

[Act 2000 No 35]



New South Wales

Legal Profession Amendment (Complaints and Discipline) Bill 2000

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* to make a number of miscellaneous changes to the procedure dealing with complaints about, and the discipline of, legal practitioners and to validate certain disciplinary proceedings in which the complaint was made or the proceedings were instituted more than 3 years after the conduct concerned occurred.

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 Schedules 1 and 2.

Schedule 1 Principal amendments

Schedule 1 [1] replaces Division 3 of Part 10 of the Act with respect to complaints about legal practitioners and the role of the Bar Council or Law Society Council (a “Council”) or the Legal Services Commissioner (the “Commissioner”). The principal changes made are as follows:

- (a) Complaints made by a Council or the Commissioner are also subjected to the requirement that the complaint cannot be made more than 3 years after the alleged conduct concerned occurred unless the Council or the Commissioner (as the case requires) is satisfied that it is just and fair to do so having regard to the reasons for the delay or it is in the public interest (in the case of an allegation of professional misconduct).
- (b) Provision is made for a complainant to withdraw a complaint (but without affecting the right of a Council or the Commissioner to pursue an investigation in an appropriate case or the making of further complaints about the matter).
- (c) The Commissioner is authorised to refer a complaint to a Council even though it is referred more than 21 days after the complaint is made or the Commissioner has commenced to investigate it.

Schedule 1 [2] inserts a broad definition of the nature of mediation that may be undertaken in respect of complaints that deal with consumer disputes.

Schedule 1 [3] enables the Commissioner, with the consent of a Council, to refer a complaint to the Council after the completion of an investigation or after the institution of proceedings in the Administrative Decisions Tribunal.

Schedule 1 [4] authorises the Commissioner or a Council to dismiss a complaint at any time if it is the public interest to do so (for example, in cases where the practitioner has retired from practice or is prevented from practising or is subject to another complaint about the same conduct).

Schedule 1 [5] ensures that the Commissioner has the same powers when reviewing a complaint investigated by a Council as the Commissioner has when investigating a complaint (for example, powers with respect to obtaining information from legal practitioners).

Schedule 1 [6] and **[7]** provide that the Commissioner may, after completing a review of a complaint investigated by a Council, refer the matter to mediation or reprimand the legal practitioner. At present the Commissioner is required to refer the matter back to the Council if the complaint is to be mediated.

Schedule 1 [8] ensures that the Administrative Decisions Tribunal may vary the information laid against a legal practitioner to include an additional allegation even though the conduct concerned occurred more than 3 years before the variation.

Schedule 1 [9] enables the Commissioner or a Council to be replaced as the informant in proceedings before the Administrative Decisions Tribunal if a complaint is transferred between the Commissioner and the Council after the information is laid.

Schedule 1 [10] authorises the Commissioner or a Council to publicise, without incurring liability, the name and other identifying particulars of a practitioner whose practising certificate has been suspended, cancelled or refused or who has been removed from the roll of legal practitioners.

Schedule 1 [11] enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Schedule 1 [12] contains a validation and particular transitional provisions. The validation results from the decision of the High Court in *Barwick v The Law Society of New South Wales* on 3 February 2000. The Court decided, despite the past practice of the Law Society Council and the decision of the NSW Court of Appeal, that a complaint against a legal practitioner initiated by the Council was subject to section 138 of the Act (i.e. that complaints could not be made more than 3 years after the alleged conduct unless the Commissioner determines it is fair and reasonable or in the public interest). In addition, the Court decided that the limitation applied when the Administrative Decisions Tribunal, on the application of the Council, seeks to change the allegations contained in an information laid before the Tribunal to add additional allegations of misconduct. The Schedule validates past decisions with respect to complaints and disciplinary proceedings against legal practitioners concerning conduct occurring before that 3-year period.

Schedule 2 Law revision and other amendments

Schedule 2 [1] and [11] enable the Bar Council to delegate to one of its committees any functions under the Principal Act instead of only disciplinary functions under Part 10.

Schedule 2 [2]–[6], [9]–[10] and [12] make amendments by way of statute law revision to simplify and make consistent the provisions of Part 10 of the Principal Act relating to disciplinary proceedings.

Schedule 2 [7] ensures that Part 10 of the Principal Act does not affect other investigative powers of a Council (eg powers under section 55 to investigate trust accounts).

Schedule 2 [8] ensures that the Commissioner has a right of appearance in the Supreme Court in connection with any proceedings involving the exercise of the Court's jurisdiction with respect to legal practitioners.