

LEGAL PROFESSION (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Legal Profession Act 1987—

- (a) to extend the powers of the Bar Council and the Law Society Council with respect to investigations;
- (b) to vary the scheme for disciplining legal practitioners for misconduct;
- (c) to enable the Professional Standards Board and the Disciplinary Tribunal to make a compensation order against a legal practitioner for an amount of up to \$2,000 without the consent of the practitioner; and
- (d) to make other law revision amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 gives effect to the Schedules of amendments.

SCHEDULE 1—AMENDMENTS RELATING TO THE ADMISSION OF BARRISTERS AND SOLICITORS

Schedule 1 (1) and (2) enable the Barristers Admission Board and the Solicitors Admission Board to act jointly in exercising their functions.

Schedule 1 (3) makes it clear that a solicitor acting as an agent for another solicitor has a right of audience in any court in New South Wales.

Schedule 1 (4) provides that the Bar Council and the Law Society Council may make written submissions to an Admission Board hearing an application by a student-at-law for a declaration about matters affecting the student-at-law's good fame or character.

Schedule 1 (5) makes it clear that an applicant, the Bar Council and the Law Society Council each have a right to appear in an appeal to the Supreme Court relating to a declaration sought by a student-at-law about matters affecting the student-at-law's good fame or character.

Legal Profession (Amendment) 1987

SCHEDULE 2—AMENDMENTS RELATING TO PRACTISING CERTIFICATES

Schedule 2 (1) and (2) remove the requirement that a complaint must be made against a barrister or solicitor under Part 10 of the Principal Act before the Bar Council or the Law Society Council can apply for an injunction restraining a barrister or solicitor from practising without a current practising certificate or from failing to comply with a condition of a practising certificate.

Schedule 2 (3) requires applications for practising certificates to be accompanied by, or contain, information required by the regulations and empowers the Bar Council or Law Society Council to refuse to issue a certificate to a person who has not paid any costs of an inspection or investigation or expenses of receivership.

Schedule 2 (4) makes it a condition of a practising certificate issued to a barrister who is a pupil that the period as a pupil be served satisfactorily and enables the Bar Council to impose a similar condition on certain other practising certificates.

Schedule 2 (5) gives the Law Society Council an unrestricted power to limit the practising rights of a solicitor when issuing a practising certificate to the solicitor.

Schedule 2 (6) enables the Law Society Council to refuse to issue a practising certificate to a solicitor or to cancel or suspend a practising certificate of a solicitor if the solicitor contravenes an order of the Professional Standards Board or the Disciplinary Tribunal or is a disqualified person within the meaning of section 121 of the Principal Act.

Schedule 2 (7) enables regulations to be made under the Principal Act with respect to the refund of the whole or part of fees paid for practising certificates.

SCHEDULE 3—AMENDMENTS RELATING TO THE BAR ASSOCIATION AND
LAW SOCIETY

Schedule 3 (1) inserts definitions of “investigator” and “trust account inspector” into the Principal Act.

Schedule 3 (2) empowers the Law Society Council to negotiate with insurers and other persons in relation to the provision of indemnity insurance to solicitors or former solicitors.

Schedule 3 (3) and (4) make it clear that a lay member of a committee of the Bar Association, Bar Council, Law Society or Law Society Council has obligations as well as rights.

Schedule 3 (5) broadens the powers of the Law Society Council to investigate matters relating to the conduct of solicitors and persons employed by them and confers on the Law Society Council power to prosecute for breaches of the proposed Act, to appear in certain proceedings and to recover money payable to the Law Society under the proposed Act.

Schedule 3 (6) makes it clear that the Law Society may appoint trust account inspectors and gives such inspectors powers similar to those given to investigators. It also enables investigators to investigate the accounts kept by associates of a solicitor and absolves from liability any person who complies with a requirement made by a trust account inspector or an investigator under section 55 (3) of the Principal Act.

Schedule 3 (7) and (8) make amendments to the Principal Act consequent on the amendments made by Schedule 3 (5).

Legal Profession (Amendment) 1987

SCHEDULE 4—AMENDMENTS RELATING TO TRUST ACCOUNTS

Schedule 4 (1) enables corporations and partners to be considered associates of a solicitor for the purposes of Part 6 of the Principal Act.

Schedule 4 (2) clarifies the distinction between trust money, money held for short periods and controlled money received by or on behalf of a solicitor.

Schedule 4 (3) enables regulations to be made prescribing the records which a solicitor must keep of controlled money and other money received by or on behalf of the solicitor.

Schedule 4 (4) enables regulations to be made for or with respect to the auditing of a solicitor's records relating to mortgages of real property where the solicitor has, in a 12 month period, acted for mortgagees in respect of amounts totalling not less than \$500,000 or in respect of more than 50 mortgages.

Schedule 4 (5) imposes a requirement that a failure to deposit trust funds (as required by the Principal Act) must be wilful before it will constitute professional misconduct.

Schedule 4 (6) omits a reference to bills of exchange as a consequence of a recent amendment to the Trustee Act 1925.

SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS' FIDELITY FUND

Schedule 5 (1) omits a reference to bills of exchange as a consequence of a recent amendment to the Trustee Act 1925.

Schedule 5 (2) makes it clear that costs incurred by or on behalf of the Law Society in relation to inspections or investigations under section 55 of the Principal Act may be paid from the Fidelity Fund.

Schedule 5 (3) gives the Law Society Council a discretion to suspend the practising certificate of a solicitor who fails to pay a contribution or levy for the purposes of the Fidelity Fund.

Schedule 5 (4) limits the interest component of pecuniary loss for the purposes of claims against the Fidelity Fund to a rate not greater than that prescribed by the Supreme Court Rules in respect of unpaid judgments.

Schedule 5 (5) clarifies the operation of a provision relating to claims for failures to account.

Schedule 5 (6) clarifies the operation of a provision relating to double compensation when a person who has a successful claim against the Fidelity Fund has also received or recovered from another source a payment on account of pecuniary loss.

Schedule 5 (7) enables the Law Society Council to pay successful claims against the Fidelity Fund after such date as it fixes in each case.

Schedule 5 (8) replaces the stated case procedure for appeals to the Supreme Court against a disallowance by the Law Society Council of a claim against the Fidelity Fund with a simpler right to appeal.

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS

Schedule 6 (1) makes amendments to the Principal Act consequent on an amendment made by Schedule 6 (2).

Legal Profession (Amendment) 1987

Schedule 6 (2) enables a receiver to make an application to the Supreme Court to be appointed receiver of the property of an associate of a solicitor and also makes it clear that a receiver may be appointed for a solicitor or an associate of a solicitor without notifying the person for whom the receiver is appointed and without the person being a party to the relevant proceedings.

Schedule 6 (3) makes it clear that the Supreme Court may suppress publication of an order made in proceedings relating to an application for the appointment of a receiver.

Schedule 6 (4) empowers the Supreme Court to give directions as to the service of orders of appointment of receivers.

Schedule 6 (5), (7) and (9)–(15) make amendments to the Principal Act consequent on an amendment made by Schedule 6 (2).

Schedule 6 (6) extends the obligation to provide information to a receiver to an obligation to provide information about property that a receiver suspects might be receivable property and makes it clear that a solicitor must give information relating to a client if required to do so. The amendment also absolves from liability any person who complies with a requirement to provide information and makes any such information inadmissible in certain legal proceedings.

Schedule 6 (8) enables a receiver to take proceedings in the name of the receiver as if the receiver were beneficially entitled to property where property has been taken by, or paid or transferred to, a person or otherwise used unlawfully or in breach of trust at the time the property was so taken, paid, transferred or used.

SCHEDULE 7—AMENDMENTS RELATING TO UNQUALIFIED PRACTITIONERS

Schedule 7 (1) makes a minor amendment to section 116 of the Principal Act.

Schedule 7 (2) empowers the Law Society to apply for an order prohibiting any solicitor from employing or paying a person in connection with the solicitor's practice, if the Law Society Council is of the opinion that the person is not a fit and proper person to be so employed or paid or that the person has been guilty of certain conduct.

SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT

Schedule 8 (1)–(3) make amendments to the Principal Act consequent on an amendment made by Schedule 8 (4).

Schedule 8 (4) inserts new definitions of “unsatisfactory professional conduct” and “professional misconduct” into the Principal Act. “Unsatisfactory professional conduct” will include 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. “Professional misconduct” will include unsatisfactory professional conduct involving a substantial or consistent failure to reach reasonable standards of competence and diligence and certain conduct not connected with the practice of law as well as the other elements it presently includes.

Schedule 8 (5)–(7), (10), (13) and (14) make amendments to the Principal Act consequent on an amendment made by Schedule 8 (4).

Schedule 8 (8) requires the Bar Council and the Law Society Council to refer complaints involving unsatisfactory professional conduct to the Professional Standards Board and those involving professional misconduct to the Disciplinary Tribunal.

Legal Profession (Amendment) 1987

Schedule 8 (9) requires the Professional Conduct Review Panel to give the Bar Council and the Law Society Council one month's notice before recommending that a complaint dismissed by a Council be referred to the Professional Standards Board or Disciplinary Tribunal.

Schedule 8 (11) requires the Professional Standards Board to refer a matter that may involve professional misconduct to the Disciplinary Tribunal.

Schedule 8 (12) enables the Professional Standards Board to order a legal practitioner to pay up to \$2,000 in compensation without the legal practitioner's consent.

Schedule 8 (15) enables the Disciplinary Tribunal to order a legal practitioner to pay up to \$2,000 in compensation without the legal practitioner's consent.
