

LEGAL PROFESSION REFORM ACT 1993 No. 87

NEW SOUTH WALES



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LEGAL PROFESSION REFORM ACT 1993 No. 87

NEW SOUTH WALES



Act No. 87, 1993

An Act to amend the Legal Profession Act 1987 in relation to the structure, regulation and discipline of the legal profession, the making and handling of complaints about legal practitioners and the regulation of legal fees and other costs; and for other purposes. [Assented to 29 November 1993]

See also Maintenance and Champerty Abolition Act 1993.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Legal Profession Reform Act 1993.

Commencement

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

Amendment of Legal Profession Act 1987 No. 109

3. The Legal Profession Act 1987 is amended as set out in Schedules 1–4.

Amendment of other Acts

4. The Acts specified in Schedules 5 and 6 are amended as set out in those Schedules.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION**

Amendment of Legal Profession Act 1987

(Sec. 3)

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

- (a) From section 3 (1), omit the definitions of “Admission Board”, “barrister”, “legal practitioner”, “solicitor”, “unrestricted practising certificate”.
- (b) In section 3 (1), insert in alphabetical order:
 - “**Admission Board**” means the Legal Practitioners Admission Board constituted under Part 2;
 - “**admission rules**” means rules made under this Act by the Admission Board;
 - “**barrister**” means a legal practitioner who holds a current practising certificate as a barrister;
 - “**barristers rules**” means rules made under this Act by the Bar Council;

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

“**joint rules**” means rules made under this Act jointly by the Bar Council and the Law Society Council;

“**legal practitioner**” means a person enrolled in the Supreme Court as a legal practitioner;

“**solicitor**” means a legal practitioner who holds a current practising certificate as a solicitor, and includes a solicitor corporation;

“**solicitors rules**” means rules made under this Act by the Law Society Council;

“**unrestricted practising certificate**” means a practising certificate that is not subject to a condition, other than a condition requiring the holder of the certificate to undertake and complete one or more courses of continuing legal education.

(2) Part 2:

Omit the Part, insert instead:

**PART 2—ADMISSION OF LEGAL
PRACTITIONERS**

Division 1—Role of Supreme Court

Admission of legal practitioners

4. (1) The Supreme Court may admit and enrol natural persons as legal practitioners in accordance with subsection (2).

(2) The Supreme Court is, on any day appointed by the Supreme Court for the purpose, to hear and determine any application made for the admission as a legal practitioner of a person approved by the Admission Board as a suitable candidate for admission.

Legal practitioners to be officers of Supreme Court

5. A legal practitioner is, on and from admission, an officer of the Supreme Court.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION— *continued*****Division 2—Legal Practitioners Admission Board****Rules for registration and admission**

6. The Admission Board may make rules for or with respect to all or any of the following:

- (a) the qualifications for registration, and registration, as a student-at-law;
- (b) the qualifications for admission as a legal practitioner;
- (c) without limiting paragraphs (a) and (b), the examination in such branches of knowledge as the Board thinks fit of candidates for admission as students-at-law or legal practitioners;
- (d) the establishment and conduct of boards or other bodies with functions concerning:
 - (i) the examination of candidates for admission as legal practitioners; and
 - (ii) the approval of a properly qualified person to be admitted as a legal practitioner;
- (e) applications for admission as a legal practitioner and the approval of such applications;
- (f) the fees payable to the Board in relation to registration, admission, examination and certificates;
- (g) any other matters relating to the exercise of its functions.

Provisions applying to admission rules

7. Part 6 of the Interpretation Act 1987 applies to a rule made under section 6 in the same way as it applies to a statutory rule within the meaning of that Act.

Note. Part 6 of the Interpretation Act 1987 contains provisions relating to the publication and Parliamentary disallowance of statutory rules and other standard provisions relating to the making, amendment and repeal of statutory rules.

Examiners

8. The Admission Board may delegate the examination of candidates for admission as legal practitioners to such persons as it considers competent to examine the candidates.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*****Constitution of Admission Board**

9. (1) There is constituted by this Act the Legal Practitioners Admission Board.

(2) The Admission Board has and may exercise the functions conferred or imposed on it by or under this or any other Act.

(3) The Admission Board is not and does not represent the Crown for any purpose.

(4) The Admission Board is a body corporate.

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

Membership of Admission Board

10. (1) The Admission Board is to consist of 9 members.

(2) The members of the Admission Board are:

- (a) the Chief Justice of New South Wales; and
- (b) 3 Judges of the Supreme Court for the time being nominated by the Chief Justice of New South Wales; and
- (c) the Attorney General or a person for the time being nominated by the Attorney General; and
- (d) 2 persons for the time being nominated by the Committee of NSW Law Deans; and
- (e) 2 barristers for the time being nominated by the Bar Council; and
- (f) 2 solicitors for the time being nominated by the Law Society Council.

Division 3—Character**Character of candidates**

11. A candidate, however qualified in other respects, must not be admitted as a legal practitioner unless the Admission Board is satisfied that the candidate is of good fame and character.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*****Declaration on character**

12. (1) When the Admission Board considers an application for admission as a legal practitioner, it must consider whether it is satisfied that the candidate is of good fame and character.

(2) Unless the Admission Board declares that it is satisfied that the candidate is of good fame and character, it must refuse to approve of the application for admission.

(3) The Admission Board must notify the Bar Council and the Law Society Council in accordance with the admission rules of any application for admission (unless a declaration has been made under section 13 with respect to the applicant).

Early consideration of character

13. (1) A person may apply to the Admission Board for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by the Board of his or her good fame or character.

(2) Such an application can be made on applying for registration as a student-at-law or after being registered as a student-at-law.

(3) The applicant must serve a copy of the application on the Bar Council and the Law Society Council in accordance with the admission rules.

(4) The Admission Board is to consider each application under this section and make the declaration sought or refuse to do so.

Appeals

14. (1) If approval of an application for admission as a legal practitioner is refused by the Admission Board under section 12, the applicant may appeal to the Supreme Court against the refusal.

(2) If a declaration sought under section 13 is refused, the applicant may appeal to the Supreme Court against the refusal of the declaration.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(3) If a declaration is made under section 12 or 13, a Council may appeal to the Supreme Court against the making of the declaration. The applicant is entitled to be represented and to be heard on the appeal.

(4) An appeal under this section is to be by way of rehearing and fresh evidence, or evidence in addition to or substitution for the evidence before the Admission Board, may be given on the appeal.

(5) A Judge is disqualified from hearing an appeal under this section if the Judge was a member of the Admission Board when it made the decision to which the appeal relates.

(6) On an appeal under this section, the Supreme Court may make such order or declaration as it thinks fit.

Binding effect of declaration

15. A declaration made under section 13, or an order or declaration of the Supreme Court under section 14, is binding on the Admission Board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought on the application or appeal.

Representation by Councils

16. (1) A Council is entitled to be represented before, and to be heard by, the Supreme Court on an appeal under section 14.

(2) A Council is entitled to be represented before, and to be heard by, the Admission Board at an inquiry into a matter under this Division. A Council may make representations in writing to the Admission Board on any such matter.

(3) The applicant concerned in the matter before the Admission Board is also entitled to be represented and heard at the inquiry and to make representations.

Division 4—Miscellaneous**Miscellaneous provisions respecting admission**

17. (1) Persons cannot be admitted or enrolled as barristers or solicitors.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE AND REGULATION OF THE LEGAL PROFESSION—*continued*

(2) Any inherent power or jurisdiction of the Supreme Court to admit barristers and solicitors (or legal practitioners) is revoked.

(3) The Supreme Court Charter remains revoked in New South Wales in so far as it relates to the admission of barristers, advocates, proctors, solicitors and attorneys.

References to barristers and solicitors

18. (1) The regulations may require a reference in any other Act or in any instrument under any other Act to a barrister or solicitor to be construed as a reference to a specified class of legally qualified persons, including:

- (a) as a reference to a legal practitioner within the meaning of this Act; or
- (b) in the case of a reference to a barrister—as reference to a barrister, or a barrister or solicitor, within the meaning of this Act; or
- (c) in the case of a reference to a solicitor—as reference to a solicitor, or a solicitor or barrister, within the meaning of this Act.

(2) Subject to any such regulation, a reference in any other Act or in any instrument under any other Act to a barrister or solicitor is, so far as the reference relates to a barrister or solicitor of New South Wales, taken to be a reference to a legal practitioner within the meaning of this Act. This subsection has effect except in so far as the context or subject-matter otherwise indicates or requires.

Cancellation of practising certificates

19. A practising certificate is automatically cancelled if the holder ceases to be a legal practitioner.

(3) Part 3, heading:

Omit the heading, insert instead **“PART 3—LEGAL PRACTICE”**.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(4) Part 3, Divisions 1–1B:

Omit Division 1 of Part 3, insert instead:

Division 1—Practising certificates**Requirement for practising certificate**

25. (1) A legal practitioner must not practise as a barrister or solicitor without being the holder of a current practising certificate.

(2) A legal practitioner must not hold himself or herself out to be a barrister without being the holder of a current practising certificate as a barrister.

(3) A legal practitioner must not hold himself or herself out to be a solicitor without being the holder of a current practising certificate as a solicitor.

(4) A legal practitioner who contravenes this section wilfully and without reasonable excuse is guilty of professional misconduct.

Election to practise as barrister or solicitor

26. (1) A legal practitioner may, subject to this Act, elect to practise as a barrister or as a solicitor.

(2) A legal practitioner is, subject to this Act, entitled to be issued with a practising certificate as a barrister or solicitor.

Note. A person may not hold current practising certificates at the same time as a barrister and as a solicitor, see section 38D.

Barristers

27. (1) The Bar Council may, on application, grant a practising certificate to a legal practitioner authorising the practitioner to practise as a barrister.

(2) A legal practitioner who does not hold a current practising certificate as a barrister may at any time apply to the Bar Council for a practising certificate unless there is in force an order of the Tribunal preventing the issue of the certificate.

(3) A legal practitioner who holds a current practising certificate as a barrister may, during the prescribed period before the certificate expires, apply to the Bar Council for a new practising certificate.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(4) Subsection (3) does not prevent the Bar Council from accepting an application made after the prescribed period and before the next 1 July.

Solicitors

28. (1) The Law Society Council may, on application, grant a practising certificate to a legal practitioner authorising the practitioner to practise as a solicitor.

(2) A legal practitioner who does not hold a current practising certificate as a solicitor may at any time apply to the Law Society Council for a practising certificate unless there is in force an order of the Tribunal preventing the issue of the certificate.

(3) A legal practitioner who holds a current practising certificate as a solicitor may, during the prescribed period before the certificate expires, apply to the Law Society Council for a new practising certificate.

(4) Subsection (3) does not prevent the Law Society Council from accepting an application made after the prescribed period and before the next 1 July.

(5) In this section, “**legal practitioner**” includes a solicitor corporation.

Fees

29. (1) An application for a practising certificate must be accompanied by a fee of such amount as is determined by the Council concerned and approved by the Attorney General.

(2) A Council may determine different fees according to such different factors as are specified in the determination and approved by the Attorney General.

(3) If an application for a practising certificate is accepted by a Council after the end of the prescribed period during which the application is authorised to be made, payment of a prescribed late fee may, if the Council thinks fit, be required as a condition of acceptance of the application.

Refusal of application for practising certificate as barrister or solicitor

30. (1) A Council must refuse to issue a practising certificate if the application for it:

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

- (a) is not accompanied by the appropriate fee; or
- (b) is not accompanied by, or does not contain, such information as may be prescribed by the regulations.

(2) A Council may refuse to issue a practising certificate applied for by the holder of a suspended practising certificate.

(3) A Council may refuse to issue a practising certificate if a finding of unsatisfactory professional conduct or professional misconduct has been made in respect of the applicant and:

- (a) a fine imposed because of the finding has not been paid; or
- (b) costs awarded against the applicant because of the finding have been assessed but have not been paid or, if an arrangement for their payment has been made, the applicant is in default under the arrangement; or
- (c) any costs of an inspection or investigation payable under section 55 by the applicant have not been paid; or
- (d) any expenses of receivership payable under section 110 by the applicant have not been paid.

(4) Other sections of this Act also provide for the refusal of applications for the issue of practising certificates.

Non-payment of contributions and levies by solicitors in respect of Indemnity Fund or Fidelity Fund

31. The Law Society Council may refuse to issue a practising certificate if

- (a) the applicant is required by section 45 to contribute to the Indemnity Fund and the application is not accompanied by the contribution payable under that section; or
- (b) the applicant is required by section 76 to contribute to the Fidelity Fund and the application is not accompanied by the contribution payable under that section; or
- (c) any levy payable by the applicant under section 46 or 77 is unpaid.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*****Conditions may be imposed on practising certificates**

32. (1) A practising certificate may be issued unconditionally or subject to conditions.

(2) A Council may attach a condition to a practising certificate when it is issued or at any time after it is issued, and may at any time vary or revoke any such condition.

(3) A condition cannot be attached to a practising certificate unless it is of a kind authorised by this Act to be attached.

(4) The practising certificate issued to a solicitor corporation is not to be subject to any condition.

(5) A legal practitioner who is the holder of a current practising certificate must not fail to comply with a condition to which the certificate is subject.

Conditions on practising certificates generally

33. (1) Conditions of the following kinds can be attached to the practising certificate of a barrister or solicitor:

- (a) a condition requiring the holder to undertake and complete one or more courses of continuing legal education;
- (b) a condition requiring the holder to undertake additional academic or training courses;
- (c) a condition, of a kind authorised by the regulations, limiting the practising rights of the holder as determined by the Bar Council or the Law Society Council;
- (d) any other condition agreed to by the holder.

(2) Other sections of this Act also provide for conditions that may be attached to practising certificates.

Additional conditions on practising certificates of barristers

34. (1) Conditions of the following kinds can be attached to the practising certificate of a barrister:

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

- (a) a condition requiring the holder to undertake and complete to the satisfaction of the Bar Council a full-time component or other component of a reading program applicable to the holder and determined or approved by the Bar Council;
 - (b) a condition requiring the holder to sit for and pass any examination set by the Bar Council as part of a reading program;
 - (c) a condition requiring the holder to read with a barrister of a specified class or description chosen by the holder (including a barrister chosen from a list of at least 10 barristers kept by the Bar Council for the purpose) for a specified period and to comply with such requirements as will enable the barrister, at the end of the specified period, to certify to the Bar Council that the holder is fit to practise as a barrister without restriction.
- (2) A condition of a kind referred to in subsection (1) which is attached to the practising certificate of a barrister may limit the practising rights of the barrister until the condition is complied with.
- (3) The following conditions may also be attached to the practising certificate of a barrister:
- (a) a condition limiting the holder to practising as a barrister as the holder of a statutory office under the Crown (whether in right of New South Wales or in another right);
 - (b) a condition limiting the holder to practising as a barrister in any other office under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right);
 - (c) a condition limiting the holder to practising as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right).

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

Additional conditions on practising certificates of solicitors

35. Conditions of the following kinds can be attached to the practising certificate of a solicitor:

- (a) a condition requiring the holder to complete a period of supervised practice;
- (b) a condition restricting the solicitor to acting as a solicitor under particular conditions as to employment.

Duration of practising certificates

36. (1) A practising certificate issued on application by the holder of a current practising certificate takes effect on the relevant date next following the making of the application, and remains in force for 12 months.

(2) Any other practising certificate takes effect on the date it bears, and remains in force until immediately before the next relevant date.

(3) If an application referred to in subsection (1) is not determined before the relevant date next following the making of the application, the practising certificate already held continues in force until a new practising certificate is issued or the application is refused.

(4) In this section, “**relevant date**” means:

- (a) subject to paragraph (b)—1 July; or
- (b) another date specified by the regulations as the common date for the duration of practising certificates.

(5) A regulation which specifies another date may contain savings and transitional provisions consequent on the change in the date and, in particular, may specify the period for which practising certificates in force when the change is made are to remain in force.

Refusal, suspension or cancellation of practising certificate generally

37. (1) A Council may refuse to issue, may cancel or may suspend a practising certificate if the applicant or holder:

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

- (a) is required by the Council to explain specified conduct by the barrister or solicitor as a barrister or solicitor and fails, and continues to fail, to give an explanation satisfactory to the Council; or
- (b) has, in the opinion of the Council, failed to comply with a condition attached to the certificate; or
- (c) has contravened an order made in respect of the applicant or holder by the Tribunal; or
- (d) is a disqualified person within the meaning of section 48K; or
- (e) has had the applicant's or holder's right to practise as a solicitor, barrister or legal practitioner in another State or a Territory suspended or cancelled; or
- (f) has contravened a provision of this Act; or
- (g) is in prison.

(2) If a Council acts under this section and, within 14 days after being notified of the action, the applicant or holder requires the Council to state its reasons for the action, the Council must comply with the requirement without delay.

Refusal, suspension or cancellation of practising certificate as solicitor—trust accounts etc.

38. The Law Society Council may refuse to issue, may cancel or may suspend a practising certificate as a solicitor if the applicant or holder fails, and continues to fail, to comply with section 61 or any other law relating to money received on behalf of another by the solicitor or by a partnership of which, at the time of the failure, the solicitor is or was a member.

Refusal, suspension or cancellation of practising certificate—infirmity

38A. (1) A Council may refuse to issue, may cancel or may suspend a practising certificate (other than that of a solicitor corporation) if the Council is satisfied, on such evidence as to it seems proper:

- (a) that the applicant or holder is, because of infirmity, injury or mental or physical illness, unfit to practise as a barrister or solicitor; and

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

(b) that it is in the public interest or the interest of the barrister's or solicitor's clients that the practising certificate should not be issued or should be cancelled or suspended.

(2) Before acting under subsection (1), a Council:

(a) may require the applicant or holder to be medically examined by a medical practitioner nominated by the Council; and

(b) may hold an inquiry.

(3) A refusal or failure by a person to comply with a requirement for medical examination may be accepted by a Council as evidence of the unfitness of the person to practise as a barrister or solicitor.

Appeals relating to practising certificates

38B. (1) If a Council:

(a) refuses to issue a practising certificate; or

(b) refuses to issue a practising certificate of the kind applied for; or

(c) attaches a condition to a practising certificate or varies a condition attached to a practising certificate; or

(d) cancels or suspends a practising certificate,

the applicant for, or holder of, the practising certificate may appeal to the Supreme Court.

(2) The Supreme Court may make such order in the matter as it thinks fit.

(3) Except to the extent (if any) that may be ordered by the Supreme Court, the lodging of an appeal does not stay the effect of the refusal, cancellation or suspension, or the attaching or variation of a condition, appealed against.

(4) This section does not apply if a Council acts in conformity with a decision of the Tribunal that is in force.

Registers of barristers and solicitors

38C. A Council is required to keep, in such form as it thinks fit, a register of the legal practitioners to whom it has issued current practising certificates.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*****Dual certificates**

38D. (1) A legal practitioner may not at the same time hold current practising certificates as barrister and solicitor.

(2) A practising certificate may be issued to a person on the condition that it does not have effect while another practising certificate is in force in relation to the person.

Injunctions

38E. (1) The Supreme Court may, on the application of a Council, grant an injunction, in such terms as the Supreme Court considers to be appropriate, restraining a legal practitioner from contravening section 25 or 32.

(2) No undertaking as to damages or costs is required.

Application of provisions of Division

38F. (1) The Attorney General, while admitted as a legal practitioner, is entitled to an unconditional practising certificate. The Attorney General may elect to hold a practising certificate as a barrister or as a solicitor.

(2) Section 33 (1) (b) and (c) and section 34 (1) do not apply to:

- (a) a legal practitioner who is the holder of a statutory position under the Crown (whether in right of New South Wales or in another right); or
- (b) a legal practitioner who acts as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right); or
- (c) a legal practitioner who is, or is a member of a class or description of legal practitioners, specified by the Bar Council or the Law Society Council for the purposes of this subsection; or
- (d) a legal practitioner who is, or is a member of a class or description of legal practitioners, prescribed by the regulations for the purposes of this subsection.

(3) Subsection (2) applies only while the person is a legal practitioner to whom at least one of the paragraphs of that subsection applies.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

**Division 1AA—Application of Trade Practices
Act 1974**

Commencement of Division

38FA. This Division does not have effect until:

- (a) 31 July 1994; or
- (b) the date on which the Federal Court, the Trade Practices Commission and the Trade Practices Tribunal are, by a Commonwealth law, permitted to exercise the jurisdiction, powers and functions conferred on them under the restrictive trade practices laws for the purposes of this Division,

whichever is the later.

Definitions

38FB. In this Division:

“**conduct**” has the same meaning as in the restrictive trade practices laws;

“**professional association**” means the Bar Association, the Bar Council, the Law Society, the Law Society Council or any other association of legal practitioners;

“**restrictive trade practices laws**”—see section 38FC.

Application of restrictive trade practices laws

38FC. (1) The restrictive trade practices laws apply as a law of the State to the conduct of legal practitioners and of any professional association in connection with the provision of legal services.

(2) For the purposes of this Division, the restrictive trade practices laws are the provisions of the Trade Practices Act 1974 of the Commonwealth (and the regulations made under that Act), as amended and in force from time to time and as modified by this section.

(3) The provisions referred to in subsection (2) are modified for the purposes of this Division as follows:

- (a) references to corporations include legal practitioners and professional associations (whether incorporated or not);

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE AND REGULATION OF THE LEGAL PROFESSION—*continued*

- (b) references to interstate trade or commerce include the provision of legal services by legal practitioners (including legal services supplied only within the State);
- (c) section 51 (1) (Exceptions) does not apply to acts or things specifically authorised or approved by barristers rules, solicitors rules, joint rules or the conditions of practising certificates;
- (d) the provisions of Part 5 and any provisions relating only to goods do not apply.

The regulations under this Act may make other modifications of those provisions.

(4) The Acts Interpretation Act 1901 of the Commonwealth applies to the interpretation of the restrictive trade practices laws.

Exercise of jurisdiction and powers by Federal Court and by Trade Practices Commission and Tribunal

38FB. (1) The Federal Court has, for the purposes of this Division only, the jurisdiction and powers conferred on it by the restrictive trade practices laws.

(2) The Trade Practices Commission and the Trade Practices Tribunal may, for the purposes of this Division only, exercise the powers and functions conferred on them by the restrictive trade practices laws.

(3) This section has effect to the extent that the Federal Court, the Trade Practices Commission and the Trade Practices Tribunal are permitted by Commonwealth law to exercise that jurisdiction and those powers and functions for the purposes of this Division.

Exceptions

38FE. (1) This Division does not apply to any conduct exempted from this Division by the regulations.

(2) Before any such regulation is made, the Attorney General must certify to the Governor that:

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

- (a) he or she has consulted with the Trade Practices Commission, the Advisory Council, the Bar Council and the Law Society Council on the proposed regulation; and
- (b) the public benefit of any conduct proposed to be exempted outweighs the detriment to the public constituted by any lessening of competition that would result from the proposed conduct.
- (3) Nothing in this Division affects:
 - (a) practice as a barrister as the holder of a statutory office under the Crown (whether in right of New South Wales or in another right); or
 - (b) practice as parliamentary counsel under a contract of service, or contract for service, with the Crown (whether in right of New South Wales or in another right).

Division 1A—Practice as a barrister or solicitor

Practice as a barrister

38G. (1) Practice as a barrister is subject to the barristers rules.

(2) Practice as a barrister is not subject to any other rules, practice guidelines or rulings of the Bar Association or Bar Council.

Practice as a solicitor

38H. (1) Practice as a solicitor is subject to the solicitors rules.

(2) Practice as a solicitor is not subject to any other rules, practice guidelines or rulings of the Law Society or Law Society Council.

Note. Barristers rules are made by the Bar Council and solicitors rules are made by the Law Society Council. The Bar Council and the Law Society Council may also make joint rules. See sections 57A–57C.

Client access

38I. (1) **Barristers.** Barristers may accept any clients, subject to the barristers rules and the conditions of any relevant practising certificate.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(2) **Solicitors.** Solicitors may accept any clients, subject to the solicitors rules and the conditions of any relevant practising certificate.

(3) **Contracts.** A barrister or solicitor may enter into a contract for the provision of services with a client or with another legal practitioner. The barrister or solicitor may accordingly sue and be sued in relation to the contract.

(4) **Barristers contracts.** A barrister may enter into a contract with a client even though the barrister has accepted a brief from a solicitor in the matter.

(5) **Immunity.** Nothing in this section affects any law relating to immunity to suit in relation to advocacy.

Advertising

38J. (1) A barrister or solicitor may advertise in any way the barrister or solicitor thinks fit.

(2) However, an advertisement must not be of a kind that is or that might reasonably be regarded as:

- (a) false, misleading or deceptive; or
- (b) in contravention of the Trade Practices Act 1974 of the Commonwealth, the Fair Trading Act 1987 or any similar legislation; or
- (c) in contravention of any requirements of the regulations.

Specialisation

38K. A barrister or solicitor may advertise or hold himself or herself out as being a specialist or as offering specialist services, but only if the barrister or solicitor:

- (a) has appropriate expertise and experience; or
- (b) is appropriately accredited under an accreditation scheme conducted by the Bar Council or Law Society Council.

Advocates

38L. (1) Barristers and solicitors may act as advocates.

(2) Barristers and solicitors may appear, and have a right of audience, in any court as advocates.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

(3) Joint rules may be made about ethical rules to be observed by barristers and solicitors in the practice of advocacy.

(4) This section does not apply to solicitor corporations.

Joint advocates

38M. (1) In any proceedings, more than one barrister or solicitor or a solicitor and barrister may appear together as advocates.

(2) The appearance together as advocates of a barrister and solicitor may be regulated by joint rules, but not by barristers rules or solicitors rules.

Attendance

38N. (1) There is no rule or practice that prevents a barrister from attending on another barrister or solicitor or a solicitor from attending on another barrister or solicitor.

(2) Nothing in this section prevents arrangements being made between individual legal practitioners with regard to attendance on each other.

Prohibition of official schemes for recognition of seniority or status

38O. (1) Any prerogative right or power of the Crown to appoint persons as Queen's Counsel or to grant letters patent of precedence to counsel is abrogated.

(2) Nothing in this section affects the appointment of a person who was appointed as Queen's Counsel before the commencement of this section.

(3) Nothing in this section abrogates any prerogative right or power of the Crown to revoke such an appointment.

(4) No law or practice prevents a person who was Queen's Counsel immediately before the commencement of this section from continuing to be Queen's Counsel while a barrister or solicitor.

(5) Executive or judicial officers of the State have no authority to conduct a scheme for the recognition or assignment of seniority or status among legal practitioners.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

(6) Nothing in subsection (5) prevents the publication of a list of legal practitioners in the order of the dates of their admission, or a list of barristers or solicitors in the order of the dates of their becoming barristers or solicitors, or a list of Queen’s Counsel in their order of seniority.

(7) In this section:

“**executive or judicial officers**” includes the Governor, Ministers of the Crown, Parliamentary Secretaries, statutory office holders, persons employed in the Public Service or by the State, an authority of the State or another public employer, and also includes judicial office holders or persons acting under the direction of the Chief Justice of New South Wales or other judicial office holder;

“**Queen’s Counsel**” means one of Her Majesty’s Counsel learned in the law for the State of New South Wales and extends to King’s Counsel where appropriate.

Barristers receiving money on behalf of other

38P. (1) A barrister is not, in the course of practising as a barrister, to receive money on behalf of another person unless authorised under this section.

(2) The regulations may authorise a barrister to do so. For that purpose, the regulations may apply to barristers any of the provisions of Part 6 (Trust Accounts) or make other provision relating to the matter.

Service with the Crown

38Q. Nothing in this Division affects:

- (a) practice as a barrister as the holder of a statutory office under the Crown (whether in right of New South Wales or in another right); or
- (b) practice as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right).

Division 1B—Barristers’ indemnity insurance

Indemnity insurance

38R. (1) The Bar Council may not issue a practising certificate to an insurable barrister unless it is satisfied that

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

there is, or will be, in force with respect to the barrister an approved indemnity insurance policy.

(2) A policy of indemnity insurance is approved if:

- (a) the policy is not to expire before the expiration of the practising certificate of the barrister to whom the policy relates; and
- (b) the level of insurance and type of policy have been approved by the Attorney General by order in writing given to the Bar Council; and
- (c) any conditions imposed by the order are complied with.

(3) The Bar Council may not issue a practising certificate to an insurable barrister whose application for the practising certificate is not accompanied by evidence that there is, or will be, in force with respect to the barrister an approved indemnity insurance policy.

(4) In this section, “**insurable barrister**” means a barrister required by the regulations to be an insured barrister.

(5) Part 3, Division 3:

After Division 2 of Part 3, insert:

Division 3—Crown Solicitor

Crown Solicitor

48A. (1) The Crown Solicitor may, in his or her official capacity, act as solicitor for:

- (a) the State of New South Wales; or
- (b) a person suing or being sued on behalf of the State of New South Wales; or
- (c) a Minister of the Crown in his or her official capacity as such a Minister; or
- (d) a body established by an Act or other law of New South Wales; or
- (e) an officer or employee of the Public Service or any other service of the State of New South Wales or of a body established by an Act or other law of New South Wales; or

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

- (f) a person holding office under an Act or other law of New South Wales or because of the person's appointment to that office by the Governor or a Minister of the Crown; or
 - (g) any other person or body, or any other class of persons or bodies, approved by the Attorney General.
- (2) The Crown Solicitor may act. under subsection (1):
- (a) with or without charge; or
 - (b) for a party in a matter that is not the subject of litigation, even if also acting under that subsection for another party in the matter.
- (3) The Crown Solicitor may, in his or her official capacity, act as agent for:
- (a) another State or a Territory; or
 - (b) at the request of another State or a Territory—an instrumentality of, or a person in the service of, that State or Territory.
- (4) If, under subsection (1) (g), the Crown Solicitor is given approval to act as solicitor for a Minister of the Crown (otherwise than in his or her official capacity as such a Minister), the following must be included in the annual report under the Annual Reports (Departments) Act 1985 of the Crown Solicitor's activities:
- (a) the name of the Minister;
 - (b) the matter in which the Crown Solicitor acted (but without disclosure of any confidential client information);
 - (c) the costs incurred by the Crown Solicitor in acting for the Minister and the amount charged to the Minister for so acting.
- (5) In this section, a reference to a State or a Territory includes a reference to the Crown in right of the State or Territory and to the Government of the State or Territory.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

(6) Part 3A:

After Part 3, insert:

PART 3A—UNQUALIFIED PRACTITIONERS**Unqualified person acting as a barrister or solicitor**

48B. (1) A person must not act as a barrister or solicitor unless the person holds a current practising certificate.

Maximum penalty: 20 penalty units.

(2) This section does not prevent a licensed conveyancer from carrying out conveyancing work in accordance with a licence in force under the Conveyancers Licensing Act 1992.

(3) A person who contravenes this section is, whether or not prosecuted or convicted for the contravention, guilty of contempt of any court in relation to which the contravention takes place.

(4) If a person contravenes this section:

- (a) no action lies for the recovery of costs in respect of anything done in the course of the contravention; and
- (b) if any such costs have been paid, the amount paid may be recovered as a debt owed by the person to the other person who paid them.

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

Unqualified person making false representations to be a barrister or solicitor

48C. (1) A person must not falsely pretend to be qualified to act as a barrister or solicitor.

(2) A person who does not hold a current practising certificate must not:

- (a) take or use a name, title, addition or description implying that the person is qualified to act as a barrister or solicitor; or
- (b) do anything, or permit anything to be done, that holds out, advertises or represents that the person is so qualified.

Maximum penalty: 20 penalty units.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

Offence by corporation or officers

48D. (1) A corporation must not do anything of a kind, or do anything in a manner, that is calculated to imply that the corporation is qualified to act as a barrister or solicitor.

Maximum penalty: 50 penalty units.

(2) A director, officer or employee of a corporation must not:

- (a) do anything of a kind, or do anything in a manner; or
- (b) cause the corporation to do anything of a kind, or do anything in a manner,

that is calculated to imply that the corporation is qualified to act as a barrister or solicitor.

Maximum penalty: 20 penalty units.

(3) In this section, “**corporation**” does not include a solicitor corporation which holds an unrestricted practising certificate.

Limitation on general legal work and probate work

48E. (1) In this section:

“**fee**” includes any form of, and any expectation of, a fee, gain or reward;

“**general legal work**” means the work involved in drawing, filling up or preparing an instrument or other document that:

- (a) is a will or other testamentary instrument; or
- (b) creates, regulates or affects rights between parties (or purports to do so); or
- (c) affects real or personal property; or
- (d) relates to a legal proceeding;

“**probate work**” means the work involved in:

- (a) taking instructions for a grant of probate or letters of administration; or
- (b) drawing or preparing papers on which to found or oppose a grant of probate or letters of administration.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

(2) A person must not directly or indirectly do any general legal work, or any probate work, for a fee unless the person is a barrister or solicitor.

Maximum penalty: 20 penalty units.

(3) Any general legal work or probate work is taken to have been done for a fee if it relates to, or is done in conjunction with, other work done by the same person for a fee, unless it is proved that the general legal work or probate work:

- (a) was done without the person who did it receiving any advantage or benefit; and
- (b) was not offered as an inducement to do the other work.

(4) This section does not apply to:

- (a) a public officer drawing instruments in the course of his or her duty; or
- (b) a person employed merely to engross an instrument; or
- (c) a land agent in respect of an instrument he or she is entitled to draw, fill up or prepare, and to charge for, under the Land Agents Act 1927; or
- (d) a licensed conveyancer acting in accordance with a licence in force under the Conveyancers Licensing Act 1992.

(5) This section does not apply to a person acting as an employee if the person:

- (a) so acts in the ordinary course of his or her employment; and
- (b) receives no fee, gain or reward for so acting other than his or her ordinary remuneration as an employee.

(6) this section does not apply to a person or work, or a class of persons or work, declared by the regulations as being exempt from the operation of this section.

(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.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*****Sharing receipts**

48F. (1) A barrister or solicitor may share with any other person the receipts of a business of the kind ordinarily conducted by a barrister or solicitor, except to the extent (if any) that the regulations, barristers rules, solicitors rules or joint rules otherwise provide.

(2) This section does not authorise a barrister or solicitor who is employed under a contract of service by a person who is not a barrister or solicitor to share with the employer the receipts of any business conducted by the barrister or solicitor on behalf of the employer.

(3) However, this section does not affect any business conducted by barristers or solicitors on behalf of their employer if the business:

- (a) concerns a proceeding or transaction to which the employer or a related body is a party; or
- (b) is of a kind prescribed by the regulations or is carried out in circumstances of a kind prescribed by the regulations.

(4) For the purposes of this section, a body is related to an employer if the body and the employer are related to each other in terms of section 50 of the Corporations Law.

Multidisciplinary partnerships

48G. (1) A barrister or solicitor may be in partnership with a person who is not a barrister or solicitor, except to the extent (if any) that the regulations, barristers rules, solicitors rules or joint rules otherwise provide.

(2) This section applies only if the business of the partnership concerned includes business of a kind ordinarily conducted by a barrister or solicitor.

(3) The following provisions apply in respect of a partnership in which a barrister or solicitor is authorised by this section to be a member:

- (a) A partner who is not a barrister or solicitor does not contravene this Part merely because the partner conducts business of the partnership that is the business of a barrister or solicitor.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

- (b) A partner who is not a barrister or solicitor does not contravene this Part merely, because the partner receives any fee, gain or reward for business of the partnership that is the business of a barrister or solicitor.
 - (c) A partner who is not a barrister or solicitor does not contravene this Part merely because the partner holds out, advertises or represents himself or herself as a member of a partnership conducting the business of a barrister or solicitor.
 - (d) A partner who is a barrister or solicitor does not contravene this Part merely because the partner shares with any other partner the receipts of business of the partnership that is the business of a barrister or solicitor.
 - (e) Part 6 (Trust Accounts), Part 7 (Solicitors' Fidelity Fund), Part 8 (Receivers) and Part 8A (Managers) apply, subject to the regulations, as if each partner who is not a solicitor were a solicitor. Those provisions so apply in connection with any business of the partnership (whether or not it is the business of a barrister or solicitor).
- (4) This section has effect despite anything to the contrary in this Part (except sections 48J and 48K).

Community legal centres

48H. (1) An organisation, whether incorporated or not, is a community legal centre which complies with this section if:

- (a) it is held out or holds itself out as being a community legal centre (or a centre or establishment of a similar description); and
- (b) it provides legal services:
 - (i) which are directed generally to persons or organisations who or which lack the financial means to obtain privately funded legal services or whose cases are expected to raise issues of public interest or of general concern to disadvantaged groups in the community; and

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

- (ii) which are made available to persons or organisations who or which have a special need arising from their location or the nature of the legal matter to be addressed or have a significant physical or social disability; and
 - (iii) which are not intended, or likely, to be provided at a profit to the community legal centre and the income (if any) from which cannot or will not be distributed to any member or employee of the centre otherwise than by way of reasonable remuneration under a contract of service or for services; and
 - (iv) which are funded or expected to be funded to a significant level by donations or by grants from government, charitable or other organisations; and
- (c) at least one of the persons who is employed or otherwise used by it to provide those legal services is a barrister or solicitor with a current practising certificate and is generally responsible for the provision of those legal services (whether or not the person has an unrestricted practising certificate).
- (2) A community legal centre which complies with this section does not contravene this Part merely because:
- (a) it employs, or otherwise uses the services of, solicitors or barristers (or both) to provide legal services to members of the public; or
 - (b) it has a contractual relationship with a member of the public to whom those legal services are provided or receives any fee, gain or reward for providing those legal services; or
 - (c) it shares with a solicitor or barrister employed or otherwise used by it to provide those legal services receipts from the business of the centre, being business of a kind usually conducted by a solicitor or barrister; or

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(d) it adopts or uses the word “legal” (or some related term) in its name or any registered business name under which it provides legal services to members of the public.

(3) This section has effect despite anything to the contrary in this Part.

Prohibition on employment of certain non-legal clerks

48I. (1) This section applies to a person who:

- (a) is not a legal practitioner; and
- (b) is or was a clerk to a barrister or solicitor.

(2) On application by a Council, the Tribunal may make an order prohibiting (without approval under section 48K) any barrister or solicitor from, employing or paying in connection with his or her practice a specified person to whom this section applies if:

- (a) the Tribunal is satisfied that the person is not a fit and proper person to be employed or paid in connection with a barrister’s or solicitor’s practice; or
- (b) the Tribunal is satisfied that the person has been guilty of conduct which, if the person were a barrister or solicitor, would have constituted unsatisfactory professional conduct or professional misconduct within the meaning of Part 10.

(3) An order made under this section may be revoked by the Tribunal on application by a Council or by the person against whom the order was made.

(4) A person the subject of an order under this section may appeal to the Supreme Court against the order and the Supreme Court may stay the order pending determination of the appeal.

(5) The death of a barrister or solicitor does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a clerk to the barrister or solicitor.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*****Prohibition on partnerships with certain non-legal partners**

48J. (1) This section applies to a person who:

- (a) is not a legal practitioner; and
- (b) is or was a partner of a barrister or solicitor.

(2) On application by a Council, the Tribunal may make an order prohibiting (without approval under section 48K) any barrister or solicitor from being a partner, in a business that includes the barrister's or solicitor's practice, of a specified person to whom this section applies if:

- (a) the Tribunal is satisfied that the person is not a fit and proper person to be such a partner; or
- (b) the Tribunal is satisfied that the person has been guilty of conduct which, if the person were a barrister or solicitor, would have constituted unsatisfactory professional conduct or professional misconduct within the meaning of Part 10.

(3) An order made under this section may be revoked by the Tribunal on application by a Council or by the person against whom the order was made.

(4) A person the subject of an order under this section may appeal to the Supreme Court against the order which may confirm or revoke the order. The Supreme Court may stay the order pending determination of the appeal.

(5) The death of a barrister or solicitor does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the barrister or solicitor.

Associates who are disqualified or convicted persons

48K. (1) It is professional misconduct if a barrister or solicitor has an associate whom the barrister or solicitor knows to be:

- (a) a disqualified person; or
- (b) a person who has been convicted of an indictable offence and does not hold a current practising certificate.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

(2) Subsection (1) does not apply to an associate approved by:

- (a) in the case of a disqualified person who is an associate of a barrister—the Bar Council; or
- (b) in the case of a disqualified person who is an associate of a solicitor—the Law Society Council;
- (c) in the case of a person who has been convicted of an indictable offence—the Tribunal; or
- (d) in any case—the Supreme Court on an appeal under subsection (3).

(3) If a Council or the Tribunal decides to refuse an application by a person for approval under this section, the person may appeal against the decision to the Supreme Court which may:

- (a) confirm the decision appealed against; or
- (b) approve of the associate.

(4) An approval under this section may be subject to specified limitations or conditions.

(5) A disqualified person, or a person convicted of an indictable offence, must not seek to become an associate of a barrister or solicitor unless the person first informs the barrister or solicitor of the disqualification or conviction.

Maximum penalty: 10 penalty units.

(6) Proceedings for an offence under subsection (5) may be brought at any time within 6 months after discovery of the offence by the barrister or solicitor concerned.

(7) In this section:

“**associate**” of a solicitor or barrister means:

- (a) a person (not being a legal practitioner) who is a partner of the solicitor or barrister in a business that includes the barrister’s or solicitor’s practice; or
- (b) a person (not being a legal practitioner) who shares the receipts of the barrister’s or solicitor’s practice; or
- (c) a person who is employed or paid in connection with the barrister’s or solicitor’s practice;

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

“disqualified person” means a person (other than a person who has been convicted of an indictable offence):

- (a) whose name has, otherwise than at his or her own request, been removed from the roll of legal practitioners in the Supreme Court; or
- (b) whose name has been removed from a roll kept outside the State that corresponds to the roll of legal practitioners in the Supreme Court; or
- (c) who is suspended from practising as a barrister or solicitor in New South Wales or another State or Territory; or
- (d) who is the subject of an order in force under section 48I or 485; or
- (e) who is disqualified from holding a licence under the Conveyancers Licensing Act 1992 by virtue of an order in force under Part 6 of that Act.

Miscellaneous provisions—ss. 481–48K

48L. (1) The parties to an application to the Tribunal under sections 481–48K may be represented by a barrister or solicitor at the hearing of the application.

(2) On making an order under section 48I or 48J, the Tribunal may make an order for costs.

(3) A Council must:

- (a) retain in its office an order made under section 48I or 48J on its application; and
- (b) permit any such order to be inspected during office hours and without charge, but only if the inspection is made by a barrister or solicitor.

(4) In any proceedings under this Act, a document that purports:

- (a) to be an order under section 48I or 48J; and
 - (b) to be signed by the member constituting, or presiding at the sitting of, the Tribunal when the order was made,
- is, without further proof, evidence of the order it purports to be.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

(5) For the purposes of sections 481–48K, the Tribunal is in each case to be constituted as determined by the President of the Tribunal.

Injunctions

48M. The Supreme Court may, on the application of any person, grant an injunction, in such terms as the Supreme Court considers to be appropriate, restraining a person from contravening this Part.

(7) Part 4, Divisions 4, 5:

After Division 3, insert:

Division 4—Rules

Rules of Bar Council

57A. (1) The Bar Council may make rules for or with respect to practice as a barrister.

(2) The power to make rules is not limited to the matters for which this Act specifically authorises the making of barristers rules.

Rules of Law Society Council

57B. (1) The Law Society Council may make rules for or with respect to practice as a solicitor.

(2) The power to make rules is not limited to the matters for which this Act specifically authorises the making of solicitors rules.

Joint rules

57C. (1) The Bar Council and Law Society Council may jointly make rules for or with respect to:

- (a) any matters about which joint rules are authorised to be made; or
- (b) any matters about which they may separately make rules.

(2) Joint rules may but need not apply in the same way to both barristers and solicitors.

(3) Joint rules prevail, to the extent of any inconsistency, over barristers rules or solicitors rules (whether made before or after the joint rules).

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(4) If joint rules are made, references in this Act to barristers rules or solicitors rules extend to any such joint rules.

Rules binding

57D. (1) Barristers rules are binding on barristers, solicitors rules are binding on solicitors and joint rules are binding on both barristers and solicitors.

(2) Any such rules are binding on legal practitioners acting as barristers or solicitors without a practising certificate as if those legal practitioners were barristers or solicitors.

(3) Any such rules are binding on barristers or solicitors even though they are not members of the Bar Association or the Law Society.

(4) Failure to comply with any such rules does not of itself amount to a breach of this Act. However, failure to comply is capable of being professional misconduct or unsatisfactory professional conduct.

Inconsistent rules

57E. Barristers rules, solicitors rules and joint rules do not have effect to the extent that they are inconsistent with this Act or the regulations.

Existing rules

57F. (1) The Bar Council may, by a notice published in the Gazette, designate rules of the Bar Association (as in force at the commencement of this section) as barristers rules. Those rules are, to the extent that they could be made under this Act, taken to be barristers rules made under this Act and this Act (including section 57E) applies to those rules accordingly.

(2) The Law Society Council may, by a notice published in the Gazette, designate rules, practice guidelines or rulings of the Council (as in force at the commencement of this section) as solicitors rules. Those rules are, to the extent that they could be made under this Act, taken to be solicitors rules made under this Act and this Act (including section 57E) applies to those rules accordingly.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(3) Any such barristers or solicitors rules may be amended or revoked in the same way as any other barristers or solicitors rules made under this Act.

(4) Unless they are sooner revoked, any such barristers or solicitors rules expire on the second anniversary of the commencement of this section.

Initial review of rules

57G. (1) Within 12 months after the commencement of this section, each Council is required to review its barristers or solicitors rules for the purpose of determining whether it considers any rule imposes restrictive or anti-competitive practices which are not in the public interest or is not otherwise in the public interest.

(2) Each Council must report to the Attorney General on completion of the review.

(3) The Attorney General must make each report public within 28 days after it is received by the Attorney General.

Review of rules by Advisory Council

57H. (1) The Advisory Council may, from time to time, review the barristers rules, solicitors rules and joint rules. The Advisory Council is required to furnish reports to the Attorney General on any such review of those rules.

(2) The Advisory Council is required to conduct such a review and furnish a report if requested to do so by the Attorney General.

(3) The Attorney General must make each report public within 28 days after it is received by the Attorney General.

(4) Without limiting the matters about which the Advisory Council may report, the Advisory Council must report on whether it considers any rule imposes restrictive or anti-competitive practices which are not in the public interest or is not otherwise in the public interest.

Rules may be declared inoperative

57I. (1) The Attorney General may, by order published in the Gazette, declare any barristers or solicitors rule or joint

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

rule, or part of any such rule, inoperative, but only if the Advisory Council has reported to the Attorney General that it imposes restrictive or anti-competitive practices which are not in the public interest or it is not otherwise in the public interest.

(2) A rule or part of a rule may be declared inoperative even though it deals with a matter for which this Act specifically authorises the making of rules.

(3) A declaration is effective to render the rule or the part of the rule inoperative.

(4) A declaration takes effect on the date of the publication of the order in the Gazette or on a later date specified in the order.

Publication of rules

57J. Barristers or solicitors rules or joint rules are to be published in the Gazette and in appropriate professional publications.

Commencement of rules

57K. (1) A barristers or solicitors rule or joint rule commences on the date specified in the rule for its commencement.

(2) The date so specified is not to be earlier than the date of its publication in the Gazette and, unless the Attorney General approves, is not to be earlier than 1 month after the date of that publication.

Other provisions as to rules

57L. Sections 42–45 of the Interpretation Act 1987 apply to barristers or solicitors rules or joint rules in the same way as they apply to statutory rules within the meaning of that Act.

Note. The above provisions of the Interpretation Act 1987 relate to standard provisions authorising the adoption of other publications by reference, the making of differential rules, the amendment or repeal of rules and judicial notice and presumptions as to validity for rules.

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

Division 5—General

Membership of Bar Association or Law Society

57M. (1) A barrister is entitled to be a member of the Bar Association, and is so entitled without being required to pay any amount additional to that paid for issue of his or her practising certificate.

(2) A solicitor is entitled to be a member of the Law Society, and is so entitled without being required to pay any amount additional to that paid for issue of his or her practising certificate.

Continuing legal education

57N. Each Council may arrange for the establishment and administration of courses of continuing legal education.

(8) Section 58 (Constitution of the Advisory Council):

(a) Omit section 58 (2), insert instead:

(2) The Advisory Council is to consist of 11 members appointed by the Attorney General.

(b) Omit section 58 (3), insert instead:

(3) Of the members:

(a) 1 is to be appointed as the Chairperson of the Advisory Council; and

(b) 2 are to be barristers, of whom 1 is to be selected from a panel of at least 5 persons nominated by the Bar Council; and

(c) 3 are to be solicitors, of whom 2 are to be selected from a panel of at least 5 persons nominated by the Law Society Council; and

(d) 5 are to be lay persons appointed to represent the community.

(9) Section 59 (Functions of the Advisory Council):

(a) In section 59 (2) (b), after “Attorney General”, insert “, including any matter relating to professional standards, advertising and the general regulation of the legal profession”.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(b) After section 59 (2), insert:

(3) The Advisory Council is to furnish a report to the Attorney General on whether it considers any regulation made under section 216 (3) (b) or any such proposed regulation referred to it by the Attorney General imposes restrictive or anti-competitive practices which are not in the public interest or is not otherwise in the public interest. The Attorney General must make each report public within 28 days after it is received by the Attorney General.

(4) The Advisory Council may consult with representatives of the Bar Association, the Law Society or any other relevant organisation.

(5) The Advisory Council has such other functions as may be conferred or imposed on it by or under this or any other Act.

(10) Part 9 (Unqualified practitioners):

Omit the Part.

(11) Section 216 (**Regulations**):

(a) Omit section 216 (3) (b), (c) and (k), insert instead:

(b) matters for or with respect to which barristers rules, solicitors rules or joint rules have been or may be made;

(b) Omit section 216 (3) (h), insert instead:

(h) information to be provided to a Council by a barrister or solicitor (or former barrister or solicitor) about indemnity insurance;

(c) From section 216 (3) (i), omit “and” where lastly occurring.

(12) Schedule 2:

Omit the Schedule, insert instead:

**SCHEDULE 2—THE LEGAL PRACTITIONERS
ADMISSION BOARD**

(Sec. 9)

General procedure

1. The procedure for the calling of meetings of the Admission Board and for conduct of business at those

SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

meetings is, subject to this Act, to be as determined by the Board.

Quorum

2. The quorum for a meeting of the Admission Board is 5 members including the member presiding at the meeting.

Presiding and deputy presiding member of Admission Board

3. The Chief Justice of New South Wales may from time to time nominate one of the judicial members of the Admission Board to be the presiding member of the Board and another of the judicial members of the Board to be the deputy presiding member of the Board.

Presiding member

4. (1) The Chief Justice of New South Wales is to preside at a meeting of the Admission Board if electing to be present and electing to preside.

(2) Otherwise:

- (a) the presiding member; or
- (b) in the absence of the presiding member—the deputy presiding member; or
- (c) in the absence of both—a member elected by and from the members present and voting,

is to preside at the meeting.

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

Voting

5. A decision supported by a majority of the votes cast at a meeting of the Admission Board at which a quorum is present is the decision of the Board.

Minutes

6. The Admission Board is to cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*****Reserve members**

7. (1) For each member of the Admission Board, one or more reserve members may be nominated to act in the office of the member during the member's illness or absence.

(2) While so acting, a reserve member has and may exercise all the functions of the member and is taken to be a member of the Admission Board.

(3) For a member who is the Attorney General or a nominee of the Attorney General, the reserve member or members may be nominated by the Attorney General.

(4) For any other member, the reserve member or members are to be nominated by the person or body that nominated the member and must be qualified for nomination in the same way as the member.

(5) A person may be removed, by the nominating person or body, from any office for which the person was nominated under this clause.

(6) For the purposes of this clause, a vacancy in the office of a member of the Admission Board is taken to be an absence from office of the member.

Liability of members

8. (1) Subject to subclause (2), no matter or thing done by the Admission Board or any member of the Board is, if the matter or thing was done in good faith for the purpose of executing Part 2, to subject any such member personally to any action, liability, claim or demand.

(2) A judicial member of the Admission Board is, in the exercise of his or her functions under Part 2, to have the same protection and immunity as a Judge of the Supreme court.

Seal

9. The regulations may make provision for or with respect to the custody and use of the seal of the Admission Board.

(13) Schedule 3 (The Legal Profession Advisory Council):

- (a) Omit Part 1.
- (b) Omit clause 8 (3).

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SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*

- (c) From clause 12, omit “5 members”, insert instead “6 members”.

(14) Schedule 8 (**Savings, transitional and other provisions**):

- (a) Omit clauses 4 and 5.
(b) After Part 4, insert:

**Part 5—Provisions consequent on enactment of
Schedule 1 to the Legal Profession Reform Act 1993**

Barristers

30. (1) A person enrolled as a barrister at the commencement of Schedule 1 (2) to the Legal Profession Reform Act 1993 is taken to have been admitted as a legal practitioner on the day on which the person was admitted as a barrister.

(2) However, if the person has been on the roll of barristers or solicitors since the date of the person’s first admission as either a barrister or solicitor, the person is taken to have been admitted as a legal practitioner on the first date on which the person was admitted as either a barrister or solicitor.

(3) A person holding a practising certificate as a barrister at that commencement is taken to have been issued with a practising certificate as a barrister under this Act as amended by the Legal Profession Reform Act 1993. The certificate continues in force accordingly.

Solicitors

31. (1) A person enrolled as a solicitor at the commencement of Schedule 1 (2) to the Legal Profession Reform Act 1993 is taken to have been admitted as a legal practitioner on the day on which the person was admitted as a solicitor.

(2) However, if the person has been on the roll of barristers or solicitors since the date of the person’s first admission as either a barrister or solicitor, the person is taken to have been admitted as a legal practitioner on the first date on which the person was admitted as either a barrister or solicitor.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued***

(3) A person holding a practising certificate as a solicitor at that commencement is taken to have been issued with a practising certificate as a solicitor under this Act as amended by the Legal Profession Reform Act 1993. The certificate continues in force accordingly.

Admission Boards

32. (1) The Barristers Admission Board and Solicitors Admission Board are abolished.

(2) Anything done by, to or in relation to either of those Boards is taken to have been done by, to or in relation to the Legal Practitioners Admission Board, except as may be provided by the regulations.

(3) The Attorney General may call the first meeting of the Legal Practitioners Admission Board in such way as the Attorney General thinks fit.

Students-at-law

33. (1) An application to be registered as a student-at-law pending at the commencement of Schedule 1 (2) to the Legal Profession Reform Act 1993 is taken to be an application to be registered as a student-at-law by the Admission Board.

(2) A person registered as a student-at-law at that commencement is taken to be registered as a student-at-law by the Admission Board.

Declarations as to character

34. (1) An application for a declaration under section 20 pending at the commencement of Schedule 1 (2) to the Legal Profession Reform Act 1993 is taken to be an application for a declaration by the Admission Board.

(2) A declaration made by the Barristers Admission Board or the Solicitors Admission Board before that commencement and in force at that commencement is taken to be a declaration made by the Legal Practitioners Admission Board under section 12 of this Act as amended by the Legal Profession Reform Act 1993.

**SCHEDULE 1—REFORMS RELATING TO THE STRUCTURE
AND REGULATION OF THE LEGAL PROFESSION—*continued*****Legal Profession Advisory Council**

35. (1) A person who held office as a member of the Advisory Council immediately before the commencement of Schedule 1 (8) to the Legal Profession Reform Act 1993 ceases to hold office on that commencement and is not entitled to any remuneration or compensation for the loss of that office.

(2) However, any such person is eligible (if otherwise qualified) to be appointed as a member of the Advisory Council after the commencement of Schedule 1 (8) to the Legal Profession Reform Act 1993.

Unqualified practitioners

35A. (1) An order under section 120 that was in force immediately before the repeal of that section by the Legal Profession Reform Act 1993 is taken to be an order under section 48I as inserted by that Act.

(2) An order may be made under section 48I or 48J in connection with conduct occurring before the commencement of that section.

(3) Leave given under section 121 that was in force immediately before the repeal of that section by the Legal Profession Reform Act 1993 is taken to be an approval under section 48K, as inserted by that Act.

Regulations

36. Without limiting clause 1A, regulations may be made under that clause for or with respect to the following:

- (a) rules of the Admission Board of a transitional or savings nature;
- (b) pending applications for admission as a barrister or solicitor;
- (c) practising certificates and conditions of practising certificates;
- (d) pending applications for practising certificates;
- (e) orders, pending applications and appeals and other proceedings under Part 9 before the repeal of that Part, and the enactment of Part 3A, by the Legal Profession Reform Act 1993.

**SCHEDULE 2—REFORMS RELATING TO COMPLAINTS
AND DISCIPLINE****Amendment of Legal Profession Act 1987**

(Sec. 3)

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

(a) In section 3 (1), insert in alphabetical order:

“Commissioner” means the Legal Services Commissioner appointed under, Part 10;

(b) From section 3 (1), omit the definition of “Tribunal”, insert instead:

“Tribunal” means the Legal Services Tribunal constituted under Part 10;

(2) Part 10:

Omit the Part, insert instead:

PART 10—COMPLAINTS AND DISCIPLINE**Division 1—Preliminary****Objects of Part generally**

123. The general objects of this Part are:

- (a) to redress the consumer complaints of users of legal services; and
- (b) to ensure compliance by individual legal practitioners with the necessary standards of honesty, competence and diligence; and
- (c) to maintain at a sufficiently high level the ethical and practice standards of the legal profession as a whole.

Objects of Part relating to users of legal services

124. The objects of this Part relating to the users of legal services are:

- (a) to give every person the right to complain about the conduct of legal practitioners; and
- (b) to give users of legal services access to sufficient advice and assistance in order to make and pursue complaints in accordance with this Part and to understand their rights and responsibilities under this Part; and

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

- (c) to provide an opportunity for mediation of consumer disputes relating to legal services; and
- (d) to give complainants immunity from civil liability for communications made by them in connection with the official complaints and disciplinary system; and
- (e) to provide complainants with a reasonable opportunity to rebut statements of the legal practitioner against whom the complaint is made before the complaint is disposed of; and
- (f) to ensure that complainants receive adequate notice of the institution and status of disciplinary proceedings at relevant stages of the proceedings (including notice of the dismissal of complaints and the reasons for the dismissal); and
- (g) to give complainants the right to seek an independent review of decisions of Councils to dismiss complaints or merely reprimand legal practitioners.

Objects of Part relating to providers of legal services

125. The objects of this Part relating to the providers of legal services are:

- (a) to ensure that the rules of natural justice (being rules for procedural fairness) are applied to any disciplinary proceedings taken against legal practitioners; and
- (b) to give legal practitioners immunity from civil liability for communications made by them in connection with the official complaints and disciplinary system; and
- (c) to ensure that legal practitioners are aware of the standards of honesty, competence and diligence expected of them.

Definitions

126. In this Part:

“appropriate Council” means:

- (a) in relation to a complaint concerning a person who was a barrister when the conduct the subject of the complaint allegedly occurred—the Bar Council; or

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

- (b) in relation to a complaint concerning a person who was a solicitor when the conduct the subject of the complaint allegedly occurred—the Law Society Council; or
- (c) in relation to a complaint concerning a person who was neither a barrister nor a solicitor when the conduct the subject of the complaint allegedly occurred—the Bar Council or the Law Society Council, whichever the Commissioner nominates for the purposes of the complaint;

“**associated solicitor corporation**” of a solicitor who is found guilty of unsatisfactory professional conduct or professional misconduct means any solicitor corporation the affairs or business of which are under the direction or control of the solicitor (either alone or in association with any other solicitor who is also found guilty of unsatisfactory professional conduct or professional misconduct in relation to the same complaint);

“**barrister member**” of the Tribunal means a member of the Tribunal appointed under section 163 (1) (a);

“**compensation order**” means an order of the Tribunal under section 171D;

“**complaint**” means a complaint made under Division 3;

“**information**” means an information laid in the Tribunal in relation to a complaint against a legal practitioner;

“**investigation**” means an investigation under this Part by a Council or the Commissioner into a complaint, and includes an independent investigation under section 151;

“**professional misconduct**” and “**unsatisfactory professional conduct**” are defined in section 127;

“**solicitor member**” of the Tribunal means a member of the Tribunal appointed under section 163 (1) (b).

Professional misconduct and unsatisfactory professional conduct

127. (1) For the purposes of this Part, “**professional misconduct**” includes:

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

- (a) unsatisfactory professional conduct, where the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence; or
- (b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with the practice of law which, if established, would justify a finding that a legal practitioner is not of good fame and character or is not a fit and proper person to remain on the roll of legal practitioners; or
- (c) conduct that is declared to be professional misconduct by any provision of this Act.

(2) For the purposes of this Part:

“unsatisfactory professional conduct” includes conduct (whether consisting of an act or omission) occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

(3) Maintenance or champerty by a legal practitioner (except in connection with a conditional costs agreement under Part 11) may constitute professional misconduct despite the Maintenance and Champerty Abolition Act 1993.

Legal practitioners to whom Part applies

128. (1) This Part applies to any legal practitioner, including:

- (a) a legal practitioner who does not hold a practising certificate; and
- (b) a solicitor corporation; and
- (c) a person who was a legal practitioner when the unsatisfactory professional conduct or professional misconduct the subject of a complaint allegedly occurred but who is no longer a legal practitioner (in which case this Part applies as if the person were still a legal practitioner).

(2) However, this Part does not apply to a judicial officer within the meaning of the Judicial Officers Act 1986.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued***Division 2—Legal Services Commissioner****Appointment of Commissioner**

129. (1) The Governor may, on the recommendation of the Attorney General, appoint a person to be Legal Services Commissioner.

(2) The person so appointed is to be a person who, in the opinion of the Attorney General:

- (a) is familiar with the nature of the legal system and legal practice (but need not be a legal practitioner); and
- (b) possesses sufficient qualities of independence, fairness and integrity.

(3) The employment of the Commissioner is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part. 2 or 8 of that Act.

(4) The Commissioner may be appointed for a period of up to 7 years, despite anything to the contrary in section 42F of that Act.

(5) The Governor may remove the Commissioner from office only for misbehaviour, incapacity or incompetence, despite anything to the contrary in section 42Q of that Act.

Acting Commissioner

130. (1) The Attorney General may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner (or during a vacancy in the office of Commissioner) and a person, while so acting, has all the functions of the Commissioner.

(2) The Attorney General may, at any time, remove a person from the office of acting Commissioner.

(3) The acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine.

Functions of Commissioner

131. (1) The Commissioner has, in accordance with this Act, the following functions:

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

- (a) to receive complaints about professional misconduct or unsatisfactory professional conduct of legal practitioners;
 - (b) to assist and advise complainants and potential complainants in making and pursuing complaints (including assisting complainants to clarify their complaints and to put their complaints in writing);
 - (c) to initiate a complaint against a legal practitioner;
 - (d) to investigate, or take over the investigation of, a complaint if the Commissioner considers it appropriate;
 - (e) to refer complaints to the appropriate Council for investigation or mediation in appropriate cases;
 - (f) to monitor investigations and give directions and assistance to Councils in connection with the investigation of complaints;
 - (g) to review the decisions of Councils to dismiss complaints or to reprimand legal practitioners in connection with complaints;
 - (h) to take over investigations or to institute proceedings in the Tribunal against legal practitioners following a review by the Commissioner;
 - (i) to assist the Councils to promote community education about the regulation and discipline of the legal profession;
 - (i) to assist the Councils in the enhancement of professional ethics and standards, for example, through liaison with legal educators or directly through research, publications or educational seminars;
 - (k) to conduct regular surveys of, and report on, the views and levels of satisfaction of complainants and respondent legal practitioners with the complaints handling and disciplinary system;
 - (l) to report on the Commissioner's activities under this Act.
- (2) The Commissioner has such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

Note. The Conveyancers Licensing Act 1992 confers on the commissioner the function of dealing with complaints against licensed conveyancers.

Staff of Commissioner

132. (1) The staff of the Commissioner is (subject to this section) to be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Commissioner may employ other staff with the approval of the Attorney General. Part 2 of the Public Sector Management Act 1988 does not apply to the employment of any such staff.

(3) The Commissioner may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government agency or other public authority. Any staff of whose services the Commissioner makes use is taken to be staff of the Commissioner for the purposes of this Act.

(4) The Commissioner may, with the approval of the Attorney General, engage consultants or other persons for the purpose of getting assistance.

Delegation of functions

133. The Commissioner may delegate any of his or her functions (other than this power of delegation) to a member of the staff of the Commissioner or to a person of a class prescribed by the regulations.

Division 3—Complaints about legal practitioners

Right to make complaint to Commissioner

134. (1) Any person may make a complaint to the Commissioner about the conduct of a legal practitioner.

(2) Any such complaint that is duly made is to be dealt with in accordance with this Part.

(3) This section does not affect any other right of a person to complain about the conduct of a legal practitioner.

Complaints made by or to Councils

135. (1) A Council may initiate a complaint against any legal practitioner under this Part.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

(2) A copy of any such complaint is to be forwarded immediately to the Commissioner.

(3) A complaint that is made to a Council instead of to the Commissioner is to be forwarded immediately to the Commissioner by the Council.

Complaints made by Commissioner

136. (1) The Commissioner may initiate a complaint against any legal practitioner under this Part.

(2) Any such complaint is, for the purposes of this Part, taken to have been made to the Commissioner.

How complaint made

137. A complaint:

- (a) must be in writing; and
- (b) must identify the Complainant and the legal practitioner against whom the complaint is made; and
- (c) must give particulars of the alleged conduct of the legal practitioner that is the subject of the complaint.

When complaint made

138. (1) A complaint may only be made within 3 years after the conduct is alleged to have occurred.

(2) However, the Commissioner may accept a complaint made after that time if

- (a) the Commissioner is satisfied that it is just and fair to do so having regard to the delay and the reason for the delay; or
- (b) the Commissioner is satisfied that the complaint concerns an allegation of professional misconduct and that it is necessary in the public interest to investigate the complaint.

Request by complainant for compensation order

139. (1) A complainant who has suffered a loss because of the conduct the subject of the complaint may request a compensation order.

(2) A complainant who makes such a request must give particulars of the loss suffered by the complainant.

**SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued***

(3) Such a request may be made in the complaint. The request may also be made, by notice in writing to the Commissioner or the appropriate Council, at any time after the making and before the disposal of the complaint.

(4) However, such a request may not be made after proceedings have been instituted in the Tribunal with respect to the complaint unless the Tribunal grants the complainant leave to make the request.

(5) Such a request may only be made within 6 years after the conduct which caused the loss is alleged to have occurred.

Further particulars

140. (1) The Commissioner:

- (a) may require further particulars of a complaint to be given; and
- (b) may require the complaint, or any further particulars, to be verified by statutory declaration.

(2) The requirement is to be notified in writing to the complainant and is to specify a reasonable time for compliance.

Summary dismissal of complaints

141. The Commissioner may dismiss a complaint without referring it to the appropriate Council:

- (a) if further particulars of the complaint are not given, or the complaint or the further particulars are not verified, as required by the Commissioner; or
- (b) if the complaint is frivolous or vexatious.

Referral of complaints to Council for investigation or mediation, or both

142. (1) The Commissioner may refer a complaint to the appropriate Council if the complaint is not to be investigated by the Commissioner under Division 5.

(2) When referring a complaint to a Council, the Commissioner may recommend that the Council investigate the complaint or refer it to mediation, or both.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

(3) The complaint is to be referred within 21 days after it is made. If the Commissioner requires the complainant to provide further particulars or to do any other thing under section 140, the complaint is to be referred within 21 days after the further particulars are provided or the other thing is done.

(4) This section does not apply to a complaint which is dismissed by the Commissioner under this Division.

Division 4—Mediation of consumer disputes**Consumer dispute**

143. (1) For the purposes of this Division, a **consumer dispute** is a dispute between a client and a legal practitioner in which the client seeks redress or a remedy by making a complaint under this Part.

(2) The client may make a complaint in connection with the consumer dispute even though the dispute may not involve an issue of professional misconduct or unsatisfactory professional conduct.

Referral for mediation

144. (1) A Council or the Commissioner, when dealing with a complaint, may refer a consumer dispute for mediation.

(2) If the consumer dispute involves an issue of professional misconduct or unsatisfactory professional conduct, the complaint is to continue to be dealt with under this Part after or during the attempt at mediation.

(3) If the consumer dispute does not involve an issue of professional misconduct or unsatisfactory professional conduct, the dispute may be referred for mediation but no other action is required on the complaint.

Mediation to be voluntary

145. Participation in the mediation by the parties to a consumer dispute is voluntary.

**SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*****Mediators**

146. (1) The Commissioner is to maintain a list of mediators who are available to attempt a mediation of a consumer dispute.

(2) The Commissioner is to consult the Councils and may consult any other relevant body about the selection and training of mediators.

Confidentiality of mediation process

147. (1) Evidence of anything said or admitted during the mediation or attempted mediation of a consumer dispute and a document prepared for the purposes of any such mediation are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence.

(2) A mediator may recommend to the appropriate Council and the Commissioner that a complaint should be investigated (without disclosing any such evidence, admission or document).

Division 5—Investigation of complaints**Investigation of complaints by Commissioner**

147A. (1) The Commissioner may conduct an investigation into a complaint instead of referring it to a Council for investigation, or may take over the investigation of a complaint from a Council, if the Commissioner considers it appropriate.

(2) A Council is to provide any assistance required by the Commissioner to conduct an investigation into a complaint (including copies of or access to all documents held by the Council that relate to the complaint or are required for the purpose of investigating the complaint).

Investigation of complaints by Council

148. (1) A Council must, subject to this section, conduct an investigation into each complaint referred to it by the Commissioner or initiated by the Council.

(2) A Council may dismiss a complaint without investigation if further particulars of the complaint are not given, or the complaint or the further particulars are not verified, as required by the Council.

**SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued***

(3) This section does not apply to a complaint which is taken over by the Commissioner under section 147A, a complaint which is referred to an independent investigator under section 151 or a complaint which is referred only to mediation.

Monitoring by Commissioner of conduct of investigation

149. (1) The Commissioner is to monitor investigations by a Council into complaints.

(2) A Council investigating a complaint is to report to the Commissioner on the progress of the investigation if required to do so by the Commissioner.

(3) A Council is required to provide any assistance required by the Commissioner to monitor investigations by the Council (including access to or a copy of all documents held by the Council that relate to the complaint or are required for the purpose of monitoring the investigation).

Directions by Commissioner about conduct of investigation

150. (1) The Commissioner may give the Council directions on the handling of a complaint being investigated by the Council if the Commissioner considers that it is in the public interest to do so having regard to the seriousness of the complaint.

(2) The directions may include, for example, directions to pursue a particular line of inquiry or directions concerning the time for completing the investigation.

(3) Directions may not be given on the decision to be taken by a Council following the investigation.

(4) If the directions of the Commissioner about the investigation of a complaint are not complied with, the Commissioner may, under section 147A, take over the investigation of the complaint.

(5) The Commissioner may also issue general guidelines to a Council about the investigation of complaints.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued***Independent investigation of certain complaints**

151. (1) The Commissioner is to arrange for a complaint to be investigated by an independent investigator if requested to do so by the appropriate Council and if the Commissioner decides not to conduct the investigation into the complaint under section 147A.

(2) The independent investigator is to report to the Council on his or her investigation of the complaint.

(3) This Part applies to any such investigation as if it were conducted by the Council (except that the decision on the complaint is to be made by the Council after consideration of the report of the independent investigator).

(4) A complaint is to be referred for an independent investigation if the Council is satisfied that it is in the interests of justice or in the public interest to do so.

(5) A Council is to provide any assistance required by the independent investigator to conduct an investigation into a complaint (including copies of or access to all documents held by the Council that relate to the complaint or are required for the purpose of investigating the Complaint).

(6) The independent investigator is to provide a copy of his or her report on the investigation to the Commissioner.

Powers of Council or the Commissioner when investigating complaint

152. (1) For the purpose of investigating a complaint, a Council or the Commissioner may require the legal practitioner against whom the complaint is made to provide information or to produce documents, and to verify any such information by statutory declaration.

(2) If a legal practitioner against whom a complaint is made claims a lien over documents relating to the matter the subject of the complaint, the Council or the Commissioner may require the legal practitioner to waive the lien if satisfied it is necessary for the orderly transaction of the client's business.

(3) A requirement under this section is to be notified in writing to the legal practitioner and is to specify a reasonable time for compliance.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

(4) A legal practitioner who, without reasonable excuse, fails to comply with such a requirement is guilty of professional misconduct.

Referral of matters to costs assessors

153. (1) A Council or the Commissioner may, for the purpose of investigating a complaint, apply under Part 11 for an assessment of costs claimed by a legal practitioner.

(2) Part 11 applies to any such application as if the Council or the Commissioner were a client of the legal practitioner.

Investigation to be conducted expeditiously

154. An investigation by a Council or the Commissioner is to be conducted as expeditiously as possible.

Decision after investigation of complaint

155. (1) After a Council or the Commissioner has completed an investigation into a complaint against a legal practitioner, the complaint is to be dealt with in accordance with this section.

(2) The Council or the Commissioner must institute proceedings in the Tribunal with respect to the complaint against the legal practitioner if satisfied that there is a reasonable likelihood that the legal practitioner will be found guilty by the Tribunal of unsatisfactory professional conduct or professional misconduct.

(3) However, if the Council or the Commissioner is satisfied that there is a reasonable likelihood that the legal practitioner will be found guilty by the Tribunal of unsatisfactory professional conduct (but not professional misconduct), the Council or the Commissioner may instead:

- (a) reprimand the legal practitioner if the legal practitioner consents to the reprimand; or
- (b) dismiss the complaint if satisfied that the legal practitioner is generally competent and diligent and that no other material complaints have been made against the legal practitioner.

(4) The Council or the Commissioner is to dismiss the complaint against the legal practitioner if satisfied that there is no reasonable likelihood that the legal practitioner will be

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct.

(5) If a Council or the Commissioner decides to dismiss a complaint or to reprimand a legal practitioner under subsection (3) and the complainant requested a compensation order in connection with the complaint, the Council or the Commissioner may require the payment of compensation by the legal practitioner or the successful mediation of the consumer dispute before the decision takes effect.

Record of decision after investigation of complaint

156. A Council or the Commissioner must cause a record of its decision with respect to a complaint, together with the reasons for the decision, to be kept in respect of each investigation conducted under this Division.

Delegation by Council

157. (1) A Council may delegate to any of its committees the exercise of any or all of its functions under this Division, other than this power of delegation.

(2) Such a delegation may be made only to a committee whose presiding member is a member of the Council.

Division 6—Review of Councils' decisions**Applications for reviews**

158. (1) A complainant may apply to the Commissioner for a review of a Council's decision to dismiss a complaint made by the complainant or to reprimand the legal practitioner because of the complaint.

(2) The application for review is to be in writing.

(3) The application for review may be made at any time within 2 months after the decision is notified to the complainant.

(4) If the Council does not notify the Complainant of its decision with respect to the complaint within 6 months after the complaint was referred to the Council, the matter may be reviewed under this section or section 159. In that case, the Council is taken to have dismissed the complaint for the purposes of this Division.

**SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued***

(5) The Commissioner may postpone a review referred to in subsection (4) for a specified period if satisfied that there is good reason for the Council's delay in making a decision with respect to the complaint. In that case, the Council is taken to have dismissed the complaint for the purposes of this Division if it does not notify the complainant of its decision within that further specified period.

Reviews

159. (1) The Commissioner is to review each decision of a Council that is the subject of an application for review under this Division.

(2) The Commissioner may also review a Council's decision to dismiss a complaint or to reprimand a legal practitioner at the request of the Council or on the Commissioner's own initiative.

(3) The Commissioner must consult with a Council before completing a review of the Council's decision.

Decision of Commissioner on review

160. (1) When the Commissioner has completed the review of a Council's decision, the Commissioner may:

- (a) confirm that the complaint is dismissed or that the legal practitioner is reprimanded; or
- (b) direct the appropriate Council to refer the matter to mediation; or
- (c) re-investigate the complaint or direct the appropriate Council to do so; or
- (d) institute proceedings in the Tribunal against the legal practitioner or direct the appropriate Council to do so.

(2) If the Commissioner decides to re-investigate a complaint, the provisions of this Part apply as if the Commissioner had taken over the investigation of the complaint.

(3) Before instituting proceedings in the Tribunal, the Commissioner must notify the relevant Council of the Commissioner's intention to do so and of the reasons for the decision.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

(4) A Council is required to comply with a direction of the Commissioner under this section. The Commissioner may take further action under this section if the Council fails to comply with the direction.

Assistance etc. by Council

161. The Council is required to provide any assistance required by the Commissioner to conduct a review or re-investigation (including access to or a copy of all documents held by the Council that relate to the complaint or are required for the purpose of the review or re-investigation).

**Division 7—Constitution of the Legal Services
Tribunal**

The Legal Services Tribunal

162. (1) There is constituted by this Act a Legal Services Tribunal.

(2) The Tribunal is to consist of

- (a) at least 2 barristers appointed by the Attorney General after consultation with the Bar Council; and
- (b) at least 2 solicitors appointed by the Attorney General after consultation with the Law Society Council; and
- (c) at least 2 lay members appointed by the Attorney General after consultation with lay members of the Legal Aid Commission, the Law Foundation and such other bodies as the Attorney General considers appropriate.

(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.

(4) The Tribunal is to have a seal of which all courts and persons acting judicially are to take judicial notice.

(5) Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the President of the Tribunal or by a member of the Tribunal authorised to do so by the President.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

(6) A Registrar of the Tribunal is to be appointed under Part 2 of the Public Sector Management Act 1988.

(7) Schedule 6 has effect with respect to the Tribunal.

Composition of the Tribunal

163. (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; or
- (c) in the case of a complaint concerning a legal practitioner who is neither a barrister nor a solicitor—by 2 of its barrister or solicitor members and 1 of its lay members.

(2) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular hearing.

(3) The President of the Tribunal is to preside at the hearing if the President is eligible to be one of the barrister or solicitor members and has nominated himself or herself for the hearing. Otherwise, the President of the Tribunal is to nominate one of the barrister members or one of the solicitor members to preside at the hearing.

(4) More than one hearing may be conducted by the Tribunal at the same time.

Majority decisions

164. A determination supported by all the members of the Tribunal or by at least 2 of those members is a determination of the Tribunal.

Change in composition of Tribunal during hearing

165. (1) If one of the members (not being the presiding member) constituting the Tribunal for the purpose of conducting a hearing vacates office for any reason:

- (a) before the Tribunal has completed the hearing; or
- (b) before the Tribunal has made a determination in respect of the hearing,

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

the hearing may be continued, or a determination may be made, by the remaining members of the Tribunal. If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

(2) However, if the presiding member or more than one other member vacates office for any reason before the Tribunal has completed the hearing or made a determination in respect of the hearing, the hearing is terminated. The Tribunal may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

(3) A determination of the Tribunal is not invalid only because the constitution of the Tribunal at the time of the pronouncement of the determination is different from the constitution of the Tribunal at the time of making the determination.

Rules of procedure for the Tribunal

166. (1) A rule committee consisting of the President of the Tribunal, a barrister member of the Tribunal and a solicitor member of the Tribunal may make rules, not inconsistent with this Part, governing the practice and procedure of the Tribunal.

(2) Part 6 of the Interpretation Act 1987 applies to a rule made under this section in the same way as it applies to a statutory rule within the meaning of that Act.

Note. Part 6 of the Interpretation Act 1987 contains provisions for the publication and Parliamentary disallowance of statutory rules and other standard provisions relating to the making, amendment and repeal of statutory rules.

Division 8—Hearing and determination by Tribunal
Institution of proceedings and hearings

167. (1) Proceedings may be instituted in the Tribunal with respect to a complaint against a legal practitioner by an information laid by the appropriate Council or the Commissioner in accordance with this Part.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

(2) The Tribunal is to conduct a hearing into each such complaint.

(3) Before the commencement of the hearing, the legal practitioner must file a reply to the allegations in the information in accordance with the rules of the Tribunal and the directions of the Registrar of the Tribunal.

(4) The Tribunal may, subject to its rules and the rules of procedural fairness, order the joinder of any 2 informations against the same or different legal practitioners.

Rules of evidence

168. (1) For the purpose of conducting a hearing into a question of professional misconduct, the Tribunal is to observe the rules of law governing the admission of evidence.

(2) For the purpose of conducting any other hearing, the Tribunal is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

Parties

169. (1) The following persons are entitled to appear at a hearing conducted by the Tribunal:

- (a) the legal practitioner against whom the complaint has been made;
- (b) the appropriate Council;
- (c) the Commissioner;
- (d) the Attorney General;
- (e) the complainant, subject to subsection (2).

(2) Unless a complainant is granted leave to appear at the hearing by the Tribunal, the complainant's entitlement to appear is limited to those aspects of the hearing that relate to a request by the complainant for a compensation order.

(3) The Tribunal may grant leave to any other person to appear at a hearing if the Tribunal is satisfied that it is appropriate for that person to appear at the hearing.

(4) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE— *continued*

personally or be represented by a barrister or solicitor or, with the leave of the Tribunal, by any other person.

(5) Any person who appears at a hearing (otherwise than as a witness) is taken to be a party to the hearing.

Hearings generally to be conducted in public

170. (1) A hearing is to be held in the presence of the public.

(2) However, a hearing is to be held in the absence of the public if the Tribunal so directs.

(3) The Tribunal is to direct that a hearing (or part of a hearing) relating only to a question of unsatisfactory professional conduct be held in the absence of the public unless it is of the opinion that the presence of the public is in the public interest or the interests of justice.

(4) The Tribunal may direct that a hearing (or part of a hearing) relating to any other question be held in the absence of the public if it is of the opinion that the presence of the public is not in the public interest or the interests of justice.

(5) When a hearing is held in the absence of the public, no persons (other than the parties to the hearing, their representatives and the complainant) are entitled to be present at the hearing.

Power to summon witnesses and take evidence

171. (1) A member of the Tribunal or the Registrar of the Tribunal may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The member of the Tribunal presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Tribunal may, at a hearing, take evidence on oath or affirmation and, for that purpose:

- (a) a member of the Tribunal may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Tribunal presiding at the hearing; and

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

(b) a member of the Tribunal may administer an oath or affirmation to a person so appearing at the hearing.

(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.

Maximum penalty: 20 penalty units.

(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

- (a) when required to take an oath or make an affirmation—refuse or fail to comply with the requirement; or
- (b) refuse or fail to answer a question that the person is required to answer by the member of the Tribunal presiding at the hearing; or
- (c) refuse or fail to produce a document that the person is required to produce by a summons served under this section.

Maximum penalty: 20 penalty units.

Power to obtain documents

171A. (1) A member of the Tribunal or the Registrar of the Tribunal may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or the Registrar of the Tribunal or a person authorised by the Tribunal in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

**SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*****Release of information**

171B. (1) The Tribunal may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

(2) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 20 penalty units.

Determinations of the Tribunal

171C. (1) If, after it has completed a hearing relating to a complaint against a legal practitioner, the Tribunal is satisfied that the legal practitioner is guilty of professional misconduct or unsatisfactory professional conduct, the Tribunal may do any one or more of the following:

- (a) order that the name of the legal practitioner be removed from the roll of legal practitioners if the legal practitioner is guilty of professional misconduct;
- (b) order that the legal practitioner's practising certificate be cancelled;
- (c) order that a practising certificate not be issued to the legal practitioner until the end of the period specified in the order;
- (d) order that the legal practitioner pay a fine specified in the order, not exceeding \$50,000 if the legal practitioner is guilty of professional misconduct or not exceeding \$5,000 if the legal practitioner is guilty of unsatisfactory professional conduct;
- (e) publicly reprimand the legal practitioner or, if there are special circumstances, privately reprimand the legal practitioner;
- (f) order that the legal practitioner undertake and complete a course of further legal education specified in the order;
- (g) in the case of a solicitor, make any one or more of the orders referred to in subsection (2);
- (h) if applicable, make a compensation order;
- (i) make ancillary orders.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

- (2) In the case of a solicitor, the Tribunal may do any one or more of the following:
- (a) order that the practising certificate of any associated solicitor corporation be cancelled or that a practising certificate not be issued to any associated solicitor corporation until the end of the period specified in the order;
 - (b) order that the solicitor's practice, or the practice of any associated solicitor corporation, be subject to periodic inspection by the person, and for the period, specified in the order;
 - (c) order that the solicitor seek advice in relation to the management of the solicitor's practice, or the practice of any associated solicitor corporation, from the person specified in the order;
 - (d) order that the solicitor, or any associated solicitor corporation, cease to employ in the solicitor's practice or the solicitor corporation's practice the person specified in the order;
 - (e) order that the solicitor, or any associated solicitor corporation, employ in the solicitor's practice or the solicitor corporation's practice a person belonging to the class of persons specified in the order;
 - (f) order that the solicitor, or any associated solicitor corporation, cease to accept instructions in relation to the class of legal services specified in the order;
 - (g) order that the solicitor's practising certificate be endorsed with a condition restricting the solicitor from acting as a solicitor otherwise than in the course of employment by a solicitor holding an unrestricted practising certificate.

Compensation orders of Tribunal

171D. (1) If, after it has completed a hearing relating to a complaint against a legal practitioner, the Tribunal is satisfied that the legal practitioner is guilty of unsatisfactory professional conduct or professional misconduct and that the complainant has suffered loss because of the conduct concerned, the Tribunal may do any one or more of the following to compensate the complainant:

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

- (a) order that the legal practitioner waive or repay the whole or a specified part of the amount charged to the complainant by the legal practitioner in respect of the legal services specified in the order;
- (b) order that the legal practitioner provide to the complainant the legal services specified in the order, either free of charge or for a specified charge;
- (c) order that the legal Practitioner waive any lien in respect of the document or class of documents specified in the order;
- (d) order that the legal practitioner pay to the complainant, by way of monetary compensation for the loss, the amount specified in the order.

(2) A compensation order for the payment, waiver or repayment of an amount exceeding \$10,000 is not to be made unless the complainant and the legal practitioner both consent to the making of the order.

(3) A compensation order is not to be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation under an order made by a court or compensation from the Fidelity Fund.

(4) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

(5) In this section, “**legal practitioner**” includes associated solicitor, corporation.

Award of costs by Tribunal

171E. (1) The Tribunal may make orders requiring a legal practitioner whom it has found guilty of unsatisfactory professional conduct or professional misconduct (or any associated solicitor corporation) to pay such amounts by way of costs (including the costs of the Commissioner, the appropriate Council and the complainant) as it determines.

(2) If, after it has completed a hearing relating to a complaint against a legal practitioner, the Tribunal is satisfied that the practitioner is not guilty of unsatisfactory

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

professional conduct or 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 determines.

Appeals from orders of the Tribunal

171F. (1) Any party to a hearing conducted by the Tribunal may appeal to the Supreme Court against the Tribunal's determination of a complaint.

(2) The complainant may not make such an appeal except with respect to those aspects of the hearing that deal with the loss, if any, suffered by the complainant because of the conduct the subject of the hearing.

(3) The Supreme Court is to hear and determine an appeal under this section.

(4) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

Record and publication of determinations of Tribunal

171G. (1) The Tribunal must cause a record of its determination and orders, together with its reasons, to be kept in respect of each hearing conducted by it.

(2) The record is to include any minority decision of a member of the Tribunal if there is a majority or minority decision on a question of professional misconduct.

(3) The record is to be made available for public inspection and published in such manner as the President of the Tribunal determines.

Filing and enforcement of orders

171H. An order of the Tribunal is to be filed in the Supreme Court and is enforceable in the same way as a judgment or order of the Supreme Court.

Payment of fines

171I. Any fine imposed on a legal practitioner by the Tribunal must be paid to the Law Society for credit of the Statutory Interest Account.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued***Division 9—Notifications to complainant and legal practitioner****Notification of decisions of Council or Commissioner**

171J. (1) A Council or the Commissioner must cause the decision with respect to a complaint, together with the reasons for the decision, to be notified in writing to the complainant and to the legal practitioner against whom the complaint was made.

(2) In the case of a decision of a Council to dismiss the complaint or reprimand the legal practitioner, the right of the complainant to apply to the Commissioner for a review of the decision must also be included in the notice to the complainant.

(3) A notice to a complainant is not required under this section if the complaint was made by the Commissioner or a Council.

Notification about review of Council decisions

171K. (1) The Commissioner must cause his or her decision on a review of a Council's decision with respect to a complaint, together with his or her reasons for the decision, to be notified in writing to the complainant and the legal practitioner against whom the complaint was made.

(2) This section applies even if the complainant did not apply for the review.

Notification of progress and result of disciplinary proceedings

171L. (1) The informant in disciplinary proceedings in the Tribunal must cause the complainant to be notified in writing of the date set down by the Tribunal for hearing the matter and of the determination of the Tribunal.

(2) This section does not apply to disciplinary proceedings to which the complainant is a party.

Division 10—Miscellaneous**Jurisdiction of the Supreme Court not affected**

171M. The inherent power or jurisdiction of the Supreme Court with respect to the discipline of legal practitioners

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

(other than solicitor corporations) is not affected by anything in this Part or Part 2.

Annual report of Commissioner

171N. (1) As soon as practicable after 30 June (but before 31 December) in each year, the Commissioner is required to prepare and forward to the Attorney General a report on his or her activities for the 12 months ending on 30 June in that year.

(2) The Attorney General is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(3) The Commissioner is required to include the following information in the annual report for a year:

- (a) the number and type of complaints made during the year (including the number and type made by the Commissioner and the number and type made by each Council);
- (b) the sources of those complaints;
- (c) the number of consumer disputes referred to mediation during the year and the results of mediation;
- (d) the number and type of complaints investigated during the year by each Council, by the Commissioner and by the independent investigator under section 151;
- (e) the number and type of complaints dismissed during the year by each Council and by the Commissioner;
- (f) the number and type of complaints in respect of which the legal practitioner was reprimanded during the year by each Council and by the Commissioner;
- (g) the number and type of complaints in respect of which proceedings were instituted in the Tribunal during the year by each Council and by the Commissioner;
- (h) a summary of the results of proceedings in the Tribunal completed during the year;
- (i) the number of complaints not finally dealt with at the end of the year (including the number at each stage of proceedings);

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

- (i) the age of complaints not finally dealt with at the end of the year (that is, the number of those complaints made respectively in that year and in each previous year);
 - (k) time intervals involved in the complaints process;
 - (l) such other information as the Commissioner considers appropriate to be included or as the Attorney General directs to be included.
- (4) The Commissioner is required to include in an annual report:
- (a) information on the operation of the complaints process during the reporting year and any recommendations for legislative or other improvements to the complaints process; and
 - (b) information about the costs incurred by the Commissioner during the reporting year, certified by the Auditor General.
- (5) Matter included in a report must not identify individual clients or legal practitioners, unless their names have already lawfully been made public in connection with the complaint concerned.

Other reports

171O. (1) Each Council and the Commissioner must submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on the handling of complaints.

(2) A report is to deal with such matters as the Attorney General directs and with such other matters as the Council or Commissioner considers appropriate to include in the report.

(3) The obligations under this section are in addition to any obligation to provide an annual report under this or any other Act.

Offence: improper disclosure of information

171P. A person who discloses information obtained in the administration of this Part is guilty of an offence unless the disclosure is made:

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

- (a) with the consent of the person to whom the information relates; or
- (b) in connection with the administration of this Part; or
- (c) for the purpose of legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) with other lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Protection from liability

171Q. (1) A matter or thing done or omitted by:

- (a) a Council, any member of a Council or any member of the staff of a Council; or
- (b) the Tribunal, any member of the Tribunal or the Registrar of the Tribunal; or
- (c) the Commissioner or any member of the staff of the Commissioner; or
- (d) a mediator appointed under Division 4,

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

(2) In this section:

- (a) a reference to a Council includes a reference to a committee of the Council; and
- (b) a reference to a member of a Council includes a reference to a member of any such committee.

Commissioner, Council etc. as witness

171R. (1) A person referred to in section 171Q. is neither competent nor compellable in any legal proceedings (including proceedings before the Tribunal) to give evidence or produce documents in respect of any matter in which the person was involved in the course of the administration of this Part.

(2) This section does not apply to proceedings under Part 3 of the Royal Commissions Act 1923 or before the Independent Commission Against Corruption.

**SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued***

Duty of confidentiality of client communications

171S. (1) A legal practitioner must comply with a requirement under this Part to answer a question or to produce information or a document despite any duty of confidentiality in respect of a communication between the legal practitioner and a client (but only if the client is the complainant or consents to its disclosure).

(2) A legal practitioner may disclose a matter to the Commissioner, a Council or the Tribunal in breach of any such duty of confidentiality if the Commissioner, Council or Tribunal is satisfied that it is necessary for the legal practitioner to do so in order to rebut an allegation in the complaint.

Costs of administering Part

171T. Such amounts of the costs incurred by the Commissioner and the Tribunal as are approved under section 67 are to be paid, in accordance with that section, from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund.

- (3) Schedule 4 (**The Legal Profession Conduct Review Panel**):
Omit the Schedule.
- (4) Schedule 5 (**The Legal Profession Standards Board**):
Omit the Schedule.
- (5) Schedule 6:
Omit the Schedule, insert instead:

SCHEDULE 6—THE LEGAL SERVICES TRIBUNAL
(Sec. 162 (7))

Definitions

1. (1) In this Schedule, member means member of the Tribunal.

(2) Expressions used in this Schedule have the same meanings as they have in Part 10.

Qualifications of barrister and solicitor members

2. A barrister or solicitor is not eligible to be appointed as a member if he or she:

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

- (a) is a member of the Bar Council or the Law Society Council; or
- (b) has less than 5 years' standing as a legal practitioner.

Acting members

3. (1) The Attorney General may, from time to time, appoint a qualified person to act in the office of a member during the illness or absence of the member (or during a vacancy in the office of a member) and a person, while so acting, has all the functions of the member.

(2) A person is qualified to act in the office of a member if the person is qualified to be appointed as that member.

(3) The Attorney General may, at any time, remove a person from the office of acting member.

(4) An acting member is entitled to be paid such remuneration (including travelling and subsistence allowances) as each Council jointly from time to time determines.

Terms of office

4. Subject to this Schedule, a member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

5. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as each Council jointly from time to time determines in respect of the member.

Casual vacancies

6. (1) A member vacates office if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued*

- (d) becomes a mentally incapacitated person; or
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (f) resigns the office by instrument in writing addressed to the Attorney General; or
- (g) is removed from office by the Attorney General under this clause.

(2) The Attorney General may remove a member from office for incapacity, incompetence or misbehaviour.

Filling of casual vacancies

7. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

8 (1) Part 2 of the Public Sector Management Act 1988 does not apply to a member.

- (2) If by or under any other Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(6) Schedule 8 (**Savings, transitional and other provisions**):

- (a) Omit clauses 26, 27 and 28.

SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND DISCIPLINE—*continued*

(b) Insert in the appropriate order of Parts:

Part 6—Provisions consequent on enactment of Schedule 2 to the Legal Profession Reform Act 1993**Previous conduct**

37. (1) Part 10, as substituted by the Legal Profession Reform Act 1993, applies to conduct occurring before or after the substitution of that Part (including professional misconduct occurring before the commencement of the Legal Profession Act 1987, but not including unsatisfactory professional conduct occurring before that commencement).

(2) This clause is subject to clause 38.

Note. This clause carries forward the policy in the transitional regulations under the Act that complaints may be made and disciplinary proceedings taken in respect of conduct before the commencement of the Act on 1 January 1988 if it constitutes professional misconduct. Unsatisfactory professional conduct was a new category introduced by the Act, and accordingly only such conduct since the commencement of the Act may be the subject of complaints and disciplinary proceedings.

Continuation of pending proceedings

38. Without limiting clause 1A, the regulations under that clause may make provision for or with respect to complaints and disciplinary proceedings pending on the commencement of this clause and to orders made in those proceedings or in any such proceedings completed before that commencement.

Superseded bodies

39. (1) The Legal Profession Disciplinary Tribunal, the Legal Profession Standards Board and the Legal Profession Conduct Review Panel are abolished.

(2) A person who held office as a member of the Legal Profession Disciplinary Tribunal, the Legal Profession Standards Board or the Legal Profession Conduct Review Panel immediately before its abolition ceases to hold office and is not entitled to any remuneration or compensation for the loss of that office.

(3) However, any such person is eligible (if otherwise qualified) to be appointed as a member of the Legal Services Tribunal.

**SCHEDULE 2—REFORMS RELATING TO COMPLAINTS AND
DISCIPLINE—*continued***

Construction of superseded references

40. In any other Act or in any statutory instrument or in any other instrument:

- (a) a reference to the Disciplinary Tribunal or the Legal Profession Disciplinary Tribunal is to be read as a reference to the Legal Services Tribunal; or
- (b) a reference to the Professional Standards Board or the Legal Profession Standards Board is to be read as a reference to the Legal Services Tribunal; or
- (c) a reference to the Professional Conduct Review Panel or the Legal Profession Conduct Review Panel is to be read as a reference to the Legal Services Commissioner.

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS**

Amendment of Legal Profession Act 1987

(Sec. 3)

(1) Part 11:

Omit the Part, insert instead:

PART 11—LEGAL FEES AND OTHER COSTS

Division 1—Preliminary

Definitions

173. (1) In this Part:

“**bill of costs**” means a bill of costs for providing legal services, and includes a memorandum of fees;

“**conditional costs agreement**” means an agreement of the kind referred to in section 186;

“**costs**”—see section 3;

Note. “Costs” includes barristers’ and solicitors’ fees as well as other items that may be charged by barristers and solicitors (such as expenses and disbursements).

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

“costs agreement” means an agreement referred to in section 184 as to costs for the provision of legal services;

“costs assessor” means a person appointed as a costs assessor under Division 6;

“legal services” means work done, or business transacted, in the capacity of a barrister or solicitor.

(2) In this Part, a reference to a barrister or to a solicitor includes:

- (a) a person who was a barrister or solicitor when the legal services concerned were provided; or
- (b) the assignee of a barrister or solicitor; or
- (c) the executor of the will or other testamentary instrument of a barrister or solicitor; or
- (d) the trustee or administrator of the estate of a barrister or solicitor; or
- (e) in the case of a solicitor, the receiver of the solicitor’s property appointed under Part 8; or
- (f) in the case of a solicitor corporation, the receiver, receiver and manager, official manager or liquidator of the solicitor corporation.

Clients’ rights—under Part

174. (1) This Part gives the following rights to any client of a barrister or solicitor:

- (a) the client is to be given information about how a barrister or solicitor will charge for costs for legal services and an estimate of the likely cost of legal services (Division 2);
- (b) the client need not pay the barrister’s or solicitor’s bill until it has been assessed by a costs assessor if the client is not given the information about how costs will be charged (Division 2);
- (c) the client can enter into a costs agreement with the barrister or solicitor, including a conditional costs agreement under which costs are only payable if the matter is successful (Division 3);

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND OTHER COSTS—*continued*

- (d) the client is not liable to pay interest on unpaid costs unless notice that interest will be charged is set out in the bill of costs (Division 4);
- (e) proceedings against the client for the recovery of costs cannot be brought unless a bill of costs in the proper form has been given to the client and at least 30 days have passed (Division 5);
- (f) if the client disputes the barrister's or solicitor's bill, or is ordered to pay costs in proceedings, the client may apply to have the bill or costs assessed by a costs assessor (Division 6). The client has no right to have a bill as to costs that are covered by a costs agreement assessed unless there is some inequality affecting the agreement as set out in Division 6.

(2) Nothing in this section confers any additional rights on a client or derogates from any rights conferred on a client under this Part.

Division 2—Disclosure of matters relating to costs**Obligation to disclose to clients basis of costs**

175. (1) A barrister or solicitor must disclose to a client in accordance with this Division the basis of the costs of legal services to be provided to the client by the barrister or solicitor.

(2) The following matters are to be disclosed to the client:

- (a) the amount of the costs, if known;
- (b) if the amount of the costs is not known, the basis of calculating the costs;
- (c) the billing arrangements;
- (d) the client's rights under Division 6 in relation to a review of costs;
- (e) the client's rights under Division 4 to receive a bill of costs;
- (f) any other matter required to be disclosed by the regulations.

(3) The disclosure to a client is not required to be made by a barrister or solicitor who is retained on behalf of the client by another barrister or solicitor. However, the disclosure to

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

the client is to include the costs of the barrister or solicitor so retained.

Obligation to disclose basis of costs to instructing practitioner

176. (1) A barrister or solicitor who is retained on behalf of a client by another barrister or solicitor must disclose to that other barrister or solicitor in accordance with this Division the basis of the costs of legal services to be provided to the client by the barrister or solicitor.

(2) The following matters are to be disclosed to the other barrister or solicitor:

- (a) the amount of the costs, if known;
- (b) if the amount of the costs is not known, the basis of calculating the costs;
- (c) the billing arrangements;
- (d) any other matter required to be disclosed by the regulations.

Obligation to disclose estimated costs

177. (1) A barrister or solicitor must disclose to a client in accordance with this Division an estimate of the likely amount of the costs of legal services to be provided to the client by the barrister or solicitor, if the amount of the costs is not disclosed under section 175.

(2) A barrister or solicitor who is retained on behalf of a client by another barrister or solicitor must disclose to that other barrister or solicitor in accordance with this Division an estimate of the likely amount of the costs of legal services to be provided to the client by the barrister or solicitor, if the amount of the costs is not disclosed under section 176.

(3) A barrister or solicitor who has disclosed to a person an estimate of the likely amount of the costs of legal services is to disclose to that person any significant increase in that estimate.

When disclosure to be made

178. (1) A disclosure under this Division is to be made before the barrister or solicitor is retained to provide the legal services concerned, unless this section otherwise provides.

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

(2) If it is not reasonably practicable to make the disclosure before the barrister or solicitor is retained, the disclosure is to be made as soon as practicable after the barrister or solicitor is so retained.

(3) A disclosure under this Division to a client as to the costs of a barrister or solicitor who is retained on behalf of the client by another barrister or solicitor is to be made as soon as practicable after the other barrister or solicitor becomes aware of the costs.

(4) A disclosure under this Division as to any significant increase in the estimated costs of legal services is to be made as soon as practicable after the barrister or solicitor becomes aware of the likely increase in costs.

Disclosure to be in writing

179. (1) A disclosure under this Division must be made in writing and be expressed in clear plain language.

(2) The disclosure may be made separately or in a costs agreement or in any other contract relating to the provision of the legal services concerned.

Exception to disclosure

180. A disclosure is not required to be made under this Division if, in the circumstances, it is not reasonably practicable to do so.

Regulations, rules and guidelines as to disclosure

181. The regulations and, subject to the regulations, the barristers rules, solicitors rules or joint rules may make provision for or with respect to:

- (a) the information to be disclosed under this Division;
and
- (b) the circumstances in which it is or is not reasonably practicable to make a disclosure under this Division.

Effect of non-disclosure of matters related to basis of costs

182. (1) If a barrister or solicitor fails to make a disclosure to a client in accordance with this Division of the matters required to be disclosed by section 175 in relation to costs,

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND OTHER COSTS—*continued*

the client need not pay the costs of the legal services unless the costs have been assessed under Division 6.

(2) A barrister or solicitor who fails to make a disclosure in accordance with this Division of the matters required to be disclosed by section 175 or 176 in relation to costs may not maintain proceedings for the recovery of the costs unless the costs have been assessed under Division 6.

(3) The costs of any assessment referred to in this section (including the costs of the costs assessor) are payable by the barrister or solicitor seeking to recover costs.

(4) Any failure referred to in this section does not of itself amount to a breach of this Act. However, the failure is capable of being unsatisfactory professional conduct or professional misconduct.

Effect of non-disclosure of estimated costs

183. (1) A failure by a barrister or solicitor to make a disclosure in accordance with this Division under section 177 of an estimate of the likely amount of the costs of legal services to be provided by the barrister or solicitor (or any significant increase in the estimate) does not of itself amount to a breach of this Act.

(2) However, the failure is capable of being unsatisfactory professional conduct or professional misconduct.

Division 3—Costs agreements**Agreements about costs**

184. (1) An agreement as to the costs of the provision of legal services may be made with a client by:

- (a) the barrister or solicitor who is retained by the client to provide the services; or
- (b) the barrister or solicitor retained on behalf of the client by another barrister or solicitor.

(2) An agreement as to the costs of the provision of legal services may also be made between the barrister or solicitor providing the services and another barrister or solicitor who retained that barrister or solicitor on behalf of the client.

(3) An agreement under this section is called a “costs agreement”.

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND OTHER COSTS—*continued*

(4) A costs agreement is void if it is not in writing or evidenced in writing.

(5) A costs agreement may form part of a contract for the provision of legal services.

(6) A costs agreement may consist of a written offer that is accepted in writing or by other conduct. A disclosure in accordance with Division 2 under section 175 or 176 may constitute an offer for the purposes of this subsection.

Regulations, rules and guidelines as to costs agreements

185. The regulations and, subject to the regulations, the barristers rules, solicitors rules or joint rules may make provision for or with respect to the information to be included in costs agreements.

Conditional costs agreements

186. (1) A barrister or solicitor may make a costs agreement under which the payment of all of the barrister's or solicitor's costs is contingent on the successful outcome of the matter in which the barrister or solicitor provides the legal services.

(2) Any such costs agreement is called a "conditional costs agreement".

(3) A conditional costs agreement may relate to proceedings in a court or tribunal, except criminal proceedings.

(4) A conditional costs agreement must set out the circumstances constituting the successful outcome of the matter.

(5) A conditional costs agreement may exclude disbursements from the costs that are payable only on the successful outcome of the matter.

Payment of premium under conditional costs agreement

187. (1) A conditional costs agreement may provide for the payment of a premium on those costs otherwise payable under the agreement only on the successful outcome of the matter.

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

(2) The premium is to be a specified percentage of those costs or a specified additional amount. The premium is to be separately identified in the agreement.

(3) The premium is not to exceed 25% of those costs.

(4) However, the regulations may vary that maximum percentage of costs. Different percentages may be prescribed for different circumstances.

Costs not to be calculated on amount recovered in proceedings

188. A costs agreement may not provide that costs are to be determined as a proportion of, or are to vary according to, the amount recovered in any proceedings to which the agreement relates.

Rights may not be waived

189. (1) Any provision of a costs agreement or other agreement that is inconsistent with this Division is void to the extent of the inconsistency.

(2) In particular, any provision of a costs agreement or other agreement that purports to waive rights to an assessment of costs under this Part, or the right to receive a bill of costs in the form required for assessment under this Part, is void.

Division 4—Interest, security for costs and bills of costs**Interest on outstanding costs**

190. (1) A barrister or solicitor may charge interest on the unpaid costs for legal services provided by the barrister or solicitor, if the costs are unpaid 30 days or more after the barrister or solicitor has given a bill of costs for those services in accordance with this Division.

(2) A barrister or solicitor may not charge interest on the unpaid costs for legal services unless the bill of costs for those services contains a statement that interest is payable and of the rate of interest.

(3) A barrister or solicitor may also charge interest on the unpaid costs for legal services in accordance with a costs agreement.

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

(4) A barrister or solicitor may not charge interest under this section or under a costs agreement at a rate that exceeds:

- (a) except as provided by paragraph (b)—the rate prescribed under the Supreme Court Act 1970 in respect of unpaid judgments of the Supreme Court; or
- (b) the rate prescribed by the regulations.

Security for costs

191. A barrister or solicitor may take from a client security for the costs of providing legal services to the client.

Bill of costs to be given before costs can be recovered from client

192. (1) Proceedings for the recovery of costs by a barrister or solicitor for providing legal services must not be commenced or maintained against any person unless at least 30 days have passed since a bill for those costs was given to the person in accordance with this Division.

(2) The Supreme Court may make an order authorising a barrister or solicitor to commence or maintain proceedings against a person sooner, if the Supreme Court is satisfied that the person is about to leave New South Wales.

Form of bill of costs

193. (1) The regulations may make provision for or with respect to the form of, and the particulars to be included in, bills of costs.

(2) A bill of costs may be described as a memorandum of fees or in any other way authorised by the regulations.

Signing of bill of costs

194. (1) A bill of costs must be signed by the barrister or by the solicitor, or by his or her partner or employee. It is sufficient compliance with this section if a letter that is so signed is attached to, or enclosed with, the bill of costs.

(2) A bill of costs is taken to have been signed by a solicitor (being a solicitor corporation) if it has the corporation's seal affixed to it or is signed by a director of the corporation or by an officer or employee of the corporation who is a solicitor.

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

Delivery of bills of costs

195. A bill of costs may be given to a person in any one of the following ways:

- (a) by delivering it personally to the person;
- (b) by sending it by post to, or by leaving it for the person at, the person's place of business or residence last known to the barrister or solicitor;
- (c) by sending it by facsimile transmission to a number specified by the person (by correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent;
- (d) by delivering it to the appropriate place in a document exchange in which the person has receiving facilities;
- (e) in any other way authorised by the regulations.

Division 5—costs fixed by regulations

Regulations to provide for related costs

196. (1) The regulations may make provision for or with respect to the following:

- (a) fixing fair and reasonable costs for legal services provided in any workers compensation matter;
- (b) fixing the costs payable on obtaining or for enforcing a default judgment;
- (c) fixing an amount of costs for a matter that is not a legal service but is related to proceedings (for example, expenses for witnesses).

(2) A barrister or solicitor is not entitled to be paid or recover for a legal service an amount that exceeds the fair and reasonable cost fixed for the service by the regulations under this section.

Note. Amounts fixed for matters that are not legal services may be taken into account by a costs assessor in assessing costs under this Part.

Regulations to provide for amounts of costs passed on to other parties

197. (1) This section applies to a legal service of a kind prescribed by the regulations for the purposes of this section.

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

For example, the regulations may prescribe legal services relating to the preparation of mortgages or leases.

(2) The regulations may make provision for or with respect to fixing the fair and reasonable cost for any such legal service provided by a barrister or solicitor.

(3) A barrister or solicitor is not entitled to recover for any such legal service an amount that exceeds the fair and reasonable cost so fixed if:

- (a) liability to pay the cost of the legal service has been passed on by the client of the barrister or solicitor to a person who is not entitled to apply for an assessment of the cost under this Part; and
- (b) the barrister or solicitor is seeking to recover the cost from that person.

Provisions relating to regulations generally

198. (1) The regulations may fix a cost under this Division for a particular legal service, for a class of legal services or for any part of a legal service.

(2) The regulations may fix a cost under this Division:

- (a) as a gross amount for legal services; or
- (b) as an amount for specified elements in the legal services provided (for example, documents prepared);
or
- (c) in any other manner.

Division 6—Assessment of costs**Subdivision 1—Applications and referrals for
assessment****Applications by clients for assessment of costs in bills**

199. (1) A client who is given a bill of costs may apply to the proper officer of the Supreme Court for an assessment of the whole of, or any part of, those costs.

(2) An application relating to a bill of costs may be made even if the costs have been wholly or partly paid. If the costs have been wholly or partly paid, the application is to be made within the period prescribed by the regulations for the purposes of this subsection.

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

(3) If any costs have been paid without a bill of costs, the client may nevertheless apply for an assessment. For that purpose the request for payment by the barrister or solicitor is taken to be the bill of costs.

(4) In this section, “**client**” includes any person who is a party to a costs agreement relating to legal services for which the bill of costs is given, other than the barrister or solicitor who gave the bill or who provided the services.

Applications by instructing practitioners for assessment of costs in bills

200. (1) A barrister or solicitor who retains another barrister or solicitor to act on behalf of a client may apply to the proper officer of the Supreme Court for an assessment of the whole of, or any part of, a bill of costs given in accordance with this Part by the other barrister or solicitor in relation to the matter.

(2) An application may not be made if there is a costs agreement between the client and the other barrister or solicitor.

(3) An application is to be made within 30 days after the bill of costs is given and may be made even if the costs have been wholly or partly paid.

Application for assessment of costs by barrister or solicitor giving bill

201. (1) A barrister or solicitor who has given a bill of costs in accordance with this Part may apply to the proper officer of the Supreme Court for an assessment of the whole of, or any part of, those costs.

(2) An application may not be made unless at least 30 days have passed since the bill of costs was given or an application has been made under this Division by another person in respect of the bill of costs.

Application for assessment of party/party costs

202. (1) A person who has paid or is liable to pay, or who is entitled to receive or who has received, costs as a result of an order for the payment of an unspecified amount of costs

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

made by a court or a tribunal may apply to the proper officer of the Supreme Court for an assessment of the whole of, or any part of, those costs.

(2) A court or tribunal may direct the proper officer of the Supreme Court to refer for assessment costs payable as a result of an order made by the court or tribunal. Any such direction is taken to be an application for assessment duly made under this Division.

(3) An application or direction under this section may not be made in relation to costs arising out of criminal proceedings in a court.

Note. Matters may also be referred to costs assessors by the Legal Services Commissioner or a Council under Part 10.

How is an application to be made?

203. (1) An application for assessment is to be made in the form prescribed by the regulations and is to be accompanied by the fee prescribed by the regulations.

(2) The application must authorise a costs assessor to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any barrister or solicitor concerned, in respect of the matter to which the application relates.

Persons to be notified of application

204. The proper officer of the Supreme Court is to cause a copy of an application for assessment to be given to any barrister, solicitor or client concerned or any other person whom the proper officer thinks it appropriate to notify.

Mediation services

205. (1) Before referring an application for assessment to a costs assessor, the proper officer of the Supreme Court must inform the applicant and any other party of any mediation services available for reaching a settlement of the matter.

(2) If an attempt at mediation has not been made and the proper officer of the Supreme Court is satisfied that there is a reasonable prospect of a successful mediation of the matter, the referral of the application for assessment is to be deferred pending the outcome of any mediation that is attempted.

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***Referral of matters to costs assessors**

206. (1) The proper officer of the Supreme Court is to refer each application for assessment to a costs assessor to be dealt with under this Division.

(2) A costs assessor who has an interest in an application must, as soon as practicable after becoming aware of that fact, refer the application to the proper officer for referral to another costs assessor.

Costs assessor may require further particulars etc.

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

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

(3) The costs assessor may require any such particulars to be verified by statutory declaration.

(4) A notice under this section is to specify the period within which the notice is to be complied with.

(5) If a person fails, without reasonable excuse, to comply with a notice under this section:

- (a) the costs assessor may decline to deal with the application; or
- (b) the costs assessor may deal with the failure in accordance with the rules of the Supreme Court.

(6) A barrister or solicitor who fails, without reasonable excuse, to comply with a notice under this section is guilty of professional misconduct.

Consideration of applications by costs assessors

208. (1) A costs assessor must not determine an application for assessment unless the costs assessor:

- (a) has given both the applicant and any barrister, solicitor or client or other person concerned a reasonable

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

opportunity to make written submissions to the costs assessor in relation to the application; and

- (b) has given due consideration to any submissions so made.

(2) In considering an application, a costs assessor is not bound by rules of evidence and may inform himself or herself on any matter in such manner as he or she thinks fit.

(3) For the purposes of determining whether an application for assessment may be or is required to be made, or for the purpose of exercising any other function, a costs assessor may determine any of the following:

- (a) whether or not disclosure has been made in accordance with Division 2 and whether or not it was reasonably practicable to disclose any matter required to be disclosed under Division 2;
- (b) whether a costs agreement exists, and its terms.

Subdivision 2—Assessments of bills of costs

Assessment of bills generally

208A. (1) When considering an application relating to a bill of costs, the costs assessor must consider:

- (a) whether or not it was reasonable to carry out the work to which the costs relate; and
- (b) whether or not the work was carried out in a reasonable manner; and
- (c) the fairness and reasonableness of the amount of the costs in relation to that work.

(2) A costs assessor is to determine the application by confirming the bill of costs or, if the assessor is satisfied that the disputed costs are unfair or unreasonable, by substituting for the amount of the costs an amount that, in his or her opinion, is a fair and reasonable amount.

(3) Any amount substituted for the amount of the costs may include an allowance for any fee paid for the application by the applicant.

(4) If the barrister or solicitor is liable under section 182 (3) to pay the costs of the costs assessment (including the costs of the costs assessor), the costs assessor is to determine

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

the amount of those costs. The costs incurred by the client are to be deducted from the amount payable under the bill of costs and the costs of the costs assessor are to be paid to the proper officer of the Supreme Court.

(5) A costs assessor may not determine that any part of a bill of costs that is not the subject of an application is unfair or unreasonable.

Additional matters to be considered by costs assessors in assessing bills of costs

208B. In assessing what is a fair and reasonable amount of costs, a costs assessor may have regard to any or all of the following matters:

- (a) whether the barrister or solicitor complied with any relevant regulation, barristers rule, solicitors rule or joint rule;
- (b) whether the barrister or solicitor disclosed the basis of the costs or an estimate of the costs under Division 2 and any disclosures made;
- (c) any relevant advertisement as to the barrister's or solicitor's costs or skills;
- (d) any relevant costs agreement (subject to section 208C);
- (e) the skill, labour and responsibility displayed on the part of the barrister or solicitor responsible for the matter;
- (f) the instructions and whether the work done was within the scope of the instructions;
- (g) the complexity, novelty or difficulty of the matter;
- (h) the quality of the work done;
- (i) the place where and circumstances in which the legal services were provided;
- (j) the time within which the work was required to be done.

Costs agreements not subject to assessment

208C. (1) A costs assessor is to decline to assess a bill of costs if

- (a) the disputed costs are subject to a costs agreement that complies with Division 3; and

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

(b) the costs agreement specifies the amount of the costs or the dispute relates only to the rate specified in the agreement for calculating the costs.

(2) If the dispute relates to any other matter, costs are to be assessed on the basis of that specified rate despite section 208A. The costs assessor is bound by a provision for the payment of a premium that is not determined to be unjust under section 208B.

(3) This section does not apply to any provision of a costs agreement that the costs assessor determines to be unjust under section 208D.

(4) This section does not apply to a costs agreement applicable to the costs of legal services if a barrister or solicitor failed to make a disclosure in accordance with Division 2 of the matters required to be disclosed by section 175 or 176 in relation to those costs.

Unjust costs agreements

208D. (1) A costs assessor may determine whether a term of a particular costs agreement entered into by a barrister or solicitor and a client is unjust in the circumstances relating to it at the time it was made.

(2) For that purpose, the costs assessor is to have regard to the public interest and to all the circumstances of the case and may have regard to:

- (a) the consequences of compliance, or non-compliance, with all or any of the provisions of the agreement; and
- (b) the relative bargaining power of the parties; and
- (c) whether or not, at the time the agreement was made its provisions were the subject of negotiation; and
- (d) whether or not it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the agreement; and
- (e) whether or not any of the provisions of the agreement impose conditions that are unreasonably difficult to comply with, or not reasonably necessary for the protection of the legitimate interests of a party to the agreement; and

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

- (f) whether or not any party to the agreement was reasonably able to protect his or her interests because of his or her age or physical or mental condition; and
 - (g) the relative economic circumstances, educational background and literacy of the parties to the agreement and of any person who represented any of the parties to the agreement; and
 - (h) the form of the agreement and the intelligibility of the language in which it is expressed; and
 - (i) the extent to which the provisions of the agreement and their legal and practical effect were accurately explained to the applicant and whether or not the applicant understood those provisions and their effect; and
 - (i) whether the barrister or solicitor or any other person exerted or used unfair pressure, undue influence or unfair tactics on the applicant and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics.
- (3) For the purposes of this section, a person is taken to have represented a person if the person represented the other person, or assisted the other person to a significant degree, in the negotiations process up to, or at, the time the agreement was made.
- (4) In determining whether a provision of the agreement is unjust, the costs assessor is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the agreement was made.

Interest on amount outstanding

- 208E. (1) A costs assessor may, in an assessment, determine that interest is not payable on the amount of costs assessed or on any part of that amount and determine the rate of interest (not exceeding the rate referred to in section 190 (4)).
- (2) This section applies despite any costs agreement or section 190.
- (3) This section does not authorise the giving of interest on interest.

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND OTHER COSTS—*continued***Subdivision 3—Assessment of party/party costs****Assessment of costs—costs ordered by court or tribunal**

208F. (1) When dealing with an application relating to costs payable as a result of an order made by a court or a tribunal, the costs assessor must consider:

- (a) whether or not it was reasonable to carry out the work to which the costs relate; and
- (b) what is a fair and reasonable amount of costs for the work concerned.

(2) A costs assessor is to determine the costs payable as a result of the order by assessing the amount of the costs that, in his or her opinion, is a fair and reasonable amount.

(3) If a court or a tribunal has ordered that costs are to be assessed on an indemnity basis, the costs assessor must assess the costs on that basis, having regard to any relevant rules of the court or tribunal.

(4) The costs assessed are to include the costs of the assessment (including the costs of the costs assessor). The costs assessor may determine by whom and to what extent the costs of the assessment are to be paid.

(5) The costs of the costs assessor are to be paid to the proper officer of the Supreme Court.

Additional matters to be considered by costs assessors in assessing costs ordered by court or tribunal

208G. In assessing what is a fair and reasonable amount of costs, a costs assessor may have regard to any or all of the following matters:

- (a) the skill, labour and responsibility displayed on the part of the barrister or solicitor responsible for the matter;
- (b) the complexity, novelty or difficulty of the matter;
- (c) the quality of the work done and whether the level of expertise was appropriate to the nature of the work done;
- (d) the place where and circumstances in which the legal services were provided;

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

- (e) the time within which the work was required to be done;
- (f) the outcome of the matter.

Effect of costs agreements in assessments of party/party costs

208H. A costs assessor is not to take into account any costs agreement in assessing costs payable as a result of an order by a court or a tribunal.

Court or tribunal may specify amount etc.

208I. This Division does not limit any power of a court or a tribunal to determine in any particular case the amount of costs payable or that the amount of the costs is to be determined on **an** indemnity basis.

**Subdivision 4—Enforcement of assessment and appeals
Certificate as to determination**

208J. (1) On making a determination, a costs assessor is to issue to each party a certificate that sets out the determination.

(2) In the case of an amount of costs that has been paid, the amount (if any) by which the amount paid exceeds the amount specified in any such certificate may be recovered as a debt in a court of competent' jurisdiction.

(3) In the case of an amount of costs that has not been paid, 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, taken to be a judgment of that court for the amount of unpaid costs.

Determination to be final

208K. A costs assessor's determination of an application is binding on all parties to the application and no appeal lies in respect of the determination, except as provided by this Division.

Appeal against decision of costs assessor as to matter of law

208L. (1) A party to an application who is dissatisfied with a decision of a costs assessor as to a matter of law arising in

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

the proceedings to determine the application may, in accordance with the rules of the Supreme Court, appeal to the Court against the decision.

(2) After deciding the question the subject of the appeal, the Supreme Court may, unless it affirms the costs assessor's decision:

- (a) make such determination in relation to the application as, in its opinion, should have been made by the costs assessor; or
- (b) remit its decision on the question to the costs assessor and order the costs assessor to re-determine the application.

(3) On a re-determination of an application, fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

Appeal against decision of costs assessor by leave

208M. (1) A party to an application relating to a bill of costs may, in accordance with the rules of the Supreme Court, seek leave of the Court to appeal to the Court against the determination of the application made by a costs assessor.

(2) A party to an application relating to costs payable as a result of an order made by a court or a tribunal may, in accordance with the rules of the court or tribunal, seek leave of the court or tribunal to appeal to the court or tribunal against the determination of the application made by a costs assessor.

(3) The Supreme Court or court or tribunal may, in accordance with its rules, grant leave to appeal and may hear and determine the appeal.

(4) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.

Effect of appeal on application

208N. (1) If a party to an application has appealed against a determination or decision of a costs assessor, either the costs assessor or the court or tribunal to which the appeal is made may suspend, until the appeal is determined, the operation of the determination or decision.

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

(2) The costs assessor or the court or tribunal may end a suspension made by the costs assessor. The court or tribunal may end a suspension made by the court or tribunal.

Subdivision 5—Miscellaneous**Costs fixed by regulations**

208O. (1) An assessment of costs fixed by a regulation under section 196 (1) (a) or (b) or 197. is to be made in accordance with that regulation.

(2) An assessment of costs fixed by a regulation under section 196 (1) (c) is to be made having regard to that regulation.

Liability of barrister or solicitor for costs

208P. (1) A costs assessor may act as set out in subsection (2) if it appears to the costs assessor that costs have been incurred improperly or without reasonable cause, or have been wasted by undue delay or by any other misconduct or default.

(2) The costs assessor may in the determination:

- (a) disallow the costs as between the barrister or solicitor and the barrister's or solicitor's client; and
- (b) direct the barrister or solicitor to repay to the client costs which the client has been ordered by a court or a tribunal to pay to any other party; and
- (c) direct the barrister or solicitor to indemnify any party other than the client against costs payable by the party indemnified.

(3) Before taking action under this section, the costs assessor must give notice of the proposed action to the barrister or solicitor and the client and give them a reasonable opportunity to make written submissions in relation to the proposed action.

(4) The costs assessor must give due consideration to any submissions so made.

Referral of misconduct to Commissioner

208Q. (1) If a costs assessor considers that any conduct of a barrister or solicitor involves the deliberate charging of

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

grossly excessive amounts of costs or deliberate misrepresentations as at costs, the costs assessor must refer the matter to the Commissioner.

(2) For the purposes of this Act, the deliberate charging of grossly excessive amounts of costs and deliberate misrepresentations as to costs are each declared to be professional misconduct.

(3) Nothing in this section limits the matters which a costs assessor may refer to the Commissioner.

Rules of procedure for applications

208R. (1) There is to be a costs assessors' rules committee consisting of those costs assessors appointed to the committee by the Chief Justice of New South Wales.

(2) The committee is to regulate its own proceedings for the calling of meetings and the conduct of its business.

(3) The committee may make rules, not inconsistent with this Part, governing the practice and procedure of the assessment of costs, including matters relating to the appointment of costs assessors to particular matters and the interests of costs assessors in particular matters.

(4) The committee has any other functions conferred on the committee by or under this or any other Act.

(5) Part 6 of the Interpretation Act 1987 applies to a rule made under this section in the same way as it applies to a statutory rule within the meaning of that Act.

Note. Part 6 of the Interpretation Act 1987 contains provisions relating to the publication and Parliamentary disallowance of statutory rules and other standard provisions relating to the making, amendment and repeal of statutory rules.

Costs assessors

208S. (1) The Chief Justice of New South Wales may appoint persons to be costs assessors under this Act.

(2) A costs assessor has the functions that are conferred on the costs assessor by or under this or any other Act.

(3) Schedule 7 has effect with respect to costs assessors.

(4) A costs assessor is not an officer of the Court when acting as a costs assessor.

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

Confidentiality

208T. A costs assessor must not disclose any information obtained in connection with the exercise of the costs assessor's functions unless the disclosure is made:

- (a) in connection with the exercise of those functions or the administration or execution of this Act; or
- (b) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (c) in the case of information relating to a barrister or solicitor or other person—with the consent of the barrister or solicitor or person; or
- (d) with other lawful excuse.

Maximum penalty: 20 penalty units.

Costs of administering.Part etc.

208U. (1) All costs related to the remuneration of costs assessors are to be paid, in accordance with section 67, from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund.

(2) An application fee for an assessment, or a payment for the costs of a costs assessor, received by the proper officer of the Supreme Court is to be paid to the Law Society for payment to the credit of the Statutory Interest Account.

Note. Assessments by costs assessors may also be made of the fees of licensed conveyancers under the Conveyancers Licensing Act 1992.

(2) Section 209C:

After section 209B, insert:

Supreme Court may order delivery up of documents etc.

209C. (1) On the application of a barrister's or solicitor's client, the Supreme Court may order the barrister or solicitor:

- (a) to give to the client a bill of costs in respect of any legal services provided by the barrister or solicitor; and
- (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the barrister or solicitor in relation to those services.

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

(2) Subsection (1) does not affect the provisions of Division 6 of Part 11 with respect to the assessment of costs.

(3) This section does not apply to the client of a barrister or solicitor retained on the client's behalf by another barrister or solicitor.

(4) In this section, a reference to a barrister or solicitor includes a reference to a former barrister or solicitor.

(5) In this section, “**legal services**” has the same meaning as in Part 11.

(3) Section 216 (**Regulations**):

After section 216 (3) (d), insert:

(d1) disclosures as to costs, costs agreements, bills of costs and assessment of costs under Part 11;

(4) Schedule 7:

Omit Schedule 7, insert instead:

SCHEDULE 7—COSTS ASSESSORS

(Sec. 208S)

Eligibility for appointment

1. A person is not eligible to be appointed as a costs assessor unless the person is a barrister or solicitor of at least 5 years' standing.

Terms of office

2. Subject to this Schedule, a costs assessor holds office for such period (not exceeding 3 years) as may be specified in the instrument of appointment of the costs assessor, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

3. A costs assessor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Bar Council and Law Society Council jointly may from time to time determine in respect of the costs assessor.

Casual vacancies

4. (1) A costs assessor is taken to have vacated office if the costs assessor:

SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (d) becomes a mentally incapacitated person; or
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (f) resigns the office by instrument in writing addressed to the Attorney General; or
- (g) ceases to be eligible to be a costs assessor; or
- (h) is removed from office by the Chief Justice of New South Wales, under subclause (2).

(2) The Chief Justice of New South Wales may remove a costs assessor from office.

Effect of certain other Acts

5. (1) If by or under any other Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a costs assessor or from accepting and retaining any remuneration payable to the person under this Act as a costs assessor.

(2) Part 2 of the Public Sector Management Act 1988 does not apply to a costs assessor.

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

- (a) Omit clauses 6 and 8.

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued***

(b) Insert, in appropriate order:

**Part 7—Provisions consequent on the enactment of
Schedule 3 to the Legal Profession Reform Act 1993****Bills of costs and agreements**

41. (1) Subject to this Part, Part 11 (as substituted by Schedule 3 to the Legal Profession Reform Act 1993) extends to bills of costs given before, or agreements as to costs made before, the commencement of that substituted Part if any such bill of costs or agreement has effect after that commencement.

(2) Part 11 and any relevant determinations of the Legal Fees and Costs Board, as in force immediately before that commencement, continue to apply to a bill of costs given before that commencement.

(3) Any bill of costs referred to in subclause (2) is, if required by the application of that Part, to be taxed in accordance with any relevant rules of the Supreme Court or any other applicable court, as in force immediately before that commencement.

Barristers' costs

42. Part 11, as substituted by Schedule 3 to the Legal Profession Reform Act 1993, does not apply to barristers' costs for which a fee has been marked or a memorandum of fees has been rendered before the commencement of that substituted Part.

Costs in proceedings

43. Despite any provision of this Part, and without limiting clause 1A, regulations may be made under that clause for or with respect to the following matters:

- (a) the application of Part 11 and laws relating to the taxation of costs, as in force before the commencement of Schedules 3 and 6 to the Legal Profession Reform Act 1993, to any order for the payment of costs made by a court or tribunal after that commencement;
- (b) the application of Part 11, as substituted by that Act, to any order for the payment of costs made by a court or tribunal after that commencement.

**SCHEDULE 3—REFORMS RELATING TO LEGAL FEES AND
OTHER COSTS—*continued*****Continuation of certain fees**

44. Despite any provision of this Part, and without limiting clause 1A, regulations may be made under that clause for or with respect to the continuation of fees determined by the Legal Fees and Costs Board, and in force before the commencement of Part 11, as substituted by Schedule 3 to the Legal Profession Reform Act 1993, until such time as relevant regulations are made under Division 5 of the substituted Part.

Superseded references to taxation of costs

45. On and from the commencement of Part 11, as substituted by Schedule 3 to the Legal Profession Reform Act 1993, a reference in any Act or other instrument (however expressed) to the taxation of costs is taken to be a reference to the assessment of costs under Division 6 of Part 11.

Abolition of Legal Fees and Costs Board

46. (i) The Legal Fees and Costs Board is abolished.

(2) A person who held office as a member of the Legal Fees and Costs Board immediately before its abolition ceases to hold that office on that abolition and is not entitled to any remuneration or compensation because of the loss of that office.

Repeal of Court rules as to costs

47. Rules as to costs made by a court under a provision of an Act repealed by the Legal Profession Reform Act 1993 cease to have effect on .repeal, except as provided by this Part.

**SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS****Amendment of Legal Profession Act 1987**

(Sec. 3)

(1) Section 3 (Definitions):

In section 3 (1), insert in alphabetical order:

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

“lay member” of a body means a member who is not a legal practitioner;

(2) Section 3A:

After section 3, insert:

Notes

3A. The matter appearing under the heading “Note” in this Act does not form part of this Act.

(3) Section 51 (**Functions of Bar Council**):

(a) From section 51 (a), omit “Part 9”, insert instead “Part 3A”.

(b) Omit section 51 (b), insert instead:

(b) appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court under this Act or otherwise in relation to barristers.

(4) Section 54 (**Functions of Law Society Council**):

(a) From section 54 (1) (a), omit “Part 9”, insert instead “Part 3A”.

(b) Omit section 54 (1) (b), insert instead:

(b) appear by barrister or solicitor before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court ‘under this Act or otherwise in relation to solicitors;

(c) After section 54 (1), insert:

(1A) The Law Society Council may delegate to any of its committees the exercise of any of its functions under this Act, other than this power of delegation. Such a delegation may be made only to a committee whose presiding member is a member of the Council.

(5) Section 55 (**Investigation of affairs of solicitor**):

In section 55 (7) (b), after “Attorney General”, insert “and the Commissioner”.

(6) Section 56 (**Secrecy**):

Omit section 56 (5) (e), insert instead:

(e) the Commissioner or the Tribunal;

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

(7) Section 61 (**Money received by solicitor on behalf of another**):

- (a) At the end of section 61 (3) (a) and (b), insert “or”.
- (b) At the end of section 61 (3), insert:
 - ; or
 - (e) to 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.

(8) Section 67 (**Statutory Interest Account**):

- (a) From section 67 (2) (a), omit “(c)”.
- (b) From section 67 (2) (a), (3) (d) and (3) (e), omit “Parts 9” wherever occurring, insert instead “Parts 3A”.
- (c) From section 67 (3) (c), omit “section 168”, insert instead “section 171T”.
- (d) From section 67 (3) (c1), omit “section 143”, insert instead “section 101.”
- (e) After section 67 (3) (c1), insert:
 - (c2) the costs incurred by a Council or the Commissioner in connection with the provision of mediators for the mediation of consumer disputes under Division 4 of Part 10;
- (f) Omit section 67 (3) (e1), insert instead:
 - (e1) the payment of costs in accordance with an order of the Tribunal under section 171E (2);
- (g) Omit “and” at the end of section 67 (3) (h) and omit section 67 (3) (i), insert instead:
 - (i) the costs incurred by the Bar Council or the Law Society Council in exercising its functions under section 16 (but only in relation to appeals instituted in the Supreme Court, or matters first referred to the Admission Board, after the commencement of this paragraph);
 - (i) the costs incurred by the Bar Council or the Law Society Council in exercising its functions in taking action under section 38E to restrain a legal practitioner from contravening section 25;

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

(k) the payment under section 208U of the costs related to the remuneration of costs assessors under Part 11.

(h) After section 67 (3), insert:

(3A) The Law Society must not determine, and the Attorney General must not approve, that amounts be paid from the Statutory Interest Account unless satisfied that the payment of those amounts will not reduce the amount of funds available from the Account for the supplementation of the Legal Aid Fund established under the Legal Aid Commission Act 1979.

(3B) The Auditor General is to conduct a special audit under Division 2A of Part 3 of the Public Finance and Audit Act 1983 of

(a) the activities of the Legal Services Commissioner and the Councils for which costs are payable from the Statutory Interest Account; and

(b) the present and future liability of that Account for the payment of those costs.

(3C) The special audit is to be conducted as soon as practicable after the commencement of this subsection and thereafter whenever the Auditor General considers it appropriate.

(3D) For the purposes of the special audit, Division 2A of Part 3 of the Public Finance and Audit Act 1983 applies as if the Attorney General were the head of the relevant authority.

(9) Section 74 (**Management Committee**):

Omit section 74 (1), insert instead:

(1) The Law Society Council may by resolution delegate all or any of its functions in relation to the Fidelity Fund to a Management Committee consisting of

(a) 3 or more persons who are members of the Council; and

(b) not more than 8 persons who are not members of the Council but are members of the Law Society.

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

(10) Part 7, Division 3 (**Solicitors' Fidelity Fund—Claims**):

Omit the Division, insert instead:

Division 3—Claims

Definitions

79. In this Division:

“**associate**” of a solicitor, has the same meaning as it has in Part 6 (see section 60);

“**claim**” means a claim against the Fidelity Fund that relates to a failure to account or to a dishonest default;

“**dishonest default**” of a solicitor, has the meaning set out in section 79B;

“**failure to account**” by a solicitor, has the meaning set out in section 79A;

“**legal costs**” of any aspect of a claim, includes the costs incurred by a claimant that would have been legal costs if the claimant had engaged a legal practitioner to deal with that aspect of the claim;

“**pecuniary loss**” from a failure to account or dishonest default, has the meaning set out in section 79C;

“**solicitor**” means a solicitor required by section 76 to contribute to the Fidelity Fund;

“**successful claim**” means:

- (a) a claim allowed by the Law Society Council; or
- (b) a claim in respect of which judgment is recovered against the Law Society.

Meaning of “failure to account”

79A. (1) In this Division, a reference to a **failure to account** is a reference to a failure by a solicitor to account for, pay or deliver money or other valuable property received by, or entrusted to, the solicitor or an associate in the course of the solicitor's practice (in the case of an associate, being money or valuable property under the direct or indirect control of the solicitor).

(2) This section applies only to a failure to account that arises from an act or omission of the solicitor or associate:

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

- (a) for which the solicitor or associate has been convicted of a crime or an offence involving dishonesty; or
- (b) which the Law Society Council has found to be dishonest.

(3) A finding by the Law Society Council under subsection (2) (b) that an act or omission is, or is not, dishonest is final and conclusive.

(4) This section applies whether the money or other property was received by the solicitor or associate as trustee, agent; bailee or stakeholder or in any other capacity.

(5) This section applies whether the failure to account, or the act, omission, conviction or finding of dishonesty, took place before or after the commencement of this Act.

Meaning of “dishonest default”

79B. (1) In this Division, a reference to a **dishonest default** is a reference to a dishonest act or omission (other than a failure to account) by the solicitor in the course of the solicitor’s practice, but only if

- (a) a final judgment debt has been obtained against the solicitor as a result of the dishonest act or omission; and
- (b) the judgment debt is not fully satisfied.

(2) A dishonest act or omission is an act or omission:

- (a) for which the solicitor has been convicted of a crime or an offence involving dishonesty; or
- (b) which a State or Commonwealth Court has, in the course of delivering a final judgment, found to be dishonest; or
- (c) which the Tribunal has found to be dishonest in connection with a final determination of the Tribunal.

(3) A judgment debt is fully satisfied if the solicitor provides adequate security to cover the relevant judgment debt or pays the relevant judgment debt by agreed instalments.

(4) This division does not apply to a dishonest default unless the relevant judgment debt remains unsatisfied for at least 3 months after it was obtained (or an agreed instalment

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

remains unpaid for at least 3 months after it was due to be paid).

(5) This Division does not apply to a dishonest default that occurred before the commencement of Schedule 4 (10) to the Legal Profession Reform Act 1993.

Meaning of “pecuniary loss”

79C. (1) For the purpose of this Division, **“pecuniary loss”** resulting from a failure to account includes:

- (a) the legal costs of a claimant that are due to the failure to account; and
- (b) the legal costs involved in making and proving a claim; and
- (c) interest that, but for the failure to account, would have been received by a claimant, calculated to the date on which the claim succeeds, being interest at a rate that does not exceed the rate prescribed by the Supreme Court Rules in respect of unpaid judgments as at that date.

(2) For the purpose of this Division, **“pecuniary loss”** resulting from a dishonest default is limited to:

- (a) the amount required to satisfy the relevant judgment debt on the date on which the claim succeeds; and
- (b) any interest required by law to be paid on the relevant judgment debt; and
- (c) legal costs ordered by the court which delivered the relevant judgment to be paid by the solicitor to the claimant; and
- (d) the reasonable costs of attempted enforcement of the relevant judgment; and
- (e) the legal costs of the claimant in making and proving a claim.

(3) The amount of legal costs of making and proving a claim is:

- (a) an amount agreed between the claimant and the Law Society Council; or

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

- (b) if agreement cannot be reached—an amount assessed by a costs assessor under Division 6 of Part 11 on a reference by the Law Society Council.

Claims against the Fidelity Fund

80. (1) The Fidelity Fund is held, and is to be applied, by the Law Society for the purpose of compensating persons who suffer pecuniary loss because of a failure to account or a dishonest default.

(2) A claim against the Fidelity Fund is to be made in writing in the form approved by the Law Society.

(3) If a claim is made against the Fidelity Fund, the Law Society Council must:

- (a) investigate the claim; and
(b) determine the claim by wholly or partly allowing, compromising, settling or disallowing it.

(4) If a solicitor has failed to account or made a dishonest default, the Law Society Council may wholly or partly disallow a claim made by a person who knowingly assisted in or contributed towards, or was party or accessory to, the act or omission from which the failure to account or dishonest default arose.

(5) A person is not prevented from making a claim just because, after the act or omission by a solicitor from which the failure to account or the dishonest default arises, the solicitor:

- (a) being a natural person, dies or ceases to be a legal practitioner; or
(b) being a solicitor corporation, is dissolved or has a receiver, a receiver and manager, official manager or liquidator appointed; or
(c) ceases to practice as a solicitor; or
(d) ceases to hold a current practising certificate.

(6) If the amount of a claim against the Fidelity Fund does not exceed \$2,500 or such other amount as may be prescribed, the Law Society Council may allow the claim after waiving compliance with such of the provisions of this Division as it thinks fit.

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

(7) A claim does not lie against the Fidelity Fund unless the prospective claimant notifies the Law Society of the failure to account or dishonest default:

- (a) in the case of failure to account—not later than 3 months after the prospective claimant becomes aware of the failure; or
- (b) in the case of dishonest default—not later than 3 months after the prospective claimant becomes aware that there has been a failure to satisfy the relevant judgment debt for the period required before a claim can be made; or
- (c) if the Law Society Council allows further time after the period of 3 months referred to in paragraph (a) or (b)—within the further time allowed; or
- (d) if the Supreme Court allows further time after the Law Society Council refuses to do so—within the time allowed by the Supreme Court.

Claims by solicitor who pays compensation for failure to account or dishonest default

8l. (1) If, in respect of a failure to account or dishonest default by an associate of a solicitor:

- (a) the solicitor has paid compensation for a pecuniary loss due to the failure to account or dishonest default; and
- (b) the solicitor has, in the opinion of the Law Society Council, at all times acted honestly and reasonably in relation to the failure to account or dishonest default; and
- (c) all claims in relation to failures to account or dishonest defaults by the associate (other than claims under this section) have been met,

the solicitor may make a claim as if the compensation paid by the solicitor were a pecuniary loss suffered as a result of the failure to account or dishonest default.

(2) The solicitor may not claim under this section more than the amount that could have been claimed under this Division by the person who suffered the pecuniary loss.

(3) In this section, “**solicitor**” includes:

- (a) a former solicitor; and

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS—*continued*

- (b) in relation to the payment of compensation and the making of a claim—the personal representative of a deceased solicitor or a deceased former solicitor, or the receiver, receiver and manager, official manager or liquidator of a solicitor corporation or a former solicitor corporation.

Special provision relating to failure to account

82. (1) If, in accordance with the regulations, a solicitor authorises a person to operate on an account for clients' money kept by the solicitor at a bank, an act or omission by the person in relation to those operations is, for the purposes of this Division, an act or omission of an agent of the solicitor.

(2) If a claim arising from a failure to account is partly disallowed, there is to be paid to the claimant from the Fidelity Fund in respect of legal costs incurred by the claimant as a result of the failure to account:

- (a) an amount agreed between the claimant and the Law Society Council; or
- (b) if agreement cannot be reached—an amount assessed by a costs assessor under Division 6 of Part 11 on a reference by the Law Society Council.

(3) If a claim arising from a failure to account is wholly disallowed but the Law Society Council decides that a specified amount should be paid in respect of legal costs incurred by the claimant as a result of the failure to account, that amount is to be paid to the claimant from the Fidelity Fund.

Special provisions relating to claims based on dishonest default

83. (1) Before determining a claim against the Fidelity Fund as a result of a dishonest default, the Law Society Council may require the claimant to take action to enforce the judgment debt to which the default relates.

(2) Such action includes (but is not limited to) taking proceedings to prevent the defaulting solicitor from disposing of property for the purpose of defeating the judgment debt.

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

(3) If a judgment debt results partly from a dishonest default and partly from other conduct of the solicitor, the Law Society Council is to determine the amount of the pecuniary loss resulting from the dishonest default having regard to the findings of any relevant court or tribunal.

(4) A determination by the Law Society Council under subsection (3) is final and conclusive.

Claimant required to pursue claims etc.

84. (1) The Law Society Council may give a claimant not less than 21 days written notice requiring the claimant to do such of the following as are specified in the notice:

- (a) take specified steps for the purpose of pursuing the claim;
- (b) supply the Law Society Council with specified particulars in relation to the claim;
- (c) produce or deliver to the Law Society Council any securities or documents necessary or available to support the claim or to enable the Law Society Council to establish any rights of the Law Society against the solicitor or an associate of the solicitor;
- (d) do specified things in connection with the claim.

(2) If the claimant fails to comply with the notice, the Law Society Council may:

- (a) wholly or partly disallow the claim; or
- (b) direct that the whole, or a specified part of, any interest otherwise payable under section 85 not be paid.

Interest payable even if not claimed

85. (1) Even if a successful claim did not include a claim for interest, there is payable to the claimant from the Fidelity Fund interest at the prescribed rate on:

- (a) the amount allowed by the Law Society Council; or
- (b) the amount of the judgment recovered against the Law Society,

from the date on which the claim was made until the date on which it succeeded.

(2) This section does not apply to a claim to any extent directed by the Law Society Council under section 84 (2) (b).

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

Avoidance of double compensation

86. (1) If a claimant:

- (a) receives a payment from the Fidelity Fund in respect of the claim; and
- (b) receives or recovers from another source a payment on account of the pecuniary loss; and
- (c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant,

the amount of the surplus is a debt payable by the claimant to the Law Society.

(2) If a claimant:

- (a) receives or recovers a payment on account of the pecuniary loss from a source other than the Fidelity Fund; and
- (b) recovers judgment against the Law Society; and
- (c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant (including the amount of the judgment),

the amount of the judgment is reduced by the amount of the surplus.

Final date for making claim on failure to account

87. (1) If the Law Society Council considers that there has been, or may have been, a failure to account by a solicitor, it may publish a notice in the form approved by the Attorney General that fixes a final date on or before which claims relating to the failure to account must be made.

(2) The final date fixed by the notice for making a claim must be a date that is at least 3 months later than the first or only publication of the notice.

(3) The notice must be published:

- (a) in a newspaper published and circulating in the district in which the solicitor is, or was, practising or carrying on business; and
- (b) in a newspaper published and circulating in Sydney.

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

(4) A claim arising from a failure to account and made after the final date fixed by the notice is barred unless:

- (a) the Law Society Council allows further time; or
- (b) the Supreme Court allows further time, if the Law Society Council refuses to do so.

(5) The publication in a newspaper in good faith of a notice under this section does not subject any of the following to any liability:

- (a) the Law Society;
- (b) the Law Society Council;
- (c) a Management Committee established under section 74;
- (d) a member, employee or agent of the Society, Council or Committee;
- (e) the proprietor, editor or publisher of the newspaper.

(6) The Law Society may, after such date as it may fix in each case, pay from the Fidelity Fund successful claims arising from a failure to account.

Final date for making claim on dishonest default

88. (1) If the Law Society Council considers that there has been, or may have been, a dishonest default by a solicitor, it may give to any prospective claimant a copy of the approved claim form and notification of the date (being not less than 3 months) by which the claim must be made.

(2) A claim arising from dishonest default by a solicitor and made after the date so notified to the claimant is barred unless:

- (a) the Law Society Council allows further time; or
- (b) the Supreme Court allows further time, if the Law Society refuses to do so.

(3) The Law Society may, after such date as it may fix in each case, pay from the Fidelity Fund successful claims arising from a dishonest default.

Ceiling on payments from the Fidelity Fund—failure to account

89. (1) If a failure to account by a solicitor, or by a firm of, solicitors, that occurred before the commencement of this Act

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

was the first such failure by the solicitor or firm in respect of which:

- (a) a claim was made against the Fidelity Fund maintained under the Legal Practitioners Act 1898; or
- (b) judgment to be satisfied from the Fidelity Fund so maintained was entered against the Law Society,

the maximum aggregate amount that may be paid from the Fidelity Fund under this Act in respect of all such failures by the solicitor or firm is the maximum amount fixed by section 57 of the Legal Practitioners Act 1898 at the time of the failure.

(2) Except as provided by subsection (1), the maximum aggregate amount that may be paid from the Fidelity Fund in respect of all failures to account by the same solicitor or firm of solicitors is such amount as the Law Society Council determines.

(3) The Law Society Council may make a payment from the Fidelity Fund that, but for this subsection, could not be made because of the limit otherwise imposed by this section, but may do so only if satisfied that it would be reasonable to do so after taking into account all ascertained and contingent liabilities of the Fidelity Fund.

Ceiling on payments from the Fidelity Fund—dishonest default

90. The maximum amount that may be paid from the Fidelity Fund under this Act in respect of a particular dishonest default by a solicitor must not exceed the maximum amount the Law Society Council determines for claims relating to dishonest defaults.

Subrogation

90A. (1) On payment of a successful claim against the Fidelity Fund, the Law Society is subrogated to the rights and remedies of the claimant against any person in relation to the failure to account or dishonest default.

(2) Subsection (1) extends, for example, to a right or remedy against any of the following:

- (a) the solicitor or associate in respect of whom the claim was made;

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS—*continued*

- (b) the person authorised to administer the estate of any such solicitor who is deceased, bankrupt or insolvent;
- (c) the receiver, receiver and manager, official manager or liquidator of any such solicitor which is a solicitor corporation or a former solicitor corporation.

(3) Subsection (1) does not extend to a right or remedy against a solicitor who is a partner of a claimant under section 81 and who, in the opinion of the Law Society Council, acted honestly and reasonably in relation to the failure to account.

(4) The Law Society may exercise its rights and remedies under this section in its own name or in the name of the claimant and must pay into the Fidelity Fund any money paid to it as a result of doing so.

(5) If the Law Society brings proceedings under this section in the name of a claimant, the Society must indemnify the claimant against any costs awarded against the claimant in the proceedings.

Sufficiency of Fidelity Fund

90B. If the Fidelity Fund is at any time insufficient to meet all outstanding judgments and claims then enforceable against it:

- (a) the Law Society Council may determine the manner of division among the successful claimants, or any of them to the exclusion of the others, of the money for the time being available in the Fidelity Fund; and
- (b) the judgments and claims are to be finally satisfied from future accumulations of the Fidelity Fund, subject to any limitations imposed by this Act.

Availability of property of the Law Society

90C. (1) The Fidelity Fund is the only property of the Law Society available for the satisfaction of a successful claim.

(2) Proceedings based on, or for the enforcement of, a judgment against the Law Society that is to be satisfied from the Fidelity Fund may not be taken without the leave of the Supreme Court.

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

Proceedings against the Law Society

90D. (1) An action does not lie against the Law Society in relation to the Fidelity Fund except:

- (a) with the leave of the Law Society Council; or
- (b) as provided by this section.

(2) If the Law Society Council wholly or partly disallows a claim, it must (without delay) give written notice of the disallowance to the claimant.

(3) A claimant whose claim is wholly or partly disallowed, or whose claim is not determined by the Law Society Council with such period as is prescribed by the regulations, may appeal to the Supreme Court against the disallowance or the failure to determine the claim.

(4) On an appeal under this section, the Supreme Court may make such order as it thinks fit.

(5) If the Law Society Council wholly or partly disallows a claim relating to a failure to account in respect of which a solicitor or an associate has been convicted of an offence involving dishonesty:

- (a) the claimant may take proceedings in the Supreme Court as for a debt due by the Law Society; and
- (b) in any such proceedings, the defences that would have been available to the solicitor are available to the Law Society.

Any such claimant may take proceedings instead under subsection (3).

(11) Section 104 (**Lien for costs on receivable property**):

(a) From section 104 (2), omit “tax the bill of costs”, insert instead “apply for an assessment under Part 11 of the bill of costs”.

(b) Omit section 104 (3), insert instead:

(3) If the solicitor requests the receiver in writing to allow such access to receivable property as is reasonably necessary to enable the solicitor to have a bill of costs assessed in compliance with a notice under subsection (1) or (2), the time allowed for assessment does not begin to run until the access is provided.

SCHEDULE 4—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS—*continued*

(12) Schedule 8 (**Savings, transitional and other provisions**):

(a) At the end of clause 1A (1), insert:
Legal Profession Reform Act 1993

(b) After clause 1A, insert:

Review of Legal Profession Reform Act 1993

1B. (1) The Attorney General is to review the Legal Profession Reform Act 1993 to determine whether the policy objectives of the Act remain valid and whether the Act remains appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 4 years from the date of assent to the Act.

(3) The Attorney General is to include the functions of the Legal Services Commissioner, the Advisory Council, the Attorney General's Department and costs assessors in the review.

(4) Any person may make a written submission to the Attorney General in connection with the review.

(5) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 4 years referred to in subclause (2).

**SCHEDULE 5—AMENDMENT OF OTHER ACTS RELATING
TO JUDICIAL AND OTHER APPOINTMENTS**

(Sec. 4)

Casino Control Act 1992 No. 15

Section 135 (**Qualifications of members**):

Omit section 135 (2), insert instead:

(2) At least one of the members of the Authority (other than the Chief Executive) must be a person who:

(a) is or has been a Judge; or

(b) is a legal practitioner of at least 7 years' standing.

SCHEDULE 5—AMENDMENT OF OTHER ACTS RELATING TO
JUDICIAL AND OTHER APPOINTMENTS—*continued***Chiropractors and Osteopaths Act 1991 No. 7****Section 45 (Chairperson and Deputy Chairpersons of the Tribunal):**

- (a) Omit section 45 (1), insert instead:
 - (1) The Governor may appoint:
 - (a) a qualified person as Chairperson of the Tribunal; and
 - (b) 1 or more qualified persons as Deputy Chairpersons of the Tribunal.
 - (1A) A person is qualified for appointment as Chairperson, or as a Deputy Chairperson, if the person:
 - (a) is or has been a Judge; or
 - (b) is a legal practitioner of at least 7 years' standing.
- (b) Omit section 45 (8).

Compensation Court Act 1984 No. 89**Section 8 (Appointment and qualification of Judges):**

- Omit section 8 (2), insert instead:
 - (2) A person is qualified for appointment as a Judge if the person is under 70 years of age and:
 - (a) is a Judge of the District Court; or
 - (b) is a legal practitioner of at least 7 years' standing.

Crown Advocate Act 1979 No. 59**Section 3 (Appointment of Crown Advocate):**

- Omit section 3 (1), insert instead:
 - (1) The Governor may appoint as Crown Advocate a legal practitioner of at least 7 years' standing.

Director of Public Prosecutions Act 1986 No. 207**Schedule 1 (Provisions relating to senior officers):**

- (a) From clause 2 (2), omit "one of Her Majesty's Counsel for the State", insert instead "a legal practitioner of at least 7 years' standing".

SCHEDULE 5—AMENDMENT OF OTHER ACTS RELATING TO JUDICIAL AND OTHER APPOINTMENTS—*continued*

(b) Omit clause 2 (3) and (4), insert instead:

(3) A person is not eligible to be appointed as a Deputy Director unless the person is a legal practitioner of at least 5 years' standing.

(4) A person is not eligible to be appointed as Solicitor unless the person is a legal practitioner of at least 5 years' standing.

District Court Act 1973 No. 9

Section 13 (**Appointment and qualification of Judges**):

Omit section 13 (1) and (2), insert instead:

(1) The Governor may, by commission under the public seal of the State, appoint as a Judge a Magistrate, or a legal practitioner of at least 7 years' standing.

Guardianship Act 1987 No. 257

Section 49 (**Constitution of the Board**):

Omit section 49 (3) (a), insert instead:

(a) at least 3 shall be persons who are legal practitioners of at least 7 years' standing; and

Industrial Relations Act 1991 No. 34

Section 289 (**The Judges**):

(a) Omit section 289 (1) (c), insert instead:

(c) a person who is under 72 years of age and is a legal practitioner of at least 7 years' standing.

(b) Omit section 289 (2) (c), insert instead:

(c) a person who is under 72 years of age and is a legal practitioner of at least 7 years' standing.

(c) Omit section 289 (3) (b), insert instead:

(b) a person who is under 72 years of age and is a legal practitioner of at least 7 years' standing.

(d) Omit section 289 (4).

SCHEDULE 5—AMENDMENT OF OTHER ACTS RELATING TO
JUDICIAL AND OTHER APPOINTMENTS—*continued*

Land and Environment Court Act 1979 No. 204

Section 8 (Appointment and qualification of Judges):

Omit section 8 (2), insert instead:

(2) A person is qualified for appointment as a Judge if the person is under 70 years of age and:

- (a) is a Judge of the Supreme Court; or
- (b) is a Judge of the Industrial Court; or
- (c) is a legal practitioner of at least 7 years' standing.

Mental Health Act 1990 No. 9

(1) Schedule 4 (**Constitution, membership and meetings of the Psychosurgery Review Board**):

Omit clause 1 (2) (a), insert instead:

- (a) a person appointed by the Minister as President of the Board, being a person who is a legal practitioner of at least 7 years' standing; and

(2) Schedule 6 (**Provisions relating to members of the Tribunal**):

Omit clause 1 (1), insert instead:

(1) A person is qualified for appointment as President or as a Deputy President if the person is a legal practitioner of at least 7 years' standing.

New South Wales Crime Commission Act 1985 No. 117

Section 3 (Definitions):

Omit section 3 (4) (b), (c) and (d), insert instead:

; or

- (b) is a legal practitioner of at least 7 years' standing,

SCHEDULE 5—AMENDMENT OF OTHER ACTS RELATING TO
JUDICIAL AND OTHER APPOINTMENTS—*continued***Nurses Act 1991 No. 9****Section 60 (Chairperson and Deputy Chairpersons of the Tribunal):**

- (a) Omit section 60 (1), insert instead:
 - (1) The Governor may appoint:
 - (a) a qualified person as Chairperson of the Tribunal; and
 - (b) 1 or more qualified persons as Deputy Chairpersons of the Tribunal.
 - (1A) A person is qualified for appointment as Chairperson, or as a Deputy Chairperson, if the person:
 - (a) is a Judge of the District Court; or
 - (b) is a legal practitioner of at least 7 years' standing.
- (b) Omit section 60 (8).

Radiation Control Act 1990 No. 13

- (1) Section 20 (**Special inquiries**):
 - Omit section 20 (1), insert instead:
 - (1) The Minister may authorise a legal practitioner of at least 7 years' standing to conduct an inquiry into any accident or incident involving a radioactive substance or radiation apparatus.
- (2) Section 29 (**Radiation Advisory Council**):
 - Omit section 29 (2) (i), insert instead:
 - (i) a person who is a legal practitioner of at least 7 years' standing; and

Royal Commissions Act 1923 No. 29**Section 15 (Application of Division):**

- (a) Omit section 15 (3) (a), insert instead:
 - (a) the chairman of a commission or the sole commissioner is a legal practitioner of at least 7 years' standing; and
- (b) From the definition of "commissioner" in section 15 (4), omit "Judge or Queen's Counsel", insert instead "Judge or legal practitioner".

SCHEDULE 5—AMENDMENT OF OTHER ACTS RELATING TO
JUDICIAL AND OTHER APPOINTMENTS—*continued*

Solicitor General Act 1969 No, 80

Section 2 (Appointment of Solicitor General):

Omit the first sentence of section 2 (1), insert instead:

The Governor may appoint as Solicitor General a legal practitioner of at least 7 years' standing.

Special Commissions of Inquiry Act 1983 No. 90

Section 4 (Issue of commission):

Omit section 4 (2), insert instead:

(2) A commission may be issued only to a person who:

(a) is a Judge; or

(b) is a legal practitioner of at least 7 years' standing.

(2A) A commission issued to a person who is a Judge does not cease to have force only because the person ceases to be a Judge.

Supreme Court Act 1970 No. 52

(1) **Section 26 (Appointment and qualifications: Chief Justice and other Judges):**

Omit section 26 (2) and (3), insert instead:

(2) A person is qualified for appointment as Chief Justice if the person:

(a) is a Judge; or

(b) is a Judge of the Industrial Court; or

(c) is a legal practitioner of at least 7 years' standing.

(3) A person is qualified for appointment as a Judge if the person:

(a) is a Judge of the Industrial Court; or

(b) is a legal practitioner of at least 7 years' standing.

(2) **Section 111 (Appointment of masters and acting masters):**

Omit section 111 (4).

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 4)

Compensation Court Act 1984 No. 89**(1) Section 18 (Costs):**

(a) Omit section 18 (1), insert instead:

(1) In this section, a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.

(b) Omit section 18 (2) (c), insert instead:

(c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the Legal Profession Act 1987 or on an indemnity basis.

(c) Omit section 18 (3).

(2) Section 19A (Interest after order for payment):

Omit section 19A (3), insert instead:

(3) Despite subsection (1) or (2), where:

(a) the amount of any sum ordered to be paid (excluding the amount of costs to be assessed) is paid in full within 21 days after the sum becomes payable; or

(b) the amount of costs assessed is paid in full within 21 days after that amount is assessed,

interest is not payable on the amount so paid, unless the Court otherwise orders.

(3) Section 43 (Rules):

(a) Omit section 43 (1) (a1) and (1A).

(b) After section 43 (4), insert:

(5) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the Legal Profession Act 1987.

(6) A practice note (including any other document, however described, which regulates the practice or procedure of the Court, or of any class of proceedings in the Court, but excluding a decision of the Court) issued by or on behalf of the Court is taken to be a statutory rule for the purposes of

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

Part 6 of the Interpretation Act 1987. This subsection does not apply to a practice note issued before the commencement of this subsection.

Consumer Claims Tribunals Act 1987 No. 206

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

Omit section 3 (6) and (7).

(2) Section 10 (**Jurisdiction**):

After section 10 (4), insert:

(5) If a matter arises relating to the fairness or reasonableness of the costs charged by a barrister or solicitor for an item of business transacted by the barrister or solicitor, that matter is not within the jurisdiction of a tribunal.

Conveyancers Licensing Act 1992 No. 55

(1) Section 4 (**Conveyancing work**):

From section 4 (4), omit “Part 9”, insert instead “Part 3A”.

(2) Section 5 (**Disqualified persons**):

(a) From section 5 (1) (e), omit “the roll of solicitors or the roll of barristers”, insert instead “the roll of legal practitioners”.

(b) From section 5 (1) (g), omit “section 120”, insert instead “section 481”.

(3) Section 6 (**Effect of licence**):

Omit “Part 9” insert instead “Part 3A”.

(4) Section 16 (**Withdrawal of certificates of eligibility**):

(a) From section 16 (d), omit “section 139”, insert instead “Part 6”.

(b) From section 16 (e), omit “section 139”, insert instead “Part 6”.

(5) Section 20 (**Suspension and cancellation of licences**):

Omit “section 125, 130 or 139”, insert instead “Part 6”.

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER ACTS—*continued*

(6) Section 23:

Omit the section, insert instead:

Fees

23. Part 11 of the Legal Profession Act 1987 applies to the fees charged by a licensee in the same way as it applies to the costs charged by a solicitor, subject to such modifications as are prescribed by the regulations.

(7) Sections 24–26:

Omit the sections, insert instead:

Conduct of conveyancing businesses

24. (1) The regulations may make provision for or with respect to the following matters:

- (a) the manner or capacity in which a licensee may conduct a conveyancing business;
- (b) attendance of licensees at premises on which a conveyancing business is conducted;
- (c) use of business names by licensees and approval of business names by the Committee.

(2) A licensee must not conduct a conveyancing business in contravention of the regulations under this section.

(8) Section 27 (**Sharing of receipts with unqualified persons**):

At the end of section 27 (2), insert:

- (c) will be on the same basis as that on which receipts may be shared under section 48F of the Legal Profession Act 1987.

(9) Section 30:

Omit the section, insert instead:

Advertising

30. (1) A licensee may advertise in any way the licensee thinks fit.

(2) However, an advertisement must not be of a kind that is or that might reasonably be regarded as:

- (a) false, misleading or deceptive; or

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER ACTS—*continued*

- (b) in contravention of the Trade Practices Act 1974 of the Commonwealth, the Fair Trading Act 1987 or any similar legislation; or
 - (c) in contravention of any requirements of the regulations.
 - (3) The regulations may make provision for or with respect to advertising by licensees.
- (10) Section 32 (**Committee may establish guidelines for conduct of conveyancing business**):
- (a) In section 32 (2), after “rules”, insert “or guidelines”.
 - (b) Omit section 32 (3), insert instead:
 - (3) The Committee may, in an order establishing guidelines, specify whether the guidelines are mandatory or for guidance only. If the order does not specify whether a guideline is mandatory or for guidance only, it is taken to be mandatory.
 - (4) A guideline which is expressed to be for guidance only is not required to be complied with.
 - (5) A licensee must not conduct a conveyancing business in contravention of any mandatory guidelines in force under this section.
- (11) Section 33 (**Money received by licensee on behalf of another**):
- At the end of section 33 (3), insert:
- ; and
 - (e) does not prevent a licensee from holding, or disposing of, a cheque or other negotiable instrument payable to a third party if the licensee does so on behalf of a client and in accordance with directions given by the client.
- (12) Section 43 (**Secrecy**):
- From section 43 (5) (f), omit “the Panel, the Board”, insert instead “the Legal Services Commissioner”.

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

(13) Part 6:

Omit the Part, insert instead:

PART 6—DISCIPLINARY PROCEEDINGS**Application of Legal Profession Act 1987**

101. (1) Part 10 of the Legal Profession Act 1987 applies to licensees and to professional misconduct and unsatisfactory professional conduct of a licensee in the same way as it applies to solicitors and any such misconduct or conduct of a solicitor, subject to this Part and to such modifications as are prescribed by the regulations.

(2) For the purposes of the application of those provisions:

- (a) a reference to a solicitor is to be construed as a reference to a licensee; and
- (b) a reference to the practising certificate of a solicitor is to be construed as a reference to the certificate of eligibility and the licence of a licensee.

Composition of Disciplinary Tribunal

102. (1) For the purposes of conducting a hearing into a complaint against a licensee, the Disciplinary Tribunal is to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

(2) The solicitor member is to preside at the hearing.

(3) For the purposes of this section, the Disciplinary Tribunal may include 1 or more licensee members (being the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d)).

Consultation with the Committee

103. The Council is not to make any decision with respect to a complaint against a licensee unless:

- (a) it has caused notice to be given to the Committee of the fact that it is conducting an investigation into the complaint and of its preliminary findings with respect to the complaint; and
- (b) it has given the Committee a reasonable opportunity (at least 14 days) within which to comment on those findings; and

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

(c) it has given due consideration to any comments made to it by the Committee.

(14) Section 156 (**Delivery up of documents**):

Omit section 156 (2), insert instead:

(2) This section does not affect the provisions of Division 6 of Part 11 of the Legal Profession Act 1987 with respect to the assessment of costs.

(15) Dictionary of Words and Expressions:

(a) Omit the definitions of “Board” and “Panel”.

(b) From the definition of “Tribunal”, omit “Legal Profession Disciplinary Tribunal”, insert instead “Legal Services Tribunal”.

Conveyancers Licensing Regulation 1993

(1) After clause 14, insert:

Nature of conveyancing business

14A. (1) A licensee must not conduct a Conveyancing business, or be involved in the conduct of a conveyancing business, otherwise than as a sole practitioner, in partnership with other licensees or as an employee of another licensee.

(2) A licensee must not falsely represent, or permit any other person to falsely represent, that another person is a partner of the licensee.

Attendance at business premises

14B. A licensee must not permit conveyancing work to be carried out at any premises at which the licensee conducts a conveyancing business unless the licensee, or some other licensee, gives reasonable attendance at those premises.

Business names

14C. (1) A licensee must not conduct a conveyancing business under a business name that is not approved by the Committee.

(2) The Committee is not to approve a proposed business name for a conveyancing business if the name is so similar to that of another business name under which another

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER
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conveyancing business is conducted as to suggest that there is a relationship between the two businesses.

(3) A licensee must not enter into any arrangement under which some other person, whether or not a licensee, is authorised by the licensee to conduct a conveyancing business under the same business name, or under a substantially similar business name, as that under which the licensee conducts a conveyancing business.

(2) Clause 15 (**Advertising**):

Omit the clause.

Defamation Act 1974 No. 18

(1) Section 17J (**Matters arising under the Legal Profession Act 1987**):

- (a) Omit section 17J (1) (a) (iii), (iv) and (v), insert instead:
 - (iv) the Legal Services Commissioner;
 - (v) the Legal Services Tribunal; or
- (b) In section 17J (1) (b), after “body”, insert “or person”.
- (c) From section 17J (1) (b), omit “its”, insert instead “the”.
- (d) In section 17J (1) (b), after “determination” where firstly occurring, insert “of the body or person”.

(2) Schedule 2 (**Proceedings of public concern and official and public documents and records**):

- (a) From item 2 (16), omit paragraphs (c), (d) and (e), insert instead:
 - (d) the Legal Services Commissioner; or
 - (e) the Legal Services Tribunal,
- (b) From item 3 (5), omit paragraphs (c), (d) and (e), insert instead:
 - (d) the Legal Services Commissioner; or
 - (e) the Legal Services Tribunal,

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER ACTS—*continued*

- (c) From item 3 (5) omit “its”, insert instead “the”.
- (d) In item 3 (5) after “determination” where firstly occurring, insert “of that body or person”.

District Court Act 1973 No. 9

(1) Section 43 (**Right of appearance**):

From section 43 (5), omit “between party and party”.

(2) Section 85 (**Interest on judgment debt**):

Omit section 85 (3), insert instead:

(3) Despite subsection (1) or (2), where:

- (a) the amount of a judgment debt (excluding the amount of costs to be assessed) is paid in full within 21 days after the judgment debt becomes payable; or
- (b) the amount of costs assessed is paid in full within 21 days after that amount is assessed,

interest is not payable on the amount so paid, unless the Court otherwise orders.

(3) Section 138 (**Rules**):

At the end of the section, insert:

(2) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the Legal Profession Act 1987.

(4) Section 142 (**Rules**):

At the end of the section, insert:

(2) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the Legal Profession Act 1987.

(5) Section 142F (**Rules in relation to hearing etc. of proceedings in the Court in its special civil jurisdiction**):

At the end of the section, insert:

(2) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the Legal Profession Act 1987.

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

(6) Section 148A:

Omit the section, insert instead:

Definition of “costs”

148A. In this Division (except section 148E), a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.

(7) Section 148B (**Costs to be in discretion of the Court**):

(a) Omit section 148B (1) (c), insert instead:

(c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the Legal Profession Act 1987 or on an indemnity basis.

(b) Omit section 148B (2).

(8) Section 148E (**Costs—liability of solicitor**):

Omit section 148E (2), insert instead:

(2) The Court may refer the matter to a costs assessor under the Legal Profession Act 1987 for inquiry and report before making such an order.

(9) Section 161 (**Civil procedure rules**):

(a) Omit section 161 (2) (aa), (ab) and (3).

(b) After section 161 (5), insert:

(6) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the Legal Profession Act 1987.

(7) A practice note (including any other document, however described, which regulates the practice or procedure of the Court, or of any class of proceedings in the Court, but excluding a decision of the Court) issued by or on behalf of the Court is taken to be a statutory rule for the purposes of Part 6 of the Interpretation Act 1987. This subsection does not apply to a practice note issued before the commencement of this subsection.

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER ACTS—*continued***Freedom of Information Act 1989 No. 5****Schedule 2 (Exempt bodies and offices):**

At the end of the Schedule, insert:

The office of Legal Services Commissioner—the complaint handling, investigative, review and reporting functions of that office.

Land and Environment Court Act 1979 No. 204**(1) Section 69 (Costs):**

Omit section 69 (2) (c), insert instead:

(c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the Legal Profession Act 1987 or on an indemnity basis.

(2) Section 73 (Procedure on transfer):

From section 73 (c) (ii), omit “, according to the scale of costs in the Supreme Court”.

(3) Section 74 (Rules):

After section 74 (5), insert:

(6) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the Legal Profession Act 1987.

(7) A practice note (including any other document, however described, which regulates the practice or procedure of the Court, or of any class of proceedings in the Court, but excluding a decision of the Court) issued by or on behalf of the Court is taken to be a statutory rule for the purposes of Part 6 of the Interpretation Act 1987. This subsection does not apply to a practice note issued before the commencement of this subsection.

Legal Aid Commission Act 1979 No. 78**(1) Section 40 (Assessment of costs):**

(a) From section 40 (1), omit “tax a bill of costs under Division 5 of Part 11 of the Legal Profession Act 1987”, insert instead “have a bill of costs assessed under Division 6 of Part 11 of the Legal Profession Act 1987”.

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

- (b) From section 40 (2), omit “taxation”, insert instead “assessment”.
- (2) Section 43 (**Payment of costs by certain legally assisted persons**):
From section 43 (2), omit “taxed”, insert instead “assessed”.
- (3) Section 46 (**Liability of legally assisted person to pay costs and expenses**):
- (a) From section 46 (2) (a), omit “, assessed as between solicitor and client,”.
- (b) From section 46 (2) (b), omit “(including barrister’s fees)”.
- (c) Omit section 46 (4), insert instead:
(4) For the purposes of subsection (2), a reference to costs is a reference to costs assessed as if the legally assisted person were not a legally assisted person.
- (4) Section 48 (**Repayment of costs and expenses to Commission when legal aid terminated**):
From section 48 (1) (a), omit “, assessed as between solicitor and client,”.

Local Courts (Civil Claims) Act 1970 No. 11

- (1) Section 33:
Omit the section, insert instead:
Definition of ‘costs’
33. In this Division, a reference to costs is a reference to the costs payable by a party in or in relation to proceedings, including disbursements.
- (2) Section 34 (**Costs to be in discretion of court**):
- (a) Omit section 34 (1) (c), insert instead:
(c) a court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the Legal Profession Act 1987 or on an indemnity basis.
- (b) Omit section 34 (3).

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER ACTS—*continued***(3) Section 84 (Rules):**

After section 84 (3), insert:

(4) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the Legal Profession Act 1987.

(5) A practice note (including any other document, however described, which regulates the practice or procedure of a Local Court, any Division of a Local Court or of any class of proceedings in a Local Court, but excluding a decision of a Local Court) issued by or on behalf of all or any Local Courts is taken to be a statutory rule for the purposes of Part 6 of the Interpretation Act 1987. This subsection does not apply to a practise note issued before the commencement of this subsection.

Ombudsman Act 1974 No. 68**Schedule 1 (Excluded conduct of public authorities):**

At the end of the Schedule, insert:

26. Conduct of the Legal Services Commissioner or a member of staff of the Commissioner, when exercising functions under Part 10 of the Legal Profession Act 1987.

Public Notaries Act 1985 No. 6

Omit section 13, insert instead:

Fees chargeable by public notaries

13. The regulations may make provision for or with respect to the determination of fees to be charged by public notaries.

Supreme Court Act 1970 No. 52**(1) Section 76 (Costs):**

Omit section 76 (1) (c), insert instead:

(c) the Court may order costs to be assessed on the basis set out in Division 6 of Part 11 of the Legal Profession Act 1987 or on an indemnity basis.

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER ACTS—*continued*

(2) Section 76C (**Costs—liability of solicitor**):

Omit section 76C (2), insert instead:

(2) The Court may refer the matter to a costs assessor under the Legal Profession Act 1987 for inquiry and report before making such an order;

(3) Section 95 (**Interest on debt under judgment or order**):

From section 95 (3), omit "taxation", insert instead "assessment under Division 6 of Part 11 of the Legal Profession Act 1987".

(4) Section 101 (**Appeal in proceedings in the Court**):

Omit section 101 (2) (d).

(5) Section 124 (**Rule-making power**):

(a) Omit section 124 (1) (k) and (ka).

(b) After section 124 (9), insert:

(10) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 11 of the Legal Profession Act 1987.

(11) A practice note (including any other document, however described, which regulates the practice or procedure of the Court, any Division of the Court or of any class of proceedings in the Court, but excluding a decision of the Court) issued by or on behalf of the Court is taken to be a statutory rule for the purposes of Part 6 of the Interpretation Act 1987. This subsection does not apply to a practice note issued before the commencement of this subsection, but extends to a practice note so issued if it commences on or after 19 November 1993 (whether or not published in the Gazette).

Workers Compensation Act 1987 No. 70

(1) Section 122 (**Solicitor/client costs in compensation proceedings**):

Omit section 122 (3), insert instead:

(3) Any sum so awarded is subject to assessment in accordance with Division 6 of Part 11 of the Legal Profession Act 1987.

Legal Profession Reform Act 1993 No. 87

SCHEDULE 6—CONSEQUENTIAL AMENDMENT OF OTHER
ACTS—*continued*

(4) This section prevails to the extent of any inconsistency
with Part 11 of the Legal Profession Act 1987.

(2) Section 151T (**Costs**):

Omit section 151T (2).

*[Minister's second reading speech made in—
Legislative Council on 27 October 1993
Legislative Assembly on 9 November 1993]*