 2 - AMENDMENTS CONCERNING MANAGERS
FOR SOLICITORS' PRACTICES - *continued***

Termination of management

114K. When a solicitor's practice ceases to be under management, any money held by the manager in connection with the practice is (after re-imburement of any money paid out of the Fidelity Fund in satisfaction of claims and amounts paid or payable under Parts 7, 8 and 8A and after payment of the expenses of the management of the practice) to become the property of the solicitor.

**SCHEDULE 3 - AMENDMENTS CONCERNING BARRISTERS'
AND SOLICITORS' REMUNERATION**

(Sec. 3)

(1) Part 11, heading:

Before "SOLICITORS'", insert "BARRISTERS' AND".

(2) Section 175 (**Membership of the Board**):

(a) From section 175 (1) omit "4", insert instead "8".

(b) Omit section 175 (2), insert instead:

(2) Of the members:

(a) 2 are to be practising barristers;

(b) 2 are to be practising solicitors; and

(c) 4 are to be persons (not being practising barristers or practising solicitors) having experience in, and knowledge of, wage-fixing, economics and associated matters.

(2A) One of the members is, by the instrument by which he or she is appointed as a member or by a subsequent instrument, to be appointed by the Governor to be the Chairperson of the Board.

SCHEDULE 3 - AMENDMENTS CONCERNING BARRISTERS'
AND SOLICITORS' REMUNERATION - *continued*

(3) Section 175A:

After section 175, insert:

Composition of the Board

175A (1) The Board is to be constituted:

- (a) for the purpose of making a determination under section 178A - by its 2 barrister members, 1 of its solicitor members and its 4 lay members;
- (b) for the purpose of making a determination under section 179 or 180 - by 1 of its barrister members, its 2 solicitor members and its 4 lay members; and
- (c) for the purpose of transacting any other business - in accordance with paragraph (a) or (b).

(2) The Chairperson of the Board is to nominate the persons to constitute the Board for the purposes of any particular meeting.

(4) Section 177 (**Reports etc. by the Board on matters concerning the remuneration of legal practitioners**):

Before "solicitors" in section 177 (c), insert "barristers or".

(5) Part 11, Division 3, heading:

Before "solicitors", insert "barristers' and".

(6) Section 178A:

Before section 179, insert:

Barristers' remuneration

178A. The Board may make determinations in respect of barristers' fees, being determinations fixing the maximum fees recoverable, on a party-party basis, in proceedings before:

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**SCHEDULE 3 - AMENDMENTS CONCERNING BARRISTERS'
AND SOLICITORS' REMUNERATION - *continued***

- (a) the Supreme Court;
 - (b) the District Court; or
 - (c) the Compensation Court,
- in respect of any matter or class of matters.

(7) Section 180 (Contentious business):

From section 180 (a) omit "or the District Court", insert instead ", the District Court or the Compensation Court".

(8) Section 181 (Principles of determination):

- (a) After "provide that" in section 181 (1), insert "barristers or".
- (b) After section 181 (1), insert:

(1A) A provision of a determination in relation to barristers' remuneration may apply differently according to different factors of a specified kind, including (but without limiting the foregoing):

- (a) the place where, and the circumstances in which, the matter was dealt with;
 - (b) the value and importance of any property or rights to which the matter relates;
 - (c) the skill, labour and responsibility on the part of the barrister which the matter involves; and
 - (d) the amount claimed or recovered in any proceedings.
- (c) After "determination" in section 181 (2), insert "in relation to solicitors' remuneration".

(9) Section 183 (Inquiries by the Board):

- (a) After "remuneration of" in section 183 (2) (c), insert "barristers or".
- (b) After "Ministers of the Crown," in section 183 (3), insert "the Bar Council,".

SCHEDULE 3 - AMENDMENTS CONCERNING BARRISTERS'
AND SOLICITORS' REMUNERATION - *continued*

(10) Section 184 (**Considerations affecting determinations**):

After "shall have regard to", insert "such matters as it considers relevant, including".

(11) Schedule 7 (**The Legal Fees and Costs Board**):

- (a) Omit clause 2.
- (b) Omit clause 3 (2).
- (c) Omit clause 7 (1) (f).
- (d) After "General;" in clause 7 (1) (g), insert "or".
- (e) Omit clause 7 (1) (h).
- (f) Before clause 10, insert:

Meetings

9A. Meetings of the Board are to be held at least 5 times in each period of 12 months.

- (g) Omit clauses 11 and 12, insert instead:

Quorum

11. The quorum for a meeting of the Board is 4 members.

Presiding member

12. (1) The Chairperson of the Board is to preside at any meeting of the Board for which the Board is so constituted as to include the Chairperson.

(2) At any meeting of the Board for which the Board is so constituted as not to include the Chairperson of the Board, a member elected by and from the members by whom the Board is constituted is to preside.

(3) At any meeting of the Board, the presiding member has a deliberative vote and, in the event of an equality of votes, a second or casting vote.

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SCHEDULE 4 - AMENDMENTS CONCERNING DISCIPLINARY PROCEEDINGS

(Sec. 3)

(1) Section 3 (**Definitions**):

Before "Disciplinary Tribunal" in the definition of "Tribunal" in section 3 (1), insert "Legal Profession".

(2) Section 123 (**Definitions**):

(a) From the definitions of "Board" and "Panel" omit "Professional" wherever occurring, insert instead "Legal Profession".

(b) After the definition of "lay member", insert:

"legal practitioner", in relation to a complaint, includes a person who was a barrister or solicitor, but was not the holder of a practising certificate, when the conduct to which the complaint relates occurred;

(3) Part 10, Division 2, heading:

Omit the heading, insert instead:

**Division 2 - Constitution of the Legal Profession
Conduct Review Panel, the Legal Profession
Standards Board and the Legal Profession
Disciplinary Tribunal**

(4) Section 126 (**The Legal Profession Conduct Review Panel**):

(a) From section 126 (1) omit "Professional", insert instead "Legal Profession".

(b) After section 126 (3), insert:

(3A) A person shall, under and subject to the Public Sector Management Act 1988, be appointed as the Registrar of the Panel.

SCHEDULE 4 - AMENDMENTS CONCERNING DISCIPLINARY PROCEEDINGS - *continued*

- (5) Section 127 (**The Legal Profession Standards Board**):
- (a) From section 126 (1) omit "Professional", insert instead "Legal Profession".
 - (b) After section 127 (4), insert:
 - (4A) A person shall, under and subject to the Public Sector Management Act 1988, be appointed as the Registrar of the Board.
- (6) Section 128 (**The Legal Profession Disciplinary Tribunal**):
- (a) Before "Disciplinary Tribunal" in section 128 (1), insert "Legal Profession".
 - (b) Omit section 128 (2) (a).
 - (c) Omit section 128 (3), insert instead:
 - (3) The Attorney General, after consultation with the Bar Council and the Law Society Council, may appoint a barrister member or a solicitor member to be the President of the Tribunal.
 - (d) After section 128 (4), insert:
 - (4A) A person shall, under and subject to the Public Sector Management Act 1988, be appointed as the Registrar of the Tribunal.
- (7) Section 134 (**Decisions of Councils**):
- (a) From section 134 (1) (b) (i) omit "or".
 - (b) After section 134 (1) (b) (ii), insert:
 - (iii) it shall dismiss the complaint; or
 - (c) After section 134 (1), insert:
 - (1A) A Council may not dismiss a complaint pursuant to subsection (1) (b) (iii) unless it is satisfied that the legal practitioner concerned is generally competent and diligent and that no other material complaints have been made against the legal practitioner.

Legal Profession (Amendment) 1989

SCHEDULE 4 - AMENDMENTS CONCERNING DISCIPLINARY PROCEEDINGS - *continued*

- (8) **Section 140 (Recommendations of the Panel):**
- (a) After "the recommendation" in section 140 (2), insert "and of the Panel's reasons for making the recommendation".
 - (b) After section 140 (3), insert:
 - (4) Such a recommendation must be accompanied by a statement of the Panel's reasons for making the recommendation.
- (9) **Section 146 (Power to summon witnesses and take evidence):**
- After "Board" in section 146 (1), insert "or the Registrar of the Board".
- (10) **Section 147 (Power to obtain documents):**
- After "member of the Board" wherever occurring in section 147 (1), insert "or the Registrar of the Board".
- (11) **Section 149 (Determinations of the Board):**
- After section 149 (6), insert:
- (6A) If, after it has completed a hearing into a complaint against a legal practitioner, the Board is satisfied that the practitioner is not guilty of unsatisfactory professional conduct, the Board may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the practitioner of such amount, by way of costs, as it may determine.
- (12) **Section 151 (Composition of the Tribunal):**
- (a) Omit section 151 (1) insert instead:
 - (1) The Tribunal is, for the purpose of conducting a review of the Board's determination of a complaint, to be constituted:
 - (a) in the case of a complaint concerning a barrister, by 2 of its barrister members and 1 of its lay members;
 - or

SCHEDULE 4 - AMENDMENTS CONCERNING DISCIPLINARY PROCEEDINGS - *continued*

- (b) in the case of a complaint concerning a solicitor, by 2 of its solicitor members and 1 of its lay members.
 - (b) Omit section 151 (3), insert instead:
 - (3) The President of the Tribunal is to nominate one of the barrister members or one of the solicitor members referred to in subsection (1) (a) or (b), as the case requires, to preside at the review.
- (13) Section 156 (**Composition of the Tribunal**):
 - (a) Omit section 156 (1), insert instead:
 - (1) The Tribunal is, for the purpose of conducting a hearing into a complaint, to be constituted:
 - (a) in the case of a complaint concerning a barrister, by 2 of its barrister members and 1 of its lay members; or
 - (b) in the case of a complaint concerning a solicitor, by 2 of its solicitor members and 1 of its lay members.
 - (b) Omit section 156 (3) and (4), insert instead:
 - (3) The President of the Tribunal is to nominate one of the barrister members or one of the solicitor members referred to in subsection (1) (a) or (b), as the case requires, to preside at the hearing.
- (14) Section 160 (**Power to summon witnesses and take evidence**):

After "Tribunal" in section 160 (1), insert "or the Registrar of the Tribunal".
- (15) Section 161 (**Power to obtain documents**):

After "member of the Tribunal" wherever occurring in section 161 (1), insert "or the Registrar of the Tribunal".

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SCHEDULE 4 - AMENDMENTS CONCERNING DISCIPLINARY PROCEEDINGS - *continued*

(16) Section 163 (**Determinations of the Tribunal**):

After section 163 (6), insert:

(6A) If, after it has completed a hearing into a complaint against a legal practitioner, the Tribunal is satisfied that the practitioner is not guilty of professional misconduct, the Tribunal may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the practitioner of such amount, by way of costs, as it may determine.

(17) Section 172 (**Protection from liability**):

(a) From section 172 (1) (a) omit "or" where lastly occurring.

(b) After section 172 (1) (b), insert:

; or

(c) the Registrar of the Panel, the Registrar of the Board or the Registrar of the Tribunal,

(c) After "any such member" in section 172 (1), insert "or Registrar".

(18) Schedule 4:

(a) From the heading to the Schedule omit "PROFESSIONAL", insert instead "LEGAL PROFESSION".

(b) Omit clause 2 (1).

(c) After clause 3, insert:

Alternate members

3A (1) The Attorney General may at any time appoint, as an alternate member to act during the absence or illness of a member of the Panel, a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the person for whom he or she is the alternate member.

SCHEDULE 4 - AMENDMENTS CONCERNING DISCIPLINARY PROCEEDINGS - *continued*

(2) An alternate member has and may exercise, while acting as a member of the Panel, the functions, as such a member, of the person for whom he or she is the alternate member.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the office of a member of the Panel, and all things done or omitted or suffered to be done by that person while so acting are as valid and effectual and have the same consequences as if they had been done or omitted or suffered to be done by that member.

(4) A person, while acting as an alternate member of the Panel, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may determine in respect of the person.

(5) For the purposes of this clause, the Attorney General may appoint 1 or more persons to act as an alternate member during the absence or illness of a member of the Panel.

(6) Where 2 or more persons are appointed to act in the place of a single member of the Panel, the Attorney General is to specify the person who is entitled to act as the alternate member on any particular occasion.

- (d) After "Panel" where firstly occurring in clause 4 (1), insert "for whom no alternate has been appointed".
- (e) After "Panel" in clause 4 (2), insert ", if no alternate has been appointed,".
- (f) After "General;" in clause 8 (1) (e), insert "or".
- (g) Omit clause 8 (1) (f).

(19) Schedule 5:

- (a) From the heading to the Schedule omit "PROFESSIONAL", insert instead "LEGAL PROFESSION".

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SCHEDULE 4 - AMENDMENTS CONCERNING DISCIPLINARY PROCEEDINGS - *continued*

- (b) Omit clause 2 (1).
 - (c) After "General;" in clause 8 (1) (e), insert "or".
 - (d) Omit clause 8 (1) (f).
- (20) Schedule 6:
- (a) Before "**DISCIPLINARY**" in the heading to the Schedule, insert "**LEGAL PROFESSION**".
 - (b) Omit clause 2 (1).
 - (c) Omit clause 3 (1) and (2).
 - (d) From clauses 3, 5 and 7 omit "(other than a judicial member)" wherever occurring.
 - (e) After "General;" in clause 7 (1) (e), insert "or".
 - (f) Omit clause 7 (1) (f).

SCHEDULE 5 - MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

Insert in section 3 (1), in alphabetical order:

"practising certificate" means a practising certificate issued under Part 3 by the Bar Council or by the Law Society Council;

"receiver", in relation to a solicitor's property, means a receiver appointed under Part 8;

(2) Section 6:

Omit the section, insert instead:

Membership of Barristers Admission Board

6. (1) The Barristers Admission Board is to consist of 7 members.

SCHEDULE 5 - MISCELLANEOUS AMENDMENTS - *continued*

(2) Of the members:

- (a) 1 is to be the Chief Justice;
- (b) 3 are to be Judges of the Supreme Court for the time being nominated by the Chief Justice;
- (c) 1 is to be the Attorney General or a person for the time being nominated by the Attorney General; and
- (d) 2 are to be practising barristers for the time being nominated by the Bar Council.

(3) The Chief Justice may from time to time nominate one of the judicial members of the Board to be the presiding member of the Board and another of the judicial members to be the deputy presiding member of the Board.

(4) Schedule 2 has effect with respect to the Board.

(3) Section 13:

Omit the section, insert instead:

Membership of Solicitors Admission Board

13. (1) The Solicitors Admission Board is to consist of 7 members.

(2) Of the members:

- (a) 1 is to be the Chief Justice;
- (b) 3 are to be Judges of the Supreme Court for the time being nominated by the Chief Justice;
- (c) 1 is to be the Attorney General or a person for the time being nominated by the Attorney General; and
- (d) 2 are to be practising solicitors for the time being nominated by the Law Society Council.

(3) The Chief Justice may from time to time nominate one of the judicial members of the Board to be the presiding member of the Board and another of the judicial members to be the deputy presiding member of the Board.

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SCHEDULE 5 - MISCELLANEOUS AMENDMENTS - *continued*

- (4) Schedule 2 has effect with respect to the Board.
- (4) Section 61 (**Money received by solicitor on behalf of another**):
- (a) From section 61 (3) (a) omit "or".
 - (b) After section 61 (3) (b), insert:
 - (c) to affect any enforceable lien or claim that a solicitor has to any money; or
 - (d) to 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), but only for an amount equal to the sum of the costs and disbursements unpaid, and only where the solicitor has delivered to the client on whose behalf the money is held an outline bill of costs and disbursements.
- (5) Section 66 (**Accounts to be kept by Law Society**):
- (a) From section 66 (b) omit "with the approval of the Prothonotary".
 - (b) From section 66 (c) omit "both the Attorney General and the Prothonotary", insert instead "the Attorney General".
- (6) Section 67 (**Statutory Interest Account**):
- (a) Omit section 67 (2), insert instead:
 - (2) The Law Society is to pay from the Statutory Interest Account:
 - (a) for the purposes authorised by subsection (3) (c), (d), (e) and (e1) - such amounts as are from time to time incurred under Parts 9 and 10 in relation to those purposes;
 - (b) for the other purposes authorised by subsection (3) - such amounts as are from time to time determined

SCHEDULE 5 - MISCELLANEOUS AMENDMENTS - *continued*

- by the Law Society Council and approved by the Attorney General; and
- (c) such amounts as are from time to time required to be paid under subsection (4).
- (b) After section 67 (3) (e), insert:
 - (e1) the payment of costs in accordance with an order of the Board under section 149 (6A) or an order of the Tribunal under section 163 (6A);
 - (c) From section 67 (3) (g), omit "and" where lastly occurring.
 - (d) At the end of section 67 (3) (h), insert:
 - ; and
 - (i) the payment of the costs related to the operation of the Legal Costs and Fees Board.
 - (e) From section 67 (4) omit "credited to the Statutory Interest Account", insert instead "earned on investments made under section 65".
- (7) **Section 92 (Supreme Court may appoint receiver):**
- (a) From section 92 (2) (a) omit "within the meaning of Part 7".
 - (b) After section 92 (5), insert:
 - (6) In this section, "failure to account" has the same meaning as that ascribed to the definition of "failure to account" in section 79 (1), except that:
 - (a) paragraph (a) of that definition is to be read as if there occurred after the words "has been convicted" the words ", or is likely to be convicted,"; and
 - (b) paragraph (b) of that definition is to be read as if there occurred after the words "has found to be" the words ", or is likely to find to be,".

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SCHEDULE 5 - MISCELLANEOUS AMENDMENTS - *continued*

(8) Section 96 (**Information about receivable property**):

(a) From section 96 (5) (a) omit "or".

(b) After section 96 (5) (b), insert:

; or

(c) proceedings taken under Part 10 against a solicitor where the information:

(i) consists of information given to the receiver otherwise than by the solicitor; or

(ii) consists of information given to the receiver by the solicitor and is given in evidence in those proceedings with the solicitor's consent.

(9) Section 115 (**Person acting as a barrister or solicitor**):

After section 115 (5), insert:

(6) For the removal of doubt, it is declared that a reference in this section to a person includes a reference to a body corporate.

(10) Section 117 (**Limitation on general legal work and probate work**):

After section 117 (6), insert:

(7) For the removal of doubt, it is declared that a reference in this section to a person includes a reference to a body corporate.

(11) Section 119 (**Receipts not to be shared by solicitor and unqualified person**):

After "on behalf of the employer" in section 119 (2), insert:
, where the business:

(a) concerns a proceeding or transaction to which the employer is a party; or

(b) is of a prescribed kind or is carried out in circumstances of a prescribed kind.

SCHEDULE 5 - MISCELLANEOUS AMENDMENTS - *continued*

- (12) Section 199 (**Applications for taxation of bills of costs**):
- (a) Omit section 199 (1) (a), insert instead:
 - (a) by any person who has paid, or who is liable to pay, those costs; and
 - (b) After "costs" in section 199 (1) (b), insert "have been paid or".
 - (c) From section 199 (3) omit "who is liable to pay", insert instead "who has paid, or who is liable to pay".
- (13) Section 208 (**Supreme Court may order delivery up of documents etc.**):
- From section 208 (1) (b) omit ", on payment of those costs", insert instead ", on such conditions as the Supreme Court may determine".
- (14) Schedule 2 (**The Admission Boards**):
- Omit clause 3 (1), insert instead:
- (1) At a meeting of an Admission Board, the Chief Justice, if electing to be present and electing to preside, shall preside, but otherwise:
 - (a) the presiding member;
 - (b) in the absence of the presiding member - the deputy presiding member; or
 - (c) in the absence of both the presiding member and the deputy presiding member - a member elected by and from the members present and voting,shall preside.
- (15) Schedule 3 (**The Legal Profession Advisory Council**):
- (a) Omit clause 2.
 - (b) After "General;" in clause 8 (1) (f), insert "or".
 - (c) Omit clause 8 (1) (g).

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**SCHEDULE 6 - AMENDMENTS CONCERNING SAVINGS
AND TRANSITIONAL PROVISIONS**

(Sec. 3)

Schedule 8:

- (a) Omit the heading to the Schedule, insert instead:

**SCHEDULE 8 - SAVINGS, TRANSITIONAL
AND OTHER PROVISIONS**

- (b) Before clause 1, insert:

Part 1 - Preliminary

Regulations

1A. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Miscellaneous Acts (Legal Profession) Amendment Act 1987

Legal Profession (Amendment) Act 1987

Legal Profession (Amendment) Act 1989

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

**SCHEDULE 6 - AMENDMENTS CONCERNING SAVINGS
AND TRANSITIONAL PROVISIONS - *continued***

**Part 2 - Provisions consequent on the enactment of the
Legal Profession Act 1987**

- (c) From clause 1 omit "Schedule", insert instead "Part".
- (d) After clause 16 (2), insert:
 - (3) Notwithstanding subclause (2), a claim that was barred before the appointed day may be dealt with as a claim against the Fidelity Fund if the Law Society Council is of the opinion that it is appropriate for it to be so dealt with.
- (e) Omit clause 21.
- (f) At the end of the Schedule, insert:

**Part 3 - Provisions consequent on the
enactment of the Legal Profession
(Amendment) Act 1989**

Definition

- 22. In this Part:
"the amending Act" means the Legal Profession
(Amendment) Act 1989.

Regulations

- 23. Any regulation in force under clause 21 immediately before the date of assent to the amending Act is to be taken to have been made under clause 1A.

Applications for practising certificates

- 24. A barrister who has applied for a practising certificate before the date of assent to the amending Act for the year commencing on 1 July 1988 or the year commencing on 1 July 1989, or both, has no entitlement, and is to be taken never to have had an entitlement, to a practising certificate for any such year other than that conferred by this Act, as amended by the amending Act.

Legal Profession (Amendment) 1989

**SCHEDULE 6 - AMENDMENTS CONCERNING SAVINGS
AND TRANSITIONAL PROVISIONS - *continued***

Practising certificates not invalidated

25. The amendments made by the amending Act do not invalidate the issue of a practising certificate or a practising certificate issued by the Bar Council before the date of assent to the amending Act.

Construction of certain references

26. In any other Act or instrument:
- (a) a reference to the Professional Conduct Review Panel is to be read as a reference to the Legal Profession Conduct Review Panel;
 - (b) a reference to the Professional Standards Board is to be read as a reference to the Legal Profession Standards Board; and
 - (c) a reference to the Disciplinary Tribunal is to be read as a reference to the Legal Profession Disciplinary Tribunal.

Continuation of certain proceedings

27. Any proceedings that have been begun, but have not been determined, by:

- (a) the Legal Profession Conduct Review Panel;
- (b) the Legal Profession Standards Board; or
- (c) the Legal Profession Disciplinary Tribunal,

as constituted immediately before the commencement of the amending Act in relation to the provisions under which the relevant body is constituted are to be continued and completed by those bodies, as so constituted, as if those amendments had not been enacted.

Proceedings against certain legal practitioners

28. Proceedings may be taken under Part 10 in respect of a complaint against a legal practitioner who was a barrister or solicitor, but was not the holder of a practising certificate, when the conduct to which the complaint

**SCHEDULE 6 - AMENDMENTS CONCERNING SAVINGS
AND TRANSITIONAL PROVISIONS - *continued***

relates occurred, being conduct that occurred before or after the commencement of Schedule 4 (2) (b).

**SCHEDULE 7 - CONSEQUENTIAL AMENDMENTS
TO OTHER ACTS**

(Sec. 4)

Compensation Court Act 1984 No. 89:

Section 43 (Rules):

- (a) Omit section 43 (1) (a), insert instead:
 - (a) all matters of procedure and practice, including the prescription of forms to be used in any proceedings before the Court and the payment of witnesses' expenses;
 - (a1) all matters concerning the taxation of or other means of ascertaining costs payable by one party in proceedings before the Court to another; and
- (b) After section 43 (1), insert:
 - (1A) In making provision for the taxation of or other means of ascertaining costs payable by one party in proceedings before the Court to another, the rules may:
 - (a) regulate or modify the application of scales or other amounts of costs fixed by determinations under section 178A or 180 of the Legal Profession Act 1987 to any such taxation or ascertainment; or
 - (b) provide that, in a particular case or class of cases or in particular circumstances, those scales or amounts, or specified provisions of those scales or amounts, do not apply.

District Court Act 1973 No. 9:

Section 161 (Civil procedure rules):

After "section" in section 161 (3), insert "178A or".

Legal Profession (Amendment) 1989

SCHEDULE 7 - CONSEQUENTIAL AMENDMENTS TO
OTHER ACTS - *continued*

Supreme Court Act 1970 No. 52:

Section 124 (Rule-making power):

After "section" in section 124 (1) (ka), insert "178A or".

[*Minister's second reading speech made in -
Legislative Assembly on 2 August 1989
Legislative Council on 19 September 1989*]