

[Act 1998 No 101]



New South Wales

Legal Profession Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Legal Profession Act 1987* as follows:

- (a) to provide for a Public Purpose Fund, which will replace the Statutory Interest Account under that Act.
 - (b) to require the Law Society Council, the Bar Council and the Legal Services Commissioner to develop performance criteria relating to the handling of complaints against legal practitioners under that Act and to ensure that information about the complaints procedure is provided to members of the public on request.
 - (c) to make further provision with respect to costs assessors, the functions of the Chief Justice of New South Wales and other matters.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Legal Profession Act 1987

Public Purpose Fund

At present, the *Legal Profession Act 1987* requires solicitors to deposit with the Law Society a prescribed part of the funds kept by solicitors in trust accounts. The Act allows the Law Society to invest these funds. All interest on those investments must be paid to the credit of an account called the "Statutory Interest Account". The Account is maintained by the Law Society and is used for the purpose of paying certain costs and expenses incurred under the Act and supplementing the Legal Aid Fund, and for certain other purposes.

Schedule 1 [9] and [10] replace the Statutory Interest Account with a fund called the "Public Purpose Fund".

The Public Purpose Fund is to be under the management and control of trustees appointed under the Act. The trustees consist of 3 persons appointed by the Attorney General, and the Director-General of the Attorney General's Department. The Fund is to be administered by the Law Society.

Interest paid on investments made by the Law Society (as referred to above) is to be paid into the Public Purpose Fund. In addition, any interest that accrues on general trust accounts kept by solicitors is to be paid into the Fund if that is required under the terms of an agreement between the trustees and the bank, building society or credit union at which the account is kept.

The trustees are to make payments from the Fund to re-imburse certain costs and expenses incurred under the Act. For instance, payments may be made in respect of costs and expenses incurred by the Law Society, a Council (the Law Society Council or the Bar Council) and the Legal Services

Commissioner in connection with the exercise of their functions under the Act. Such payments require the approval of the Director-General of the Attorney General's Department. For the purpose of determining the amount to be paid, the Director-General may require the beneficiary of the payment to submit a budget to the Director-General.

The new provisions also allow discretionary payments to be made from the Fund for certain purposes, including the supplementation of the Legal Aid Fund, the Fidelity Fund and the Law Foundation Fund. Payments may be made for other purposes related to the promotion and furtherance of legal education, law reform and access to legal information. All discretionary payments from the Public Purpose Fund may be made only by unanimous decision of the trustees, and only with the concurrence of the Attorney General.

The Auditor General will be able to conduct a special audit from time to time of the activities of the Legal Services Commissioner and the Councils for which costs may be paid from the Fund and the liability of the Fund for payment of those costs.

A report by the trustees about the income and expenditure of the Fund is to be included in the Law Society Council's annual report.

Schedule 1 [1]–[8], [11]–[19], [21] and [24] contain consequential amendments.

Schedule 1 [29] sets out provisions relating to the trustees of the Public Purpose Fund (such as terms of office and procedures for meetings).

Complaints against legal practitioners

Schedule 1 [20] requires the Law Society Council, Bar Council and Legal Services Commissioner to develop performance criteria relating to the handling of complaints under the Act. Each Council and the Commissioner are also required to produce information about the procedure for dealing with complaints under the Act and to ensure that it is provided to members of the public on request.

Costs assessors, the functions of the Chief Justice of New South Wales, and other matters

At present, under Part 11 of the Act, the Chief Justice of New South Wales is required to appoint costs assessors and also has power to remove them. **Schedule 1** [25] requires any proceedings relating to the appointment or

removal of a costs assessor by the Chief Justice of New South Wales to be taken against “The Proper Officer of the Supreme Court” as nominal defendant rather than the Chief Justice. **Schedule 1 [26]** provides that the Chief Justice of New South Wales and the proper officer of the Supreme Court are not personally liable for acts done in good faith for the purposes of the administration of Part 11 of the Act. **Schedule 1 [27]** is a consequential amendment.

Schedule 1 [30] allows a costs assessor whose term of office has expired to continue in office for the purpose of completing any application for costs assessment that was referred to the costs assessor before his or her term of office expired.

Schedule 1 [22] allows costs assessors to apply a rule known as the “slip rule” to their determinations. The provision will allow a costs assessor who makes a determination in relation to an application for costs assessment to correct an inadvertent error in the determination by making a new determination and issuing a replacement certificate that sets out the new determination. **Schedule 1 [23]** confers a similar power on a panel that conducts a review of the determination of a costs assessor.

Schedule 1 [28] allows the Chief Justice of New South Wales to delegate his or her functions under the Act to a Judge of the Supreme Court or a committee comprised of 1 Judge of the Supreme Court and such other persons as the Chief Justice may appoint.

Savings and transitional provisions

Schedule 1 [31] and **[32]** provide for savings and transitional provisions. In particular, the Public Purpose Fund is a continuation of the Statutory Interest Account and the assets and liabilities of the Statutory Interest Account become the assets and liabilities of the Public Purpose Fund. The assets and liabilities of the Solicitors' Trust Account Fund, a fund established by the Law Society, also become the assets and liabilities of the Public Purpose Fund.

Schedule 2 Consequential amendment of other Acts

Schedule 2 amends the following Acts:

Conveyancers Licensing Act 1995

Law Foundation Act 1979

Legal Aid Commission Act

The amendments are consequential on the Public Purpose Fund replacing the Statutory Interest Account.