

[Act 2002 No 25]



New South Wales

Legal Profession Amendment (National Competition Policy Review) Bill 2002

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, in connection with national competition policy reform:

- (a) to allow separate fees for practising and for membership to be imposed on barristers and solicitors, with only the practising fee being compulsory,
 - (b) to provide that a contravention of the advertising rules for barristers and solicitors is capable of being professional misconduct or unsatisfactory professional conduct,
 - (c) to enable the Bar Council and the Law Society Council to accredit specialist training schemes that they do not conduct and to require them to do so, if directed by the Attorney General,
 - (d) to make it clear that solicitors may practise in multidisciplinary partnerships, despite anything to the contrary in the solicitors rules, and that barristers may also practise in multidisciplinary partnerships, subject to the barristers rules,
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- (e) to require barristers rules, solicitors rules and joint rules to be exposed for public comment before they are made,
- (f) to allow any individual who is authorised to practise law in another State or a Territory, and who holds an interstate practising certificate, to practise law in an equivalent way in New South Wales, without the need for the Minister to declare that the law of the other State or Territory is a corresponding law for the purposes of the *Legal Profession Act 1987*,
- (g) to require the Bar Council, the Law Society Council and the Legal Services Commissioner to publicise disciplinary action taken against barristers and solicitors,
- (h) to provide for other matters of a minor, consequential or ancillary nature.

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.

Schedule 1 Amendments

Separate practising and membership fees

At present, section 29 of the *Legal Profession Act 1987* (*the Act*) requires an application for a practising certificate by a barrister or solicitor to be accompanied by a practising fee. The fee is to be an amount determined by the Bar Council or Law Society Council and approved by the Attorney General.

The amendments provide that the practising fee is to be such amount as the Bar Council or Law Society Council requires for the purpose of recovering costs of or associated with the exercise of regulatory functions, subject to any regulations made under the Act. The fee is not to include any charge for membership of the relevant professional association (that is, the Bar Association for barristers or the Law Society for solicitors) or any amount required for the purpose of recovering the costs of providing benefits or services to members of the association. A separate fee for membership of such an association may be charged, but membership is not compulsory. The amendments provide for the submission of budgets to the

Attorney General in connection with the charging of the practising certificate fee, and for the audit of those activities in respect of which a practising certificate fee may be charged.

The amendments also make it clear that payment of a practising fee can be waived by a Council.

See **Schedule 1 [2]**, **[4]–[6]** and **[32]**. **Schedule 1 [44]** contains a transitional provision.

Contravention of advertising rules

The amendments make it clear that any contravention of the rules about advertising by a barrister or solicitor (for example, the rule that any advertising must not be false, misleading or deceptive) is capable of being professional misconduct or unsatisfactory professional conduct. See **Schedule 1 [7]**. **Schedule 1 [44]** contains a transitional provision.

Accreditation of specialist training schemes

At present, the Act allows a barrister or solicitor to hold himself or herself out as being a specialist in a particular area if the barrister or solicitor is appropriately accredited under an accreditation scheme conducted by the Bar Council or Law Society Council.

The amendments extend this provision to accreditation schemes that are conducted by other persons or bodies and approved by the Bar Council or Law Society Council. The amendments will also require the Bar Council or Law Society Council to approve an accreditation scheme if directed to do so by the Attorney General. See **Schedule 1 [8]** and **[9]**.

Multidisciplinary partnerships

The amendments make it clear that a solicitor may be in partnership with a person who is not a barrister or solicitor, despite anything to the contrary in the solicitors rules. A barrister may also be in partnership with a person who is not a solicitor or barrister, except to the extent (if any) that the barristers rules otherwise provide. The regulations may make further provision with respect to the business of any partnership in which a barrister or solicitor participates. See **Schedule 1 [11]–[13]**.

Interstate legal practitioners

At present, the Act provides for a scheme under which lawyers from another State or a Territory that participates in a national practising certificate scheme have a right to practise in New South Wales that is similar to their right to practise in their

home State or Territory. In order to obtain the benefit of the scheme, a lawyer must have been issued with a practising certificate under a corresponding law of another State or a Territory. A corresponding law is a law declared by the Minister to be a corresponding law for the purposes of the Act.

The amendment will remove the need for the Minister to declare that the law of another State or a Territory is a corresponding law for the purposes of the *Legal Profession Act 1987*. It will allow any individual who is authorised to practise law in another State or a Territory and who holds a practising certificate under a law of that State or Territory that relates to the regulation of legal practice, and that corresponds to Part 3 of the Act, to practise law in an equivalent way in New South Wales. See **Schedule 1 [18]** and **[20]**. **Schedule 1 [1]**, **[3]**, **[10]**, **[14]–[17]**, **[19]**, **[21]–[30]**, **[33]–[39]** and **[42]** are consequential amendments.

Exposure of rules for public comment

The amendments require the Bar Council and Law Society Council, before making a barristers rule, solicitors rule or joint rule, to give public notice of the proposed rule and to invite and consider any comments and submissions that are made in relation to the rule. There is an exception for urgent matters. See **Schedule 1 [31]**.

Publicising disciplinary action

The amendments require the Bar Council and the Law Society Council to publicise disciplinary action taken against barristers and solicitors. The Legal Services Commissioner will also be required to keep a register of disciplinary action taken against barristers and solicitors. The Councils may comply with the requirements placed on them by providing to the Legal Services Commissioner sufficient information to enable the Commissioner to keep the register of disciplinary action. The register is to be made available on the internet, and the Legal Services Commissioner may provide information on the register to members of the public on request. See **Schedule 1 [40]**. **Schedule 1 [41]** is a consequential amendment and **Schedule 1 [44]** contains a savings provision.

Savings and transitional

Schedule 1 [43] allows savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [44] contains other savings and transitional provisions (as mentioned above).