



New South Wales

Legal Profession Amendment (Disciplinary Provisions) Bill 2001

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*:

- (a) to enable the Bar Council or the Law Society Council to refuse to issue, or to cancel or suspend, a practising certificate if the applicant for or holder of the certificate fails to give a satisfactory explanation of specified conduct (whether or not related to practice as a barrister or solicitor) that may indicate that the applicant or holder is not a fit and proper person to hold a practising certificate, and
- (b) to require the Bar Council and the Law Society Council to refuse to issue, or to cancel or suspend a practising certificate, if the applicant for or holder of the certificate has, since being admitted as a legal practitioner, committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence in circumstances that show that the applicant or holder is not a fit and proper person to hold the certificate, and

- (c) to enable the Bar Council or the Law Society Council to refuse to issue, or to cancel or suspend a practising certificate, if the applicant for or holder of the certificate has failed to make required notifications to the Bar Council or the Law Society Council or to comply with certain requirements made for the purpose of investigating matters under the new provisions, and
- (d) to enable the Legal Services Commissioner to take over a matter referred to in paragraph (b) and to cancel or suspend a practising certificate, or direct the Bar Council or the Law Society Council to refuse to issue a practising certificate, in the circumstances referred to in that paragraph, and
- (e) to require an applicant for or holder of a practising certificate that has engaged in conduct referred to in paragraph (b) or who has failed to make required notifications to show cause why the practising certificate should not be refused, suspended or cancelled, and
- (f) to provide for the automatic suspension of a practising certificate held by a legal practitioner who is being investigated by the Bar Council, the Law Society Council or the Legal Services Commissioner for conduct referred to in paragraph (b) if a determination in relation to the matter is not made within a specified period, and
- (g) to make it clear that certain conduct of a legal practitioner involving the commission of acts of bankruptcy, indictable offences or tax offences may constitute professional misconduct, and
- (h) to enable regulations to be made declaring contraventions of specified provisions of the Act or the regulations to be professional misconduct, and
- (i) to extend the functions and powers of the Legal Services Commissioner and the Legal Profession Advisory Council to enable the monitoring of the exercise of regulatory functions by the Bar Council and the Law Society Council, and
- (j) to make other changes in relation to delegations by the Bar Council or the Law Society Council and the hearing of appeals from decisions of the Administrative Decisions Tribunal under the Act.

The Bill also amends the *Administrative Decisions Tribunal Act 1997* to make changes to the constitution of the Administrative Decisions Tribunal when dealing with complaints against legal practitioners and makes a consequential amendment to the *Defamation Act 1974*.

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 consequential amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Legal Profession Act 1987

Conduct by legal practitioners, including bankruptcy, commission of indictable offences and tax offences and failures to notify

Schedule 1 [2] defines *tax offence* as an offence under the *Taxation Administration Act 1953* of the Commonwealth.

Schedule 1 [3] provides that a person commits an act of bankruptcy if the person:

- (a) is bankrupt or the subject of a creditor's petition presented to the Court under section 43 of the *Bankruptcy Act 1966* of the Commonwealth, or
- (b) has presented (as a debtor) a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* of the Commonwealth of his or her intention to present a debtor's petition or presented (as a debtor) such a petition under section 55 of that Act, or
- (c) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of his or her remuneration for their benefit.

Schedule 1 [4] enables the Bar Council or the Law Society Council to refuse to issue or to suspend or cancel a practising certificate if the applicant for or the holder of the practising certificate fails, within a period specified by the Council, to give a satisfactory explanation of specified conduct that may indicate that the person is not a fit and proper person to hold a practising certificate.

Schedule 1 [6] inserts proposed Division 1AA of Part 3 into the *Legal Profession Act 1987*.

Explanatory note

Proposed section 38FB requires an applicant for or a holder of a practising certificate who has, since being admitted as a legal practitioner, committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence to show cause to the Bar Council or the Law Society Council, as appropriate, why the applicant or holder is still a fit and proper person to hold a practising certificate. An applicant for, or the holder of, a practising certificate who has failed to make a notification, being a failure prescribed by the regulations as professional misconduct, must also show cause.

Proposed section 38FC requires the Bar Council or the Law Society Council to refuse to issue, or to cancel or suspend, a practising certificate if the applicant for or the holder of the certificate has, since being admitted as a legal practitioner, committed an act of bankruptcy or has been found guilty of an indictable offence or a tax offence and the Council considers that the act of bankruptcy or the offence was committed in circumstances that show that the applicant or holder is not a fit and proper person to hold a practising certificate.

Proposed section 38FD enables the Bar Council or the Law Society Council to refuse to issue, or to cancel or suspend, a practising certificate if the applicant for or the holder of the certificate has failed to notify a matter (being a failure declared by the regulations to be professional misconduct) and the Council considers the failure occurred without reasonable cause.

Proposed section 38FE enables the Bar Council or the Law Society Council to refuse to issue, or to cancel or suspend, a practising certificate if the applicant for or the holder of the certificate has failed to show cause as required by proposed section 38FB or has contravened proposed section 38FI.

Proposed section 38FF allows the Bar Council or the Law Society Council, when refusing to issue a practising certificate to a person or when cancelling a person's practising certificate under the proposed Division, to stipulate a period (being not more than 5 years) during which the legal practitioner cannot apply for a practising certificate.

Proposed section 38FG enables the Legal Services Commissioner to take over the determination of a matter at any time under proposed section 38FC from the Bar Council or the Law Society Council. The Legal Services Commissioner will have the same powers as the Councils to cancel or suspend practising certificates under proposed section 38FD (and associated powers) and may give a direction to a Council to refuse to issue a practising certificate to a person. If the Bar Council or the Law Society Council fails to make a determination within a specified period, the Legal Services Commissioner must take over the matter.

Proposed section 38FH provides that a practising certificate held by a legal practitioner to whom proposed section 38FC applies is automatically suspended at the expiration of the relevant period if a determination under proposed section 38FC has not been made by the Bar Council, the Law Society Council or the Legal Services Commissioner within that period. The “relevant period” is defined by proposed section 38FA. A legal practitioner affected by an automatic suspension can apply to the Supreme Court to have the suspension removed. An automatic suspension under proposed section 38FH continues in force until a determination is made in relation to the matter under proposed section 38FC by the relevant Council or the Legal Services Commissioner or until the Supreme Court removes the suspension, whichever occurs first.

Proposed section 38FI gives certain powers to the Bar Council, the Law Society Council and the Legal Services Commissioner to facilitate the investigation of matters under the proposed Division.

Proposed section 38FJ provides that nothing prevents a complaint from being made under Part 10 of the *Legal Profession Act 1987* about a matter to which the proposed Division relates.

Schedule 1 [5], [13] and [22] contain consequential amendments.

Schedule 1 [14] enables regulations to be made declaring a contravention of specified provisions of the *Legal Profession Act 1987* or the regulations to be professional misconduct.

Schedule 1 [15] makes it clear that conduct of a legal practitioner involving the commission of acts of bankruptcy, or indictable offences or tax offences is professional misconduct if the conduct would justify a finding that the 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.

Schedule 1 [17] and [18] require an appeal from a decision or order of the Administrative Decisions Tribunal in relation to proceedings under the *Legal Profession Act 1987* to be made directly to the Supreme Court rather than to an Appeal Panel of that Tribunal if the Tribunal was constituted so as to include a Judge of the District Court when it made the order or decision.

Functions of Legal Services Commissioner and Legal Profession Advisory Council

Schedule 1 [9] requires the Bar Council and the Law Society Council to notify the Legal Services Commissioner and the Legal Profession Advisory Council of the proposed making of a rule and to wait at least 28 days before making the rule to

enable the Commissioner and the Advisory Council to make representations. The Council involved has to take into account any such representations. The 28-day period can be waived in urgent circumstances.

Schedule 1 [10] enables the Legal Services Commissioner to require the Bar Council or the Law Society Council to review any rule made by it and to report on the review and enables the Legal Services Commissioner to make submissions to the Attorney General on any rule that has been so reviewed and to recommend that the Attorney General declare it inoperative.

Schedule 1 [11] enables the Attorney General to declare a barristers or solicitors rule or a joint rule inoperative if the Legal Services Commissioner has reported that the rule is not in the public interest. The existing powers of the Attorney General in relation to declaring such rules inoperative are preserved.

Schedule 1 [12] re-enacts provisions relating to the Legal Services Commissioner in a separate Part (proposed Part 5A) of the *Legal Profession Act 1987* so as to include certain new functions not associated with complaints against legal practitioners under Part 10 of that Act. The new functions are as follows:

- (a) to monitor the refusal to issue, cancellation and suspension of practising certificates under Part 3 of the *Legal Profession Act 1987* on grounds relating to fitness to practise (for example, in connection with acts of bankruptcy, the commission of indictable offences or tax offences or failures to give required notifications),
- (b) functions conferred on the Commissioner under proposed Division 1AA of Part 3,
- (c) to monitor generally the exercise of regulatory functions by the Bar Council and the Law Society Council (other than the imposition of conditions on practising certificates),
- (d) to review barristers rules, solicitors rules and joint rules.

Proposed section 59E enables the Commissioner to require the Bar Council or the Law Society Council to provide information relating to possible professional misconduct or unsatisfactory professional conduct, notifications required to be made by legal practitioners or the Bar Council's or the Law Society Council's intention to refuse to issue, or to cancel or suspend, a practising certificate under Part 3 of the *Legal Profession Act 1987*. The Bar Council or the Law Society Council is to take into account any representations made by the Legal Services Commissioner on any of those matters. The proposed section also requires those Councils to provide the Commissioner with copies of notifications concerning acts of bankruptcy or the commission of indictable offences or tax offences.

Proposed section 59F enables the Legal Services Commissioner, in consultation with the Bar Council and the Law Society Council, to develop protocols relating to the exercise of the Commissioner's new monitoring functions.

Proposed section 59G requires the Legal Services Commissioner to include, among other things, in the Commissioner's annual report information about the review of a barristers or solicitors rule or a joint rule requested by the Commissioner and enables the Commissioner to include in that annual report a report on the exercise of the new monitoring functions of the Commissioner and functions of the Commissioner under proposed Division 1AA of Part 3.

Schedule 1 [1], [16] and [19]–[21] and [23] contain consequential amendments.

Delegations by Bar Council and Law Society Council

Schedule 1 [7] removes a requirement that the Bar Council, when delegating functions to a committee, must choose a committee whose presiding member is a member of the Council and enables the Bar Council to delegate functions to any of its committees or officers. **Schedule 1 [8]** removes a similar requirement in relation to the Law Society Council.

Savings and transitional provisions

Schedule 1 [24] and [25] contain savings and transitional provisions.

Schedule 2 Consequential amendment of other Acts

Schedule 2.1 amends the *Administrative Decisions Tribunal Act 1997* to require the Administrative Decisions Tribunal to be constituted in one of the following ways, as determined to be appropriate in the particular case by the President of the Tribunal, when dealing with a complaint under Part 10 of the *Legal Profession Act 1987*:

- (a) 1 judicial member who is a judge of the District Court, 1 barrister or solicitor member and 1 lay member,
- (b) 1 judicial member who is a judge of the District Court, 1 barrister or solicitor member and 2 lay members,
- (c) 2 barrister or solicitor members and 1 lay member,
- (d) 2 barrister or solicitor members and 2 lay members.

Barrister members are to be chosen if the complaint is against a barrister and solicitor members are to be chosen if the complaint is against a solicitor.

Schedule 2.2 amends the *Defamation Act 1974* to extend the defence of absolute privilege afforded to certain publications under the *Legal Profession Act 1987* to:

- (a) the publication by the Bar Council or the Law Society Council, any members, committees or subcommittees of those Councils, the Bar Association, the Law Society or the Legal Services Commissioner, or any members of staff of any of those persons or bodies to such a person or body of information in accordance with the exercise of functions under Part 3 or Part 5A of the *Legal Profession Act 1987*, and
- (b) the publication by a person or body referred to in paragraph (a) of a report of the decision or determination of the Bar Council or the Law Society Council in respect of the refusal to issue, suspension or cancellation of a practising certificate.



New South Wales

Legal Profession Amendment (Disciplinary Provisions) Bill 2001

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New South Wales

Legal Profession Amendment (Disciplinary Provisions) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Legal Profession Act 1987* with respect to the issue, cancellation and suspension of practising certificates, the meaning of professional misconduct and the functions of the Legal Services Commissioner; to amend the *Administrative Decisions Tribunal Act 1997* and the *Defamation Act 1974* consequentially; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Legal Profession Amendment (Disciplinary Provisions) Act 2001</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Legal Profession Act 1987 No 109	8
The <i>Legal Profession Act 1987</i> is amended as set out in Schedule 1.	9
4 Consequential amendment of other Acts	10
Each Act specified in Schedule 2 is amended in the manner set out in that Schedule.	11 12

Schedule 1	Amendment of Legal Profession Act 1987	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Omit “Part 10” from the definition of <i>Commissioner</i> in section 3 (1).	4
	Insert instead “Part 5A”.	5
[2]	Section 3 (1)	6
	Insert in alphabetical order:	7
	<i>tax offence</i> means any offence under the <i>Taxation Administration Act 1953</i> of the Commonwealth.	8 9
[3]	Section 3 (3)	10
	Insert after section 3 (2):	11
	(3) For the purposes of this Act, a person is taken to have committed an <i>act of bankruptcy</i> if the person:	12 13
	(a) is bankrupt or the subject of a creditor’s petition presented to the Court under section 43 of the <i>Bankruptcy Act 1966</i> of the Commonwealth, or	14 15 16
	(b) has presented (as a debtor) a declaration to the Official Receiver under section 54A of the <i>Bankruptcy Act 1966</i> of the Commonwealth of his or her intention to present a debtor’s petition or presented (as a debtor) such a petition under section 55 of that Act, or	17 18 19 20 21
	(c) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit.	22 23 24 25

[4] Section 37 Refusal, suspension or cancellation of practising certificate generally	1 2
Omit section 37 (1) (a). Insert instead:	3
(a) is required by the Council to explain specified conduct (whether or not related to practice as a barrister or solicitor) that the Council considers may indicate that the applicant or holder is not a fit and proper person to hold a practising certificate and fails, within the period specified by the Council, to give an explanation satisfactory to the Council, or	4 5 6 7 8 9 10
[5] Section 38B Appeals relating to practising certificates	11
Insert after section 38B (1):	12
(1A) If the Commissioner:	13
(a) directs a Council to refuse to issue a practising certificate, or	14 15
(b) cancels or suspends a practising certificate,	16
the applicant for, or holder of, the practising certificate may appeal to the Supreme Court against the decision of the Commissioner to make the direction or to cancel or suspend the practising certificate.	17 18 19 20
(1B) An appeal may not be made under subsection (1) against the refusal of a Council to issue a practising certificate if the refusal was at the direction of the Commissioner.	21 22 23
[6] Part 3, Division 1AA	24
Insert after Division 1 of Part 3:	25
Division 1AA Special powers in relation to practising certificates	26 27
38FA Relevant period	28
(1) In this Division, <i>relevant period</i> means, in relation to a matter to be determined under section 38FC:	29 30
(a) the period of 3 months commencing on the date on which notification is given to the relevant Council of the	31 32

commission of the act of bankruptcy or the finding of	1
guilt of the indictable offence or tax offence concerned	2
by the legal practitioner who committed the act of	3
bankruptcy or the offence, or	4
(b) if the relevant Council has not received notification as	5
referred to in paragraph (a) when it sends a notice under	6
section 38FC (2) to that legal practitioner, the period of	7
3 months commencing on the date specified in the	8
notice as the date of issue of the notice,	9
and includes any extension under subsection (2).	10
(2) The Commissioner may extend the 3-month period referred to	11
in subsection (1) to 4 months in relation to a particular matter	12
at the request of the Council dealing with the matter or, if the	13
Commissioner is dealing with the matter, on the	14
Commissioner's own motion.	15
(3) If the Commissioner extends a period under subsection (2), the	16
Commissioner must give notice in writing to the legal	17
practitioner concerned of the extension of the period.	18
38FB Requirements to show cause—bankruptcy, indictable offences,	19
tax offences and failures to notify	20
(1) An applicant for a practising certificate who, since being	21
admitted as a legal practitioner:	22
(a) has committed an act of bankruptcy, or	23
(b) has been found guilty of an indictable offence or a tax	24
offence,	25
must provide a written statement, in accordance with the	26
regulations, showing why, despite the act of bankruptcy or	27
finding of guilt and any circumstances surrounding the act or	28
finding, the applicant considers that he or she is a fit and proper	29
person to hold a practising certificate.	30
(2) An applicant for a practising certificate who has failed to notify	31
a matter as required by the regulations (being a failure declared	32
by the regulations to be professional misconduct) must provide	33
a written statement, in accordance with the regulations,	34
showing why, despite the failure to notify, the applicant	35
considers that he or she is a fit and proper person to hold a	36
practising certificate.	37

- (3) A barrister or solicitor who, since being admitted as a legal practitioner: 1
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(a) has committed an act of bankruptcy, or 3
(b) has been found guilty of an indictable offence or a tax offence, 4
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must provide a written statement, in accordance with the regulations, showing why, despite the act of bankruptcy or finding of guilt and any circumstances surrounding the act or finding, the barrister or solicitor considers that he or she is a fit and proper person to hold a practising certificate. 6
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- (4) A barrister or solicitor who fails to notify a matter as required by the regulations (being a failure declared by the regulations to be professional misconduct) must provide a written statement, in accordance with the regulations, showing why, despite the failure to notify, the barrister or solicitor considers that he or she is a fit and proper person to hold a practising certificate. 11
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- (5) A person is not required to comply with subsection (1), (2), (3) or (4) if the person has previously provided a written statement in accordance with this section to the appropriate Council showing why, despite the act of bankruptcy, finding of guilt or failure to notify concerned, the person considers that he or she is a fit and proper person to hold a practising certificate. 18
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- (6) Subsections (1) and (3) extend to acts of bankruptcy occurring before the commencement of this section. 24
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- (7) This section: 26
(a) applies to an indictable offence or a tax offence whether or not committed in the course of practice as a barrister or solicitor, and 27
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(b) applies to a finding of guilt of an indictable offence or a tax offence whether or not the court proceeded to a conviction for the offence, and 30
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(c) applies to an indictable offence committed in New South Wales or to an offence committed outside New South Wales (so long as it would have been an indictable offence if committed in New South Wales), and 33
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(d)	applies to a tax offence committed in or outside New South Wales, and	1 2
(e)	applies to a finding of guilt of an indictable offence or a tax offence even if other persons are prohibited from disclosing the identity of the offender, and	3 4 5
(f)	extends to an indictable offence or a tax offence committed before the commencement of this section (and so extends whether the finding of guilt was made before or after that commencement).	6 7 8 9
38FC	Refusal, cancellation or suspension of practising certificates— bankruptcy, indictable offences and tax offences	10 11
(1)	A Council must refuse to issue, or must cancel or suspend, a practising certificate if:	12 13
(a)	the Council is aware that the applicant for or holder of the practising certificate has, since being admitted as a legal practitioner, committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence, and	14 15 16 17 18
(b)	the Council considers that the act of bankruptcy, indictable offence or tax offence was committed in circumstances that show that the applicant or holder is not a fit and proper person to hold a practising certificate.	19 20 21 22 23
(2)	A Council must, within 7 days after becoming aware that the applicant for or holder of a practising certificate has, since being admitted as a legal practitioner, committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence, give notice in writing to the applicant or holder:	24 25 26 27 28
(a)	if the Council has not received a statement under section 38FB in relation to the act of bankruptcy or the finding of guilt concerned, requiring the applicant or holder to make a statement in accordance with that section, and	29 30 31 32
(b)	informing the applicant or holder that a determination in relation to the matter is required to be made under this section, and	33 34 35

- (c) informing the applicant or holder of the relevant period in relation to the determination of the matter and that the applicant or holder will be notified of any extension of the relevant period, and 1
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 - (d) informing the applicant or holder of the effect of the automatic suspension provisions in section 38FH in the event of the matter not being determined by the Council or the Commissioner within the relevant period. 5
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- (3) Despite subsection (1), a Council may issue a practising certificate to an applicant referred to in that subsection who is a barrister or solicitor if the next relevant date (within the meaning of section 36) in relation to the barrister's or solicitor's current practising certificate is imminent and the Council has not made a determination under that section in relation to the applicant. 9
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- (4) The issue of a practising certificate in the circumstances referred to in subsection (3) does not prevent a determination from subsequently being made under this Division to refuse to issue a practising certificate to the barrister or solicitor or to cancel or suspend the barrister's or solicitor's practising certificate. 16
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- (5) Despite any other provision of this Act, a Council required to take action under subsection (1) in relation to a barrister or solicitor may, for the purpose of enabling the proper arrangement of the affairs of the barrister or solicitor: 22
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 - (a) issue a practising certificate to the barrister or solicitor that remains in force for such period, specified in the practising certificate, as the Council considers necessary to achieve that purpose, or 26
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 - (b) defer cancelling or suspending the practising certificate held by the barrister or solicitor for such period as the Council considers necessary to achieve that purpose. 30
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- (6) If a Council acts under this section and, within 14 days after being notified of the action, the applicant or holder concerned requires the Council to state its reasons for the action, the Council must comply with the requirement without delay. 33
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(7)	A Council is not required to take action under this section in relation to a person who has been bankrupt if the person was bankrupt because of an act of bankruptcy that has already been the subject of a determination under this section.	1 2 3 4
38FD	Refusal, cancellation or suspension of practising certificates—failure to notify	5 6
(1)	A Council may refuse to issue, or may cancel or suspend, a practising certificate if the applicant or holder has failed to notify a matter (being a failure declared by the regulations to be professional misconduct) and the Council considers that the failure to notify occurred without reasonable cause.	7 8 9 10 11
(2)	If a Council acts under this section and, within 14 days after being notified of the action, the applicant or holder concerned requires the Council to state its reasons for the action, the Council must comply with the requirement without delay.	12 13 14 15
38FE	Refusal, cancellation or suspension of practising certificates—failure to show cause or furnish information	16 17
(1)	A Council may refuse to issue, or may cancel or suspend, a practising certificate if the applicant or holder:	18 19
(a)	is required by section 38FB to provide a written statement in relation to a matter and has failed to provide a written statement in accordance with that section, or	20 21 22 23
(b)	has provided a written statement in accordance with section 38FB but, in the opinion of the Council to which the statement was provided, has failed to show in that statement that he or she is a fit and proper person to hold a practising certificate, or	24 25 26 27 28
(c)	has failed to comply with a requirement under section 38FI or has wilfully contravened section 38FI (4).	29 30
(2)	If a Council acts under this section and, within 14 days after being notified of the action, the applicant or holder concerned requires the Council to state its reasons for the action, the Council must comply with the requirement without delay.	31 32 33 34

38FF	Restriction on making further applications	1
(1)	A Council that determines under section 38FC, 38FD or 38FE to refuse to issue a practising certificate to a person or to cancel a person's practising certificate may also determine that the person is not entitled to apply for a practising certificate for a specified period (being a period not exceeding 5 years).	2 3 4 5 6
(2)	A person in respect of whom a determination has been made under this section is not entitled to apply for a practising certificate during the period specified in the determination.	7 8 9
38FG	Commissioner may take action	10
(1)	The Commissioner may, at any time, take over the determination of a matter under section 38FC from a Council.	11 12
(2)	The Commissioner must take over the determination of a matter under section 38FC from a Council if the Council has not made the determination within the relevant period.	13 14 15
(3)	If the Commissioner takes over the determination of a matter from a Council:	16 17
(a)	the Council is not required to make a determination in relation to the matter and is to cease to deal with the matter unless otherwise directed by the Supreme Court in an order under section 38FH (4), and	18 19 20 21
(b)	the Commissioner may exercise any of the powers of the Council under this Division in relation to the matter (other than a refusal to issue a practising certificate), including powers under sections 38FD and 38FE if those powers are exercised in relation to a failure or contravention that is relevant to the matter, and	22 23 24 25 26 27
(c)	the Commissioner may give a direction to the Council to refuse to issue a practising certificate to the legal practitioner concerned.	28 29 30
(4)	If the Commissioner gives a direction that the Council is to refuse to issue a practising certificate to a particular legal practitioner, the Council must refuse to issue the practising certificate.	31 32 33 34
(5)	The Commissioner may, in such a direction, specify a period during which the Council is not to issue the practising certificate.	35 36 37

(6) If the Commissioner takes over the determination of a matter under section 38FC from a Council, the Council is to provide any assistance required by the Commissioner to investigate the matter (including copies of or access to all documents held by the Council that relate to the matter or are required for the purpose of investigating the matter).	1 2 3 4 5 6
38FH Automatic suspension of practising certificate	7
(1) This section applies to a matter to be determined under section 38FC in respect of the holder of a practising certificate.	8 9
(2) If the relevant period in relation to a matter to be determined under section 38FC by a Council expires but no determination has been made under that section by the Council or the Commissioner, the practising certificate of the holder concerned is suspended until:	10 11 12 13 14
(a) the matter is determined by the Council or the Commissioner, or	15 16
(b) the suspension is removed by the Supreme Court under subsection (4),	17 18
whichever occurs first.	19
(3) A barrister or solicitor whose practising certificate is suspended by the operation of subsection (2) may make an application to the Supreme Court to remove the suspension.	20 21 22
(4) When dealing with an application under subsection (3), the Supreme Court may make any one or more of the following orders:	23 24 25
(a) an order removing the suspension on the grounds that the applicant is a fit and proper person to hold a practising certificate,	26 27 28
(b) an order continuing the suspension for a specified period,	29 30
(c) an order cancelling the practising certificate concerned on the ground that the applicant is not a fit and proper person to hold a practising certificate,	31 32 33
(d) an order remitting the matter to the Council originally dealing with it or the Commissioner,	34 35

- (e) an order that the matter cease to be the subject of investigation by a Council or the Commissioner. 1
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- (5) A Council or the Commissioner may investigate a matter under this Division and exercise powers under this Division in relation to the matter despite a suspension under subsection (2) of the practising certificate concerned unless the Supreme Court otherwise orders under subsection (4). 3
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- 38FI Powers when investigating matter under this Division** 8
- (1) For the purpose of investigating a matter under this Division, a Council or the Commissioner may, by notice in writing served on any legal practitioner, require the legal practitioner to do any one or more of the following: 9
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- (a) to provide written information, by a date specified in the notice, and to verify the information by statutory declaration, 13
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- (b) to produce, at a time and place specified in the notice, any document (or copy of any document) specified in the notice, 16
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- (c) to otherwise assist in, or cooperate with, the investigation in a specified manner. 19
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- (2) A Council or the Commissioner may inspect any document produced before the Council or the Commissioner under this section and may retain it for such period as the Council or Commissioner thinks necessary for the purposes of an investigation in relation to which it was produced. A Council or the Commissioner may make copies of the document or any part of the document. 21
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- (3) A requirement under this section is to specify a reasonable time for compliance. 28
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- (4) A legal practitioner must not mislead or obstruct a Council or the Commissioner in the exercise of any function under this Division. 30
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38FJ	Complaint may be made	1
	Nothing in this Division prevents a complaint from being made under Part 10 involving a matter that requires a determination to be made under this Division or in respect of which a determination has been made under this Division.	2 3 4 5
[7]	Section 51 Functions of Bar Council	6
	Omit section 51 (2). Insert instead:	7
	(2) The Bar Council may delegate to any of its committees or to an officer of the Bar Council the exercise of any of the Bar Council's functions under this Act, other than this power of delegation.	8 9 10 11
[8]	Section 54 Functions of Law Society	12
	Omit section 54 (1A). Insert instead:	13
	(1A) The Law Society Council may delegate to any of its committees or to an officer of the Law Society Council the exercise of any of the Law Society Council's functions under this Act, other than this power of delegation.	14 15 16 17
[9]	Section 57CB	18
	Insert after section 57CA:	19
57CB	Commissioner and Advisory Council to be notified of proposed rules	20 21
	(1) Each Council must notify the Commissioner and the Advisory Council of its intention to make a barristers rule, solicitors rule or joint rule.	22 23 24
	(2) The notification must be in writing and must give details of the proposal.	25 26
	(3) A Council that gives a notification under this section must wait at least 28 days after giving the notification before making the rule and must take into account any representations on the proposed rule made by the Commissioner or the Advisory Council.	27 28 29 30 31

- (4) A Council may make a rule without waiting for the 28-day period referred to in subsection (3) to expire if the Council considers that the urgency of the case warrants immediate action. However, in those circumstances the Council must indicate in its notification to the Commissioner and the Advisory Council that the case is urgent and that it intends to act immediately. 1
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[10] Section 57GA 8

Insert after section 57G: 9

57GA Review of rules requested by Commissioner 10

- (1) The Commissioner may, at any time, request a Council to review any barristers rule, solicitors rule or joint rule made by it. 11
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- (2) If a Council is requested to review a rule under this section, the Council must furnish a report on the review to the Commissioner within 28 days after the request or within such further period as is agreed on by the Commissioner and the Council. 14
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- (3) After receiving a report under this section, the Commissioner must give a report to the Attorney General about the request for the review and may include in the report submissions about the rule and a recommendation that the rule be declared inoperative. 19
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- (4) Any such report by the Commissioner must include a copy of the report on the review of the rule concerned provided by the relevant Council. 24
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- (5) The Attorney General may make public any report by the Commissioner under this section (including, if the Attorney General thinks fit, a copy of the relevant review). 27
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[11] Section 57I Rules may be declared inoperative	1
Omit section 57I (1). Insert instead:	2
(1) The Attorney General may, by order published in the Gazette, declare any barristers or solicitors rule or joint rule, or part of any such rule, inoperative, but only if:	3
(a) the Commissioner has reported to the Attorney General that the rule is not in the public interest, or	4
(b) the Advisory Council has reported to the Attorney General that the rule imposes restrictive or anti-competitive practices that are not in the public interest or the rule is not otherwise in the public interest.	5
[12] Part 5A	6
Insert after Part 5:	7
Part 5A Legal Services Commissioner	8
59B Appointment of Commissioner	9
(1) The Governor may, on the recommendation of the Attorney General, appoint a person to be Legal Services Commissioner.	10
(2) The person so appointed is to be a person who, in the opinion of the Attorney General:	11
(a) is familiar with the nature of the legal system and legal practice (but need not be a legal practitioner), and	12
(b) possesses sufficient qualities of independence, fairness and integrity.	13
(3) The employment of the Commissioner is subject to Part 2A of the <i>Public Sector Management Act 1988</i> , but is not subject to Part 2 or Part 8 of that Act.	14
(4) The Commissioner may be appointed for a period of up to 7 years, despite anything to the contrary in section 42F of the <i>Public Sector Management Act 1988</i> .	15

(5)	The Governor may remove the Commissioner from office only for misbehaviour, incapacity or incompetence, despite anything to the contrary in section 42Q of the <i>Public Sector Management Act 1988</i> .	1 2 3 4
59C	Acting Commissioner	5
(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.	6 7 8 9 10
(2)	The Attorney General may, at any time, remove a person from the office of acting Commissioner.	11 12
(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.	13 14 15
59D	Functions of Commissioner	16
(1)	The Commissioner has, in accordance with this Act, the following functions:	17 18
(a)	to receive complaints about professional misconduct or unsatisfactory professional conduct of legal practitioners and interstate legal practitioners,	19 20 21
(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),	22 23 24 25
(c)	to initiate a complaint against a legal practitioner or an interstate legal practitioner,	26 27
(d)	to investigate, or take over the investigation of, a complaint if the Commissioner considers it appropriate,	28 29
(e)	to refer complaints to the appropriate Council for investigation or mediation in appropriate cases,	30 31
(f)	to monitor investigations and give directions and assistance to Councils in connection with the investigation of complaints,	32 33 34

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| (g) | to review the decisions of Councils to dismiss complaints or to reprimand legal practitioners or interstate legal practitioners in connection with complaints, | 1
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| (h) | to take over investigations or to institute proceedings in the Tribunal against legal practitioners or interstate legal practitioners following a review by the Commissioner, | 5
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| (i) | to conduct regular surveys of, and report on, the views and levels of satisfaction of complainants and respondent legal practitioners and interstate legal practitioners with the complaints handling and disciplinary system, | 8
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| (j) | to monitor the refusal to issue, cancellation and suspension of practising certificates under Part 3 on grounds relating to fitness to practise (for example, in connection with acts of bankruptcy, the commission of indictable offences or tax offences or failures to give required notifications), | 13
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| (k) | functions conferred on the Commissioner under Division 1AA of Part 3, | 19
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| (l) | to monitor generally the exercise of regulatory functions by the Councils (other than the imposition of conditions on practising certificates), | 21
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| (m) | to review barristers rules, solicitors rules and joint rules, | 24 |
| (n) | to assist the Councils to promote community education about the regulation and discipline of the legal profession, | 25
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| (o) | 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, | 28
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| (p) | to report on the Commissioner's activities under this Act. | 32
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| (2) | The Commissioner may 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 or solicitors. | 34
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- (3) The Commissioner has such other functions as are conferred or imposed on the Commissioner by or under this or any other Act. 1
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- Note.** The *Conveyancers Licensing Act 1995* confers on the Commissioner the function of dealing with complaints against licensed conveyancers. 4
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- 59E Councils to provide information to Commissioner** 7
- (1) A Council must, within 7 days after receiving a notification from a legal practitioner that the legal practitioner has committed an act of bankruptcy, or been found guilty of an indictable offence or a tax offence, provide a copy of the notification to the Commissioner. 8
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- (2) A Council must, within 7 days after receiving a statement from a legal practitioner under section 38FB, provide a copy of the statement to the Commissioner. 13
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- (3) The Commissioner may, for the purpose of exercising the Commissioner's functions, do any of the following: 16
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- (a) require a Council to provide information received by the Council that gives the Council reason to believe that a legal practitioner or an interstate legal practitioner has engaged in professional misconduct or unsatisfactory professional conduct within the meaning of Part 10, 18
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- (b) require a Council to provide information relating to an application for a practising certificate, 23
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- (c) require a Council to provide information relating to a notification made by a legal practitioner or interstate legal practitioner for the purposes of complying with this Act or the regulations, 25
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- (d) require a Council to notify the Commissioner of the Council's intention to issue, refuse to issue, cancel or suspend a practising certificate. 29
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- (4) A requirement by the Commissioner under this section may relate to a specific case or may be made in general terms so as to relate to all cases or to a class of cases. 32
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- (5) A Council must take into account any representations made by the Commissioner on a matter under this section. 35
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59F	Protocols relating to monitoring of regulatory functions	1
	The Commissioner may, in consultation with each of the Councils, develop protocols relating to the exercise of the Commissioner's functions under section 59D (1) (j) and (l).	2 3 4
59G	Annual report of Commissioner	5
(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.	6 7 8 9
(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.	10 11 12
(3)	The Commissioner is required to include the following information in the annual report for a year:	13 14
(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),	15 16 17 18
(b)	the sources of those complaints,	19
(c)	the number of consumer disputes referred to mediation during the year and the results of mediation,	20 21
(d)	the number and type of complaints investigated during the year by each Council, by the Commissioner and by an independent investigator under section 151,	22 23 24
(e)	the number and type of complaints dismissed during the year by each Council and by the Commissioner,	25 26
(f)	the number and type of complaints in respect of which a legal practitioner or interstate legal practitioner was reprimanded during the year by each Council and by the Commissioner,	27 28 29 30
(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,	31 32 33
(h)	a summary of the results of proceedings in the Tribunal completed during the year,	34 35

<ul style="list-style-type: none"> (i) the number of complaints not finally dealt with at the end of the year (including the number at each stage of proceedings), (j) 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) information about any review of a barristers rule, solicitors rule or joint rule requested by the Commissioner under this Act, (m) information on the operation of the complaints process during the reporting year and any recommendations for legislative or other improvements to the complaints process, (n) information about the costs incurred by the Commissioner during the reporting year, certified by the Auditor General, (o) such other information as the Commissioner considers appropriate to be included or as the Attorney General directs to be included. <p>(4) The Commissioner may include in the annual report a report on the exercise of functions by the Commissioner referred to in section 59D (1) (j), (k) and (l).</p> <p>(5) Matters included in a report must not identify individual clients, legal practitioners or interstate legal practitioners, unless their names have already lawfully been made public in connection with the refusal to issue, suspension or cancellation of a practising certificate or the complaint concerned.</p> <p>59H Staff of Commissioner</p> <ul style="list-style-type: none"> (1) The staff of the Commissioner is (subject to this section) to be employed under Part 2 of the <i>Public Sector Management Act 1988</i>. (2) The Commissioner may employ other staff with the approval of the Attorney General. Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to the employment of any such staff. 	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36</p>
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(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.	1 2 3 4 5
(4)	The Commissioner may, with the approval of the Attorney General, engage consultants or other persons for the purpose of getting assistance.	6 7 8
59I	Delegation of functions	9
	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.	10 11 12 13
[13]	Section 69G Payment of certain costs and expenses from the Fund	14
	Insert “or Division 1AA” after “Division 1” in section 69G (1) (b).	15
[14]	Section 127 Professional misconduct and unsatisfactory professional conduct	16 17
	Insert at the end of section 127 (1) (c):	18
	, or	19
	(d) a contravention of a provision of this Act or the regulations, being a contravention that is declared by the regulations to be professional misconduct.	20 21 22
[15]	Section 127 (4)	23
	Insert after section 127 (3):	24
	(4) For the avoidance of doubt, conduct:	25
	(a) involving an act or acts of bankruptcy, or	26
	(b) that gave rise to a finding of guilt of the commission of an indictable offence or a tax offence,	27 28

	whether occurring before, on or after the commencement of this subsection, is professional misconduct if the conduct would justify a finding that the 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.	1 2 3 4 5
[16]	Part 10, Division 2 Legal Services Commissioner	6
	Omit the Division.	7
[17]	Section 171F Appeals against decisions and orders of Tribunal	8
	Insert “(other than a decision made by the Tribunal when its constitution includes a Judge of the District Court)” after “this Act”.	9 10
[18]	Section 171F (2)–(5)	11
	Insert at the end of section 171F:	12
	(2) An order or other decision made by the Tribunal under this Act when its constitution includes a Judge of the District Court may be appealed to the Supreme Court by a party to the proceedings in which the order or decision is made.	13 14 15 16
	(3) An appeal under subsection (2):	17
	(a) may be made on any question of law, or	18
	(b) with the leave of the Supreme Court, may extend to a review of the merits of the order or decision concerned.	19 20
	(4) Sections 114 and 115 of the <i>Administrative Decisions Tribunal Act 1997</i> apply to an appeal to the Supreme Court under subsection (2) in the same way as they apply to an appeal to an Appeal Panel against a decision of the Tribunal.	21 22 23 24
	(5) An appeal to the Supreme Court by a person under this section must be made:	25 26
	(a) within such time and in such manner as is prescribed by rules of court made under the <i>Supreme Court Act 1970</i> , or	27 28 29
	(b) within such further time as the Supreme Court may allow.	30 31

[19] Section 171MB Performance criteria relating to handling of complaints by Councils and Commissioner	1 2
Omit “section 171N” from section 171MB (4).	3
Insert instead “section 59G”.	4
[20] Section 171N Annual report of Commissioner	5
Omit the section.	6
[21] Section 171O, heading	7
Omit “ Other reports ”.	8
Insert instead “ Reports required by Attorney General ”.	9
[22] Section 171P Offence: improper disclosure of information	10
Insert “, or in relation to any notification required by the regulations, or statement given or investigation carried out under Division 1AA of Part 3,” after “administration of this Part” in section 171P (1).	11 12 13
[23] Section 171Q Protection from liability	14
Omit “section 132 (4)” from section 171Q (1) (j).	15
Insert instead “section 59H (4)”.	16
[24] Schedule 8 Savings, transitional and other provisions	17
Insert at the end of clause 1A (1):	18
<i>Legal Profession Amendment (Disciplinary Provisions) Act 2001</i>	19 20

[25] Schedule 8	1
Insert at the end of the Schedule (with appropriate Part and clause numbering):	2 3
Part Provisions consequent on the enactment of the Legal Profession Amendment (Disciplinary Provisions) Act 2001	4 5 6
Definition	7
In this Part, <i>amending Act</i> means the <i>Legal Profession Amendment (Disciplinary Provisions) Act 2001</i> .	8 9
Previous show cause statements and notifications	10
(1) Any written statement that:	11
(a) was provided before the commencement of section 38FB, and	12 13
(b) is a statement as to why, despite the commission of an act of bankruptcy or a finding of guilt of the commission of an indictable offence or a tax offence, the person making the statement considers that he or she is a fit and proper person to hold a practising certificate,	14 15 16 17 18
is taken to be a statement provided in accordance with section 38FB in relation to that act of bankruptcy or finding of guilt.	19 20 21
(2) For the purposes of the definition of <i>relevant period</i> in section 38FA, a notification referred to in that section and given to a Council before the commencement of that section is taken to have been given to the Council on that commencement.	22 23 24 25
Previous determination of matters	26
A Council or the Commissioner is not required to make a determination under section 38FC in relation to a legal practitioner who has committed an act of bankruptcy or been found guilty of an indictable offence or a tax offence if, before the commencement of that section:	27 28 29 30 31

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- (a) the commission of the act of bankruptcy or the finding of guilt was considered by the Council, and 1
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- (b) a determination was made by the Council as to whether, despite the act of bankruptcy or finding of guilt, the legal practitioner was a fit and proper person to hold a practising certificate. 3
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Legal Services Commissioner, staff and delegations 7

- (1) The person holding office as Legal Services Commissioner immediately before the repeal of section 129 by the amending Act is taken to have been appointed to that office under section 59B and holds that office for the duration of the term for which the person was appointed under section 129. 8
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- (2) A person holding office as acting Legal Services Commissioner immediately before the repeal of section 130 by the amending Act is taken to have been appointed to that office under section 59C and holds that office for the duration of the term for which the person was appointed under section 130. 13
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- (3) A person employed as a member of staff of the Legal Services Commissioner under section 132 (2) immediately before the repeal of that subsection by the amending Act is taken to be employed as a member of staff under section 59H (2). 18
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- (4) A delegation made by the Commissioner under section 133 and in force immediately before the repeal of that section by the amending Act is taken to have been made under section 59I. 22
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Appeals 25

- An appeal made under section 171F before the commencement of an amendment made to that section by the amending Act is to be dealt with as if the amendment had not been made to that section. 26
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Schedule 2	Consequential amendment of other Acts	1
	(Section 4)	2
2.1	Administrative Decisions Tribunal Act 1997 No 76	3
	Schedule 2 Composition and functions of Divisions	4
	Omit clause 4 (1) of Part 3. Insert instead:	5
(1)	Subject to subclause (2), for the purposes of conducting a hearing into a complaint made under the Act, the Tribunal is to be constituted in accordance with whichever of the following constitutions the President determines as being appropriate for the particular case:	6
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(a)	in the case of a complaint against a barrister:	11
(i)	1 judicial member who is a judge of the District Court, 1 barrister member and 1 lay member, or	12
(ii)	1 judicial member who is a judge of the District Court, 1 barrister member and 2 lay members, or	13
(iii)	2 barrister members and 1 lay member, or	14
(iv)	2 barrister members and 2 lay members,	15
(b)	in the case of a complaint against a solicitor:	16
(i)	1 judicial member who is a judge of the District Court, 1 solicitor member and 1 lay member, or	17
(ii)	1 judicial member who is a judge of the District Court, 1 solicitor member and 2 lay members, or	18
(iii)	2 solicitor members and 1 lay member, or	19
(iv)	2 solicitor members and 2 lay members,	20
(c)	in the case of a complaint against a legal practitioner—any constitution specified in paragraph (a) or (b).	21
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2.2 Defamation Act 1974 No 18	1
Section 17J Matters arising under the Legal Profession Act 1987	2
Insert at the end of section 17J (1) (b):	3
, and	4
(c) for the publication by a person or body referred to in paragraph (a) to such a person or body of information in accordance with the exercise of functions under Part 3 or Part 5A of the <i>Legal Profession Act 1987</i> , and	5 6 7 8
(d) for the publication by a person or body referred to in paragraph (a) of a report of the decision or determination of the Bar Council or the Law Society Council in respect of the refusal to issue, cancellation or suspension of a practising certificate.	9 10 11 12 13