

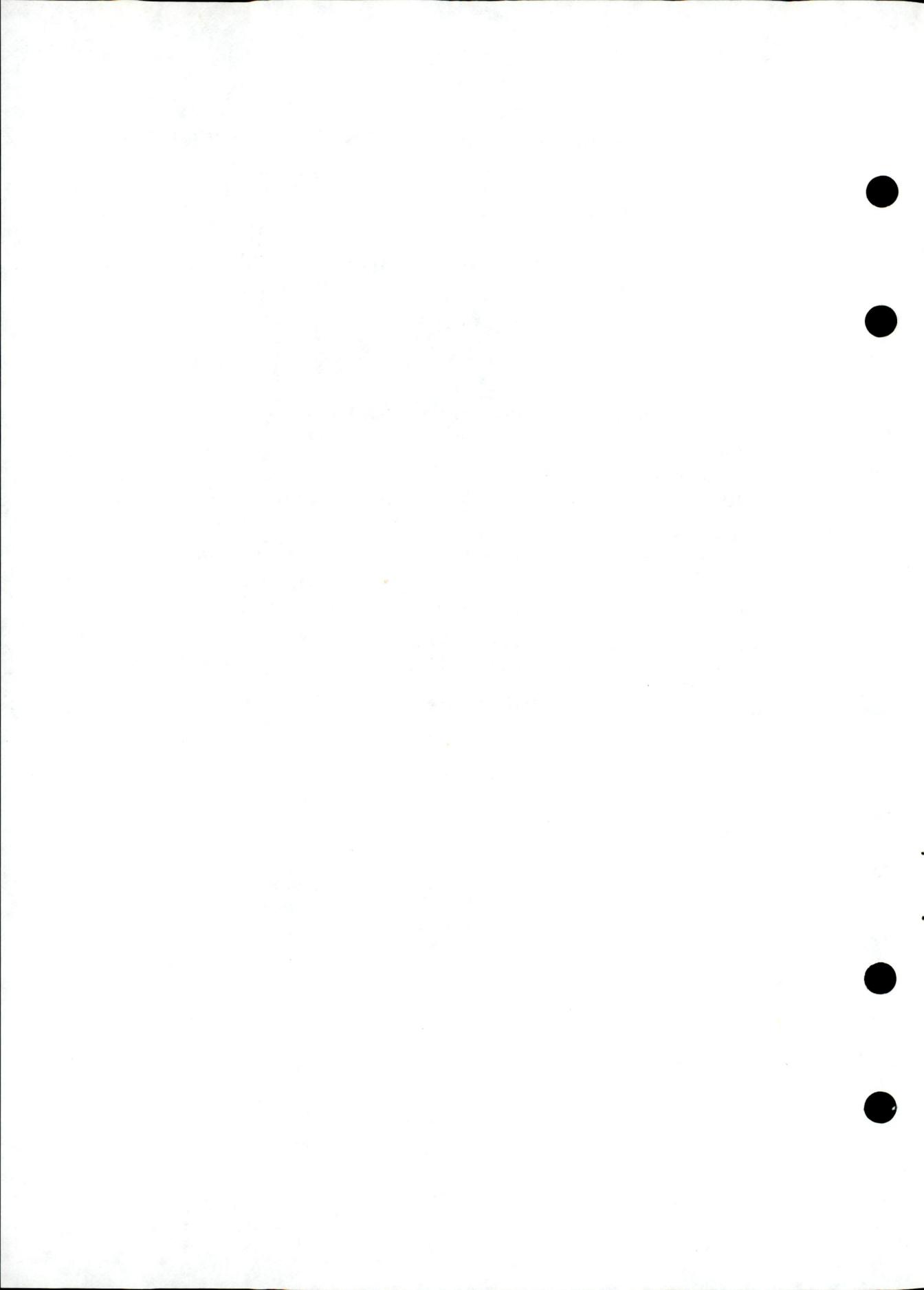
LEGAL PROFESSION (AMENDMENT) ACT 1987 No. 263

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Amendment of Act No. 109, 1987
- SCHEDULE 1—AMENDMENTS RELATING TO THE ADMISSION OF BARRISTERS AND SOLICITORS
- SCHEDULE 2—AMENDMENTS RELATING TO PRACTISING CERTIFICATES
- SCHEDULE 3—AMENDMENTS RELATING TO THE BAR ASSOCIATION AND LAW SOCIETY
- SCHEDULE 4—AMENDMENTS RELATING TO TRUST ACCOUNTS
- SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS' FIDELITY FUND
- SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS
- SCHEDULE 7—AMENDMENTS RELATING TO UNQUALIFIED PRACTITIONERS
- SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT
-



LEGAL PROFESSION (AMENDMENT) ACT 1987 No. 263

NEW SOUTH WALES



Act No. 263, 1987

An Act to amend the Legal Profession Act 1987 with respect to the investigation of legal practitioners, unsatisfactory professional conduct and compensation orders and for other purposes. [Assented to 16 December 1987]

Legal Profession (Amendment) 1987

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Legal Profession (Amendment) Act 1987.

Amendment of Act No. 109, 1987

2. The Legal Profession Act 1987 is amended as set out in Schedules 1-8.

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

(Sec. 2)

(1) Section 7 (**Rules for registration and admission**)—

Section 7 (2)—

Omit the subsection, insert instead:

(2) In exercising its functions under this section, the Board may act jointly with the Solicitors Admission Board.

(2) Section 14 (**Rules for registration and admission**)—

Section 14 (2)—

Omit the subsection, insert instead:

(2) In exercising its functions under this section, the Board may act jointly with the Barristers Admission Board.

(3) Section 18 (**Right of audience**)—

After “any person”, insert “, whether or not the solicitor is instructed by the person or by a solicitor acting on behalf of the person”.

(4) Section 20 (**Early consideration of character**)—

Section 20 (4)—

After “heard,”, insert “or to make representations in writing.”.

(5) Section 23 (**Appeals**)—

Section 23 (3), (4)—

Omit section 23 (3), insert instead:

(3) On an appeal under this section—

(a) by an applicant—the relevant Council; or

(b) by a Council—the applicant and the other Council,

is or are entitled to be represented and to be heard.

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

(4) On an appeal under this section, the Supreme Court may make such order or declaration as it thinks fit.

SCHEDULE 2—AMENDMENTS RELATING TO PRACTISING
CERTIFICATES

(Sec. 2)

(1) Section 25 (**Practising as barrister**)—

Section 25 (2)—

Omit “If a complaint against a barrister is made under Part 10 by the Bar Council in respect of a contravention of subsection (1), the”, insert instead “The”.

(2) Section 26 (**Practising as solicitor**)—

(a) Section 26 (3)—

Omit “If a complaint against a solicitor is made under Part 10 by the Law Society Council in respect of a contravention of subsection (1), the”, insert instead “The”.

(b) Section 26 (3)—

Omit “the solicitor”, insert instead “a solicitor”.

(3) Section 29 (**Refusal of application by barrister or solicitor for practising certificate**)—

(a) Section 29 (1)—

Omit the subsection, insert instead:

(1) A Council may refuse to issue a practising certificate if the application for it—

(a) is not accompanied by a fee of such amount as is determined by the Council and approved by the Attorney General; or

(b) is not accompanied by, or does not contain, such information as may be prescribed by the regulations.

(b) Section 29 (4) (a)—

Omit “or”.

(c) Section 29 (4) (c), (d)—

After section 29 (4) (b), insert:

(c) any costs of an inspection or investigation payable under section 55 by the applicant have not been paid; or

SCHEDULE 2—AMENDMENTS RELATING TO PRACTISING
CERTIFICATES—*continued*

- (d) any expenses of receivership payable under section 110 by the applicant have not been paid.
- (4) Section 32 (**Form of practising certificate issued to a barrister**)—
- (a) Section 32 (2) (a)—
Omit “completed”, insert instead “served satisfactorily”.
- (b) Section 32 (2) (a)—
Omit “complete the period”, insert instead “serve the period satisfactorily”.
- (c) Section 32 (3) (b)—
Omit the paragraph, insert instead:
(b) may be subject to such conditions as the Bar Council thinks fit, including a condition requiring the holder to serve a specified period satisfactorily as a pupil.
- (5) Section 33 (**Form of practising certificate issued to a solicitor**)—
Section 33 (2)—
Omit the subsection, insert instead:
(2) The practising certificate issued to a solicitor may limit the practising rights of the holder in any manner determined by the Law Society Council.
- (6) Section 35 (**Refusal, suspension or cancellation of practising certificate**)—
- (a) Section 35 (2) (d)—
Omit “or” where lastly occurring.
- (b) Section 35 (2) (e)–(g)—
Omit section 35 (2) (e), insert instead:
(e) has contravened an order made in respect of the solicitor by the Professional Standards Board or the Tribunal;
(f) is a disqualified person within the meaning of section 121;
or
(g) has contravened a provision of this Act.
- (7) Section 216 (**Regulations**)—
Section 216 (3) (a)—
After “certificate”, insert “and the refund of the whole or a part of fees paid for practising certificates”.

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

(Sec. 2)

(1) Section 3 (Interpretation)—**(a) Section 3 (1), definition of “investigator”—**

After the definition of “insurer”, insert:

“investigator” means an investigator appointed under section 55;

(b) Section 3 (1), definition of “trust account inspector”—

After the definition of “Tribunal”, insert:

“trust account inspector” means a trust account inspector appointed under section 55;

(2) Section 41 (Solicitor to be insured etc.)—

Section 41 (4)—

After section 41 (3), insert:

(4) The Law Society may negotiate with insurers and other persons in relation to the provision of indemnity insurance to any solicitor or former solicitor with respect to civil liability that may arise in connection with—

(a) the solicitor’s or former solicitor’s practice or former practice; or

(b) the solicitor’s or former solicitor’s administration of any trust or deceased estate of which the solicitor or former solicitor is or was a trustee or executor,

and may do any other thing necessary for or in connection with the Law Society Council’s functions under this section.

(3) Section 50 (Lay representation on committees)—

Section 50 (3)—

After “rights”, insert “and such obligations”.

(4) Section 53 (Lay representation on committees)—

Section 53 (3)—

After “rights”, insert “and such obligations”.

(5) Section 54 (Functions of Law Society Council)—**(a) Section 54 (a)—**

Omit the paragraph, insert instead:

(a) take such steps as in the opinion of the Law Society Council may be necessary or proper for or with respect to the investigation in accordance with this Act of any question—

Legal Profession (Amendment) 1987

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

- (i) as to the conduct of a solicitor;
 - (ii) as to the conduct of a person who is or was a clerk to a solicitor or who is or was employed or paid by a solicitor in connection with his or her practice as a solicitor; or
 - (iii) as to conduct that is, or may be, a contravention of a provision of Part 9;
- (b) Section 54 (c), (d), (e)—
After section 54 (b), insert:
- (c) institute prosecutions and other proceedings for the breach of any of the provisions of this Act or the regulations or rules made under this Act;
 - (d) appear by solicitor or counsel before, and be heard by, any court in any matter affecting the Law Society or its members or in which the Law Society is concerned or interested; and
 - (e) recover as a debt due to the Law Society any money payable to the Law Society under this Act or the regulations.
- (c) Section 54 (2)—
At the end of section 54, insert:
- (2) In this section—
“solicitor” includes—
- (a) a firm of solicitors;
 - (b) a former solicitor; and
 - (c) a deceased solicitor and a deceased former solicitor.
- (6) Section 55 (**Investigation of affairs of solicitor**)—
- (a) Section 55 (1)—
Omit the subsection, insert instead:
- (1) The Law Society may, by instrument signed by the President or 2 members of the Law Society Council, appoint—
 - (a) one or more trust account inspectors to inspect, either generally or in a particular case, accounts kept under Part 6 by or on behalf of solicitors or to investigate the affairs, or specified affairs, of a solicitor or solicitors; and
 - (b) an investigator to investigate the affairs, or specified affairs, of a solicitor or solicitors,

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

and any such trust account inspector or investigator shall provide the Law Society Council with a report on each inspection or investigation carried out.

- (b) Section 55 (2)—
Omit “An”, insert instead “A trust account inspector or an”.
- (c) Section 55 (3)—
After “A solicitor under”, insert “inspection or”.
- (d) Section 55 (3)—
After “of the solicitor”, insert “or relating to the affairs of the solicitor”.
- (e) Section 55 (3)—
Before “an investigator”, insert “a trust account inspector or”.
- (f) Section 55 (3)—
Omit “the investigator”, insert instead “the trust account inspector or investigator”.
- (g) Section 55 (3) (a)—
Before “affairs”, insert “accounts being inspected or the”.
- (h) Section 55 (3) (b)—
Omit “and affairs”, insert instead “, accounts and affairs”.
- (i) Section 55 (3) (c)—
Omit “or affairs”, insert instead “, accounts or affairs”.
- (j) Section 55 (5)—
Before “an investigator”, insert “a trust account inspector or”.
- (k) Section 55 (7)—
Omit “An investigator”, insert instead “A trust account inspector or an investigator”.
- (l) Section 55 (8)—
Before “investigation” wherever occurring, insert “inspection or”.
- (m) Section 55 (8) (a)—
Before “investigator”, insert “trust account inspector or”.
- (n) Section 55 (9), (10)—
After section 55 (8), insert:
 - (9) A person who complies with a requirement made by a trust account inspector or an investigator under subsection (3) shall not be subject, merely because of that compliance, to any liability, claim or demand.

Legal Profession (Amendment) 1987

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

- (10) A person is not eligible to be appointed as a trust account inspector or an investigator under this section unless the person is—
- (a) a solicitor;
 - (b) an accountant; or
 - (c) an officer or employee of the Law Society.
- (o) Section 55 (11)—
From section 55, omit “(9) In this section—”, insert instead “(11) In this section—”.
- (p) Section 55 (11) (as renumbered), definition of “affairs”—
Omit paragraphs (a) and (b), insert instead:
- (a) accounts kept under Part 6 or otherwise by or on behalf of the solicitor or an associate of the solicitor;
 - (b) any other records kept by or on behalf of the solicitor or an associate of the solicitor;
- (q) Section 55 (11) (as renumbered)—
After the definition of “affairs”, insert:
“associate”, in relation to a solicitor, has the same meaning as it has in Part 6;
- (r) Section 55 (11) (as renumbered), definition of “investigator”—
Omit the definition.
- (s) Section 55 (11) (as renumbered), definition of “solicitor”—
Before “an investigator”, insert “a trust account inspector or”.
- (7) Section 56 (**Secrecy**)—
- (a) Section 56 (1)—
Omit “An investigator”, insert instead “A trust account inspector or an investigator”.
 - (b) Section 56 (1) (a)—
Before “investigator”, insert “trust account inspector,”.
 - (c) Section 56 (1) (b)—
Before “investigation”, insert “inspection or”.
 - (d) Section 56 (1) (c)—
Before “investigator’s”, insert “trust account inspector’s or”.
 - (e) Section 56 (2), (3) (a), (4) (a)—
Before “an investigator” wherever occurring, insert “a trust account inspector or”.

Legal Profession (Amendment) 1987

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

- (f) Section 56 (2) (b), (3)—
Before “an investigator’s” wherever occurring, insert “a trust account inspector’s or”.
- (g) Section 56 (2)—
Before “the investigator”, insert “the trust account inspector or”.
- (h) Section 56 (4) (a)—
Before “investigated”, insert “inspected or”.
- (8) Section 216 (**Regulations**)—
Section 216 (3) (j)—
Omit the paragraph, insert instead:
 - (j) the functions and fees of a trust account inspector or an investigator appointed under section 55 and the duties of the solicitor whose accounts are being inspected or whose affairs are being investigated; and

SCHEDULE 4—AMENDMENTS RELATING TO TRUST
ACCOUNTS

(Sec. 2)

- (1) Section 60 (**Interpretation**)—
 - (a) Section 60 (1) (a)—
Omit “includes”, insert instead “is”.
 - (b) Section 60 (2) (c)—
Omit the paragraph, insert instead:
 - (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the solicitor or a person referred to in paragraph (a), (b) or (e) has a beneficial interest;
 - (c) Section 60 (4) (b)—
After “solicitor” where secondly occurring, insert “, but only if the money is under the direct or indirect control of the solicitor”.
- (2) Section 61 (**Money received by solicitor on behalf of another**)—
 - (a) Section 61 (1), (2)—
Omit the subsections, insert instead:
 - (1) If a solicitor, in the course of practising as a solicitor, receives money on behalf of another person, the solicitor shall—
 - (a) hold the money exclusively for the other person; and

SCHEDULE 4—AMENDMENTS RELATING TO TRUST
ACCOUNTS—*continued*

(b) ensure that subsection (2) and the regulations are complied with in relation to the money.

(2) Money received on behalf of another person by a solicitor, in the course of practising as a solicitor—

(a) shall, except where the person on whose behalf the money is received otherwise directs, be paid, within the prescribed time, to the credit of a general trust account at a bank in New South Wales and be held in accordance with such regulations as may be in force in relation to trust money;

(b) shall, where the person on whose behalf the money is received directs that it be paid otherwise than to the credit of a general trust account and the money is to be held under the direct or indirect control of the solicitor for less than the prescribed period, be paid as directed; or

(c) shall, in the case of money referred to in paragraph (b) that is to be held for the prescribed period or a longer period, be paid as directed and held in accordance with such regulations as may be in force in relation to controlled money,

and, in any case, shall be disbursed as directed by the person on whose behalf it is held.

(b) Section 61 (3) (b)—

Omit the paragraph, insert instead:

(b) to prevent a solicitor from withdrawing or receiving, from trust money or controlled money, reimbursement for disbursements paid by the solicitor or money due, or to accrue due, to the solicitor for costs, if the prescribed procedure is followed.

(c) Section 61 (8)—

Omit the subsection, insert instead:

(8) In this section—

“controlled money” means money required to be dealt with in accordance with subsection (2) (c) that, under the direct or indirect control of the solicitor by or on whose behalf it is received, is for the time being held otherwise than in a general trust account at a bank in New South Wales;

“trust money” means money required to be dealt with in accordance with subsection (2) (a) that is for the time being held in a general trust account at a bank in New South Wales.

SCHEDULE 4—AMENDMENTS RELATING TO TRUST
ACCOUNTS—*continued*

(3) Section 62 (Keeping of accounts)—

Section 62 (1)—

Omit the subsection, insert instead:

(1) A solicitor shall keep—

(a) in the case of trust money (within the meaning of section 61)—accounting records; or

(b) in the case of money other than trust money—such accounting records or other records (if any) as may be required by the regulations,

that disclose at all times the true position in relation to money received by the solicitor on behalf of another person.

(4) Section 63 (Audits)—

Section 63 (1) (a)—

Omit the paragraph, insert instead:

(a) the auditing of a solicitor's records relating to mortgages of real property if, during the last preceding period of 12 months, the solicitor has acted for mortgagees—

(i) in respect of amounts secured totalling not less than \$500,000, or such other amount as may be prescribed; or

(ii) in respect of more than 50 mortgages of real property;

(5) Section 64 (Deposit of trust funds with Law Society)—

Section 64 (5)—

Omit the subsection, insert instead:

(5) It is professional misconduct by a solicitor if the solicitor wilfully contravenes subsection (1) in relation to a trust account kept by the solicitor or by a firm of solicitors of which the solicitor is a member.

(6) Section 65 (Repayment of deposit with Law Society)—

(a) Section 65 (3) (a)—

At the end of the paragraph, insert "or".

(b) Section 65 (3) (b)—

Omit "or".

(c) Section 65 (3) (c)—

Omit the paragraph.

**SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS’
FIDELITY FUND**

(Sec. 2)

(1) Section 72 (Investment of the Fidelity Fund)—**(a) Section 72 (a)—**

At the end of the paragraph, insert “or”.

(b) Section 72 (b)—

Omit “or”.

(c) Section 72 (c)—

Omit the paragraph.

(2) Section 73 (Payments from the Fidelity Fund)—**(a) Section 73 (1) (e)—**

Omit the paragraph, insert instead:

(e) the costs of inspections or investigations under section 55, other than such part of those costs as are recovered under section 55 (8), including all costs incurred by the Law Society Council or on its behalf by its members, employees or agents in relation to any such inspections or investigations; and

(b) Section 73 (2)—

Omit “expense” wherever occurring, insert instead “money payable”.

(3) Section 78—

Omit the section, insert instead:

Failure to pay contribution or levy

78. If, after being given the prescribed notice, a solicitor fails to pay a contribution or levy in accordance with this Part, the Law Society Council may suspend the solicitor’s practising certificate while the failure continues.

(4) Section 79 (Interpretation)—**(a) Section 79 (1), definition of “failure to account”—**

Omit “or on the advice of the solicitor,”, insert instead “(in the case of an associate, being money under the direct or indirect control of the solicitor)”.

(b) Section 79 (1), definition of “pecuniary loss”—

Omit paragraph (c), insert instead:

SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS' FIDELITY FUND—*continued*

- (c) interest that, but for a failure to account, would have been received by a claimant, calculated to the date on which the claim succeeds, being interest at a rate up to, but not exceeding, the rate prescribed by the Supreme Court Rules in respect of unpaid judgments as at that date;
- (5) Section 80 (**Claims against the Fidelity Fund**)—
 Section 80 (4)—
 Omit “failure to account”, insert instead “act or omission from which a failure to account arises”.
- (6) Section 85—
 Omit the section, insert instead:
Avoidance of double compensation
 85. (1) If, in respect of a claim, a claimant—
 (a) receives a payment from the Fidelity Fund; and
 (b) receives or recovers from another source a payment on account of the pecuniary loss,
 the claimant is liable to pay to the Law Society the amount of surplus (if any) after deducting from the total amount received or recovered by the claimant the amount of the pecuniary loss.
 (2) If, in respect of a claim, a claimant—
 (a) receives or recovers from a source other than the Fidelity Fund a payment on account of the pecuniary loss; and
 (b) recovers judgment against the Law Society,
 the amount of any such judgment against the Law Society is reduced by the amount of surplus (if any) after deducting from the total amount received or recovered (including the amount of the judgment) by the claimant the amount of the pecuniary loss.
 (3) Any amount payable to the Law Society under subsection (1) is a debt due to the Law Society by the solicitor.
- (7) Section 86 (**Final date for making claim**)—
 (a) Section 86 (1)—
 Omit “Following a failure to account, the Law Society Council may publish—”, insert instead “If the Law Society Council has reason to believe that there has been or may have been a failure to account, it may publish—”.
 (b) Section 86 (4)—
 Omit the subsection, insert instead:

SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS' FIDELITY FUND—*continued*

(4) The Law Society Council may, after such date as it may fix in each case, pay successful claims from the Fidelity Fund.

(8) Section 88 (**Proceedings against the Law Society**)—

Section 88 (4)–(6)—

Omit the subsections, insert instead:

(4) A claimant whose claim is wholly or partly disallowed, or whose claim is not determined by the Law Society Council within the prescribed time, may appeal to the Supreme Court against the disallowance or the failure to determine the claim.

(5) Upon an appeal under this section, the Supreme Court may make such order as it thinks fit.

(6) A claimant referred to in subsection (2) may take proceedings under that subsection or subsection (4).

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS

(Sec. 2)

(1) Section 91 (**Interpretation**)—

(a) Before the definition of “expenses”, insert:

“associate”, in relation to a solicitor, has the same meaning as it has in Part 6;

(b) From paragraph (b) of the definition of “property”, omit “derived from money or other property”, insert instead “or any other property derived from money or property or acquired with money referred to in paragraph (a)”.

(c) Omit the definition of “receivable property”, insert instead:

“receivable property” means property of a solicitor or an associate of a solicitor that is the subject of an order appointing a receiver;

(d) Before the definition of “relevant solicitor”, insert:

“relevant associate” means an associate of a solicitor of whose property a receiver has been appointed under section 92 (5);

(2) Section 92 (**Supreme Court may appoint receiver**)—

(a) Section 92 (1)—

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS—
continued

Omit section 92 (1) (b), insert instead:

(b) that an action of the Law Society Council referred to in subsection (3) was taken in relation to the solicitor on reasonable grounds within the period of 12 months that preceded the application,

and may make the appointment whether or not the solicitor has been notified of the application or is a party to the proceedings.

(b) Section 92 (5)—

After section 92 (4), insert:

(5) If, on application by a receiver, the Supreme Court is satisfied that all or any of the property of an associate of a solicitor should be declared to be receivable property, the Court may appoint the receiver to be the receiver of all or any of that property.

(3) Section 93 (**Court to be closed**)—

Section 93 (2)—

After “proceedings”, insert “or an order made”.

(4) Section 94 (**Order to be served**)—

(a) Section 94 (a)—

After “relevant solicitor”, insert “or relevant associate”.

(b) Section 94 (2)—

At the end of section 94, insert:

(2) The Supreme Court may give directions as to the manner of service of a copy of the order, and may dispense with service of the order if it thinks fit.

(5) Section 95 (**Receiver may take possession of property**)—

Section 95 (1), (6)—

After “relevant solicitor” wherever occurring, insert “or relevant associate”.

(6) Section 96 (**Information about receivable property**)—

(a) Section 96 (1), (2)—

Omit the subsections, insert instead:

(1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, shall give the information to the receiver if required by the receiver to do so.

Penalty: \$5,000.

Legal Profession (Amendment) 1987

 SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS—
continued

(2) Without limiting the generality of subsection (1), a solicitor who has information referred to in subsection (1) retained on behalf of a client or former client of the solicitor shall give the information to the receiver if required by the receiver to do so.

Penalty: \$5,000.

(b) Section 96 (3)—

Omit “subsection (3): \$1,000”, insert instead “\$5,000”.

(c) Section 96 (4), (5)—

After section 96 (3), insert:

(4) A person who complies with a requirement made by a receiver under this section shall not be subject, merely because of that compliance, to any liability, claim or demand.

(5) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than—

(a) proceedings taken by a receiver for the recovery of receivable property; or

(b) proceedings taken under this Part.

(7) Section 97 (**Stop order on bank account**)—

Section 97 (5)—

After “relevant solicitor”, insert “or relevant associate”.

(8) Section 98 (**Recovery of compensation for disposal of receivable property**)—

(a) Section 98 (1) (d)—

After “relevant solicitor”, insert “or relevant associate”.

(b) Section 98 (1) (d)—

After “solicitor”, where thirdly occurring, insert “, associate”.

(c) Section 98 (8) (a), (d)—

After “solicitor” wherever occurring, insert “or an associate of a solicitor”.

(d) Section 98 (11), (12)—

Omit section 98 (11), insert instead:

Legal Profession (Amendment) 1987

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS—
continued

(11) In addition to any other proceedings that may be taken under this section, a receiver may, if receivable property has been taken by, or paid or transferred to, a person, or otherwise used unlawfully or in breach of trust, take proceedings in the name of the receiver as if the receiver were beneficially entitled to the property at the time the property was so taken, paid, transferred or used.

(12) In this section—

“receivable property” includes property that, but for its having being taken, paid or transferred unlawfully or in breach of trust, would be receivable property.

(9) Section 100 (**Receiver may deal with property**)—

After “relevant solicitor” wherever occurring, insert “or relevant associate”.

(10) Section 101 (**Other powers of receiver**)—

Section 101 (1)—

After “relevant solicitor”, insert “or relevant associate”.

(11) Section 102 (**Application for directions**)—

Section 102 (1)—

After “solicitor”, insert “or an associate of a solicitor”.

(12) Section 103 (**Notice to claim receivable property**)—

(a) Section 103 (1) (a), (4)—

After “relevant solicitor” wherever occurring, insert “or relevant associate”.

(b) Section 103 (1)—

After “solicitor” where secondly occurring, insert “, associate”.

(c) Section 103 (3)—

After “solicitor”, insert “, associate of a solicitor”.

(13) Section 106 (**Termination of appointment of receiver**)—

(a) Section 106 (3), (5)—

After “relevant solicitor” wherever occurring, insert “or relevant associate”.

(b) Section 106 (3)—

After “the solicitor”, insert “or associate”.

Legal Profession (Amendment) 1987

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS—
continued

(14) Section 107 (**Property not dealt with by receiver**)—

Section 107 (1) (b), (4)—

After “relevant solicitor” wherever occurring, insert “or relevant associate”.

(15) Section 112 (**Receivable property not to be attached**)—

After “relevant solicitor”, insert “or relevant associate”.

**SCHEDULE 7—AMENDMENTS RELATING TO UNQUALIFIED
PRACTITIONERS**

(Sec. 2)

(1) Section 116 (**Unlawful representations**)—

Section 116 (1)—

Before “pretend”, insert “falsely”.

(2) Section 120 (**Control of employment of certain clerks**)—

Section 120 (2), (3)—

Omit the subsections, insert instead:

(2) The Law Society may apply for an order under subsection (4) if—

- (a) the Law Society Council is of the opinion that a person is not a fit and proper person to be employed or paid in connection with a solicitor’s practice; or
- (b) the Law Society Council is of the opinion that a person has been guilty of conduct which, if the person were a solicitor, would have constituted unsatisfactory professional conduct or professional misconduct within the meaning of Part 10.

(3) Section 121 (**Employment of disqualified or convicted persons**)—

Section 121 (8), definition of “disqualified person”—

In paragraph (c), after “New South Wales”, insert “or another State or Territory”.

SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT

(Sec. 2)

(1) Section 29 (Refusal of application by barrister or solicitor for practising certificate)—

Section 29 (4)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

(2) Section 51 (Functions of Bar Council)—

Section 51 (a)—

Omit “alleged professional misconduct”, insert instead “the conduct”.

(3) Section 56 (Secrecy)—

Section 56 (4) (a)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

(4) Section 123 (Interpretation)—**(a) Definition of “professional misconduct”—**

Omit the definition, insert instead:

“professional misconduct” includes—

(a) unsatisfactory professional conduct, where the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence;

(b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with the practice of law which, if established, would justify a finding that a legal practitioner is not of good fame and character or is not a fit and proper person to remain on the roll of barristers or the roll of solicitors; or

(c) conduct that is declared to be professional misconduct by any provision of this Act;

(b) After the definition of “solicitor member”, insert:

“unsatisfactory professional conduct” includes 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.

Legal Profession (Amendment) 1987

 SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT—
continued
(5) Section 124 (**Application to ex-practitioners**)—

Section 124 (1)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

(6) Section 130 (**Complaints**)—

(a) Section 130 (1)—

Omit the subsection, insert instead:

(1) A person may make a complaint to the appropriate Council alleging that a legal practitioner is guilty of conduct that may constitute unsatisfactory professional conduct or professional misconduct.

(b) Section 130 (2) (c), (3), (4)—

Before “professional misconduct” wherever occurring, insert “unsatisfactory professional conduct or”.

(7) Section 134 (**Decisions of Councils**)—

(a) Section 134 (1) (a)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

(b) Section 134 (1) (b)—

Omit “minor professional misconduct”, insert instead “unsatisfactory professional conduct”.

(c) Section 134 (1) (c)—

Omit “serious”.

(d) Section 134 (3)—

After “the decision”, insert “and notice of the complainant’s rights (if any) under section 137”.

(8) Section 135 (**Complaints made by Councils**)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

(9) Section 140 (**Recommendations of the Panel**)—

Section 140 (2), (3)—

Omit section 140 (2), insert instead:

(2) Before making a recommendation under subsection (1) (b) or (c), the Panel shall notify the relevant Council of its intention to make the recommendation.

Legal Profession (Amendment) 1987

SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT—
continued

- (3) The Panel shall make such a recommendation only if—
- (a) a period of one month or more has elapsed since notice of its intention to do so was given to a Council under subsection (2); and
 - (b) the matter has not been referred by a Council to the Board or the Tribunal.
- (10) Part 10, Division 5, heading—
Omit the heading, insert instead:
DIVISION 5—Unsatisfactory professional conduct
- (11) Section 143 (**Hearings**)—
Section 143 (3)—
Omit “serious”.
- (12) Section 149 (**Determinations of the Board**)—
- (a) Section 149 (1), (2), (3), (6)—
Omit “minor professional misconduct” wherever occurring, insert instead “unsatisfactory professional conduct”.
 - (b) Section 149 (3)—
Omit “misconduct” where secondly occurring, insert instead “conduct”.
 - (c) Section 149 (4)—
After “order” where firstly occurring, insert “(other than an order for the payment of compensation not exceeding \$2,000)”.
- (13) Section 155 (**Professional misconduct**)—
Omit “serious”.
- (14) Part 10, Division 7, heading—
Omit the heading, insert instead:
DIVISION 7—Professional misconduct
- (15) Section 163 (**Determinations of the Tribunal**)—
- (a) Section 163 (1)—
Omit “serious”.
 - (b) Section 163 (2)—
Omit “minor professional misconduct”, insert instead “unsatisfactory professional conduct”.

Legal Profession (Amendment) 1987

SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT—
continued

(c) Section 163 (3), (6)—

Before “professional misconduct” wherever occurring, insert “unsatisfactory professional conduct or”.

(d) Section 163 (3)—

Omit “misconduct” where secondly occurring, insert instead “conduct”.

(e) Section 163 (4)—

After “order” where firstly occurring, insert “(other than an order for the payment of compensation not exceeding \$2,000)”.

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.

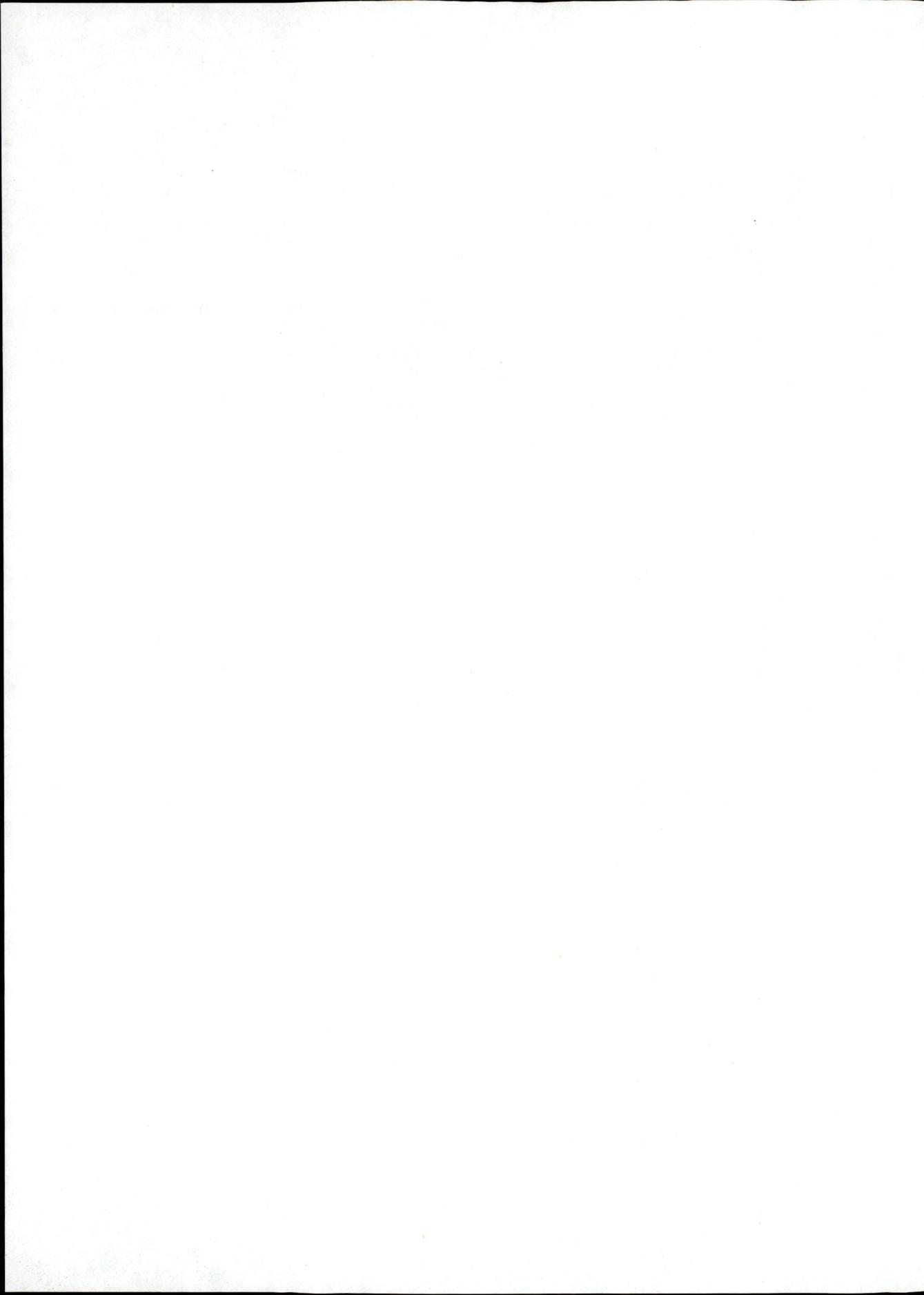
Legal Profession (Amendment) 1987

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.



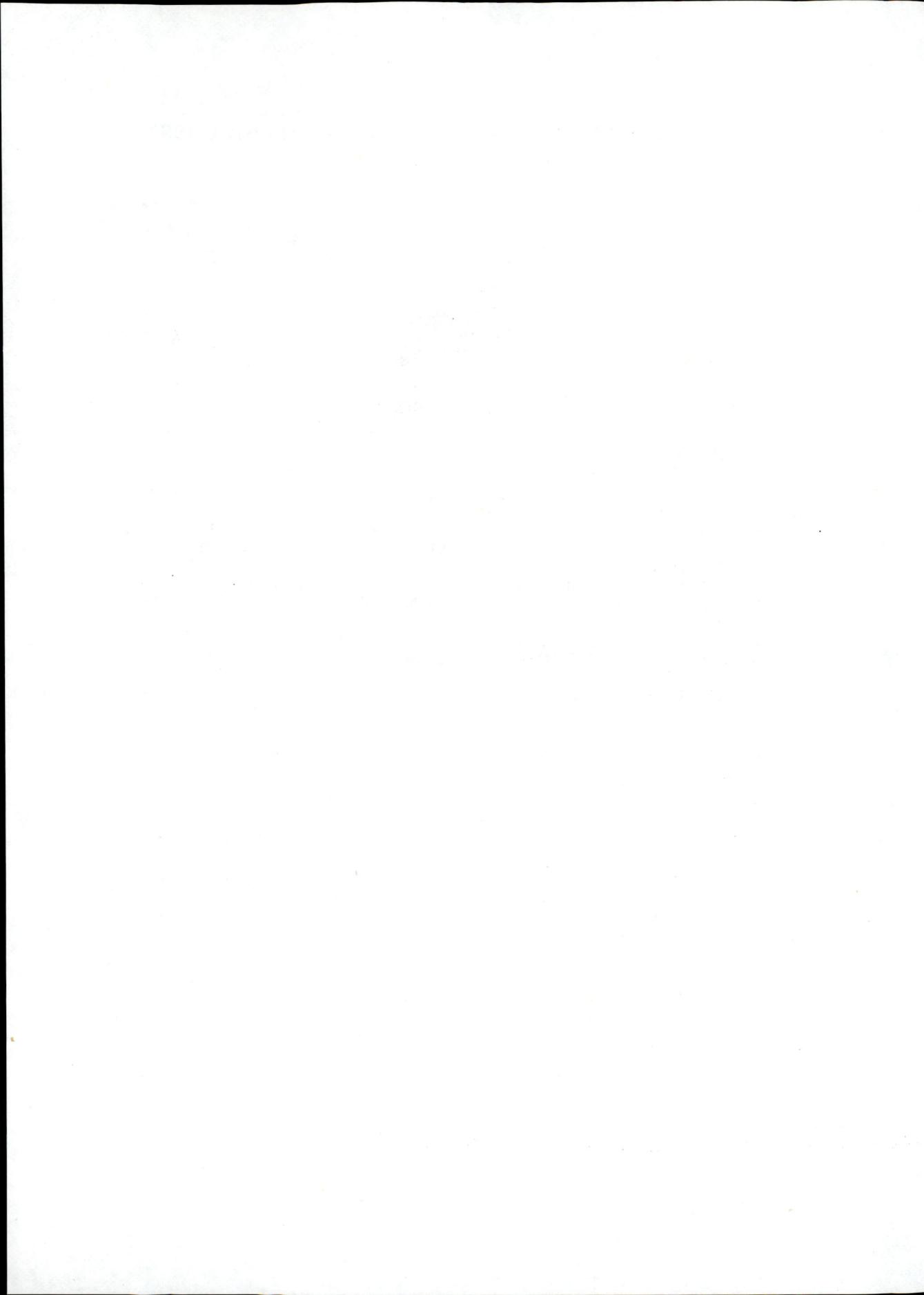
LEGAL PROFESSION (AMENDMENT) BILL 1987

NEW SOUTH WALES



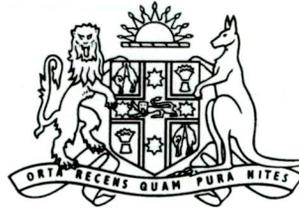
TABLE OF PROVISIONS

1. Short title
 2. Amendment of Act No. 109, 1987
- SCHEDULE 1—AMENDMENTS RELATING TO THE ADMISSION OF BARRISTERS AND SOLICITORS
- SCHEDULE 2—AMENDMENTS RELATING TO PRACTISING CERTIFICATES
- SCHEDULE 3—AMENDMENTS RELATING TO THE BAR ASSOCIATION AND LAW SOCIETY
- SCHEDULE 4—AMENDMENTS RELATING TO TRUST ACCOUNTS
- SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS' FIDELITY FUND
- SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS
- SCHEDULE 7—AMENDMENTS RELATING TO UNQUALIFIED PRACTITIONERS
- SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT
-



LEGAL PROFESSION (AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Legal Profession Act 1987 with respect to the investigation of legal practitioners, unsatisfactory professional conduct and compensation orders and for other purposes.

*Legal Profession (Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Legal Profession (Amendment) Act 1987.

5 Amendment of Act No. 109, 1987

2. The Legal Profession Act 1987 is amended as set out in Schedules 1-8.

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

10

(Sec. 2)

(1) Section 7 (Rules for registration and admission)—

Section 7 (2)—

Omit the subsection, insert instead:

15

(2) In exercising its functions under this section, the Board may act jointly with the Solicitors Admission Board.

(2) Section 14 (Rules for registration and admission)—

Section 14 (2)—

Omit the subsection, insert instead:

20

(2) In exercising its functions under this section, the Board may act jointly with the Barristers Admission Board.

(3) Section 18 (Right of audience)—

After "any person", insert ", whether or not the solicitor is instructed by the person or by a solicitor acting on behalf of the person".

25

(4) Section 20 (Early consideration of character)—

Section 20 (4)—

After "heard," insert "or to make representations in writing,".

(5) Section 23 (Appeals)—

Section 23 (3), (4)—

30

Omit section 23 (3), insert instead:

(3) On an appeal under this section—

(a) by an applicant—the relevant Council; or

(b) by a Council—the applicant and the other Council,

is or are entitled to be represented and to be heard.

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

(4) On an appeal under this section, the Supreme Court may make such order or declaration as it thinks fit.

**SCHEDULE 2—AMENDMENTS RELATING TO PRACTISING
CERTIFICATES**

5

(Sec. 2)

(1) Section 25 (**Practising as barrister**)—

Section 25 (2)—

Omit “If a complaint against a barrister is made under Part 10 by the Bar Council in respect of a contravention of subsection (1), the”, insert instead “The”.

(2) Section 26 (**Practising as solicitor**)—

(a) Section 26 (3)—

Omit “If a complaint against a solicitor is made under Part 10 by the Law Society Council in respect of a contravention of subsection (1), the”, insert instead “The”.

(b) Section 26 (3)—

Omit “the solicitor”, insert instead “a solicitor”.

(3) Section 29 (**Refusal of application by barrister or solicitor for practising certificate**)—

(a) Section 29 (1)—

Omit the subsection, insert instead:

(1) A Council may refuse to issue a practising certificate if the application for it—

(a) is not accompanied by a fee of such amount as is determined by the Council and approved by the Attorney General; or

(b) is not accompanied by, or does not contain, such information as may be prescribed by the regulations.

(b) Section 29 (4) (a)—

Omit “or”.

(c) Section 29 (4) (c), (d)—

After section 29 (4) (b), insert:

(c) any costs of an inspection or investigation payable under section 55 by the applicant have not been paid; or

30

SCHEDULE 2—AMENDMENTS RELATING TO PRACTISING
CERTIFICATES—*continued*

(d) any expenses of receivership payable under section 110 by the applicant have not been paid.

(4) Section 32 (**Form of practising certificate issued to a barrister**)—

(a) Section 32 (2) (a)—

5 Omit “completed”, insert instead “served satisfactorily”.

(b) Section 32 (2) (a)—

Omit “complete the period”, insert instead “serve the period satisfactorily”.

(c) Section 32 (3) (b)—

10 Omit the paragraph, insert instead:

(b) may be subject to such conditions as the Bar Council thinks fit, including a condition requiring the holder to serve a specified period satisfactorily as a pupil.

(5) Section 33 (**Form of practising certificate issued to a solicitor**)—

15 Section 33 (2)—

Omit the subsection, insert instead:

(2) The practising certificate issued to a solicitor may limit the practising rights of the holder in any manner determined by the Law Society Council.

20 (6) Section 35 (**Refusal, suspension or cancellation of practising certificate**)—

(a) Section 35 (2) (d)—

Omit “or” where lastly occurring.

(b) Section 35 (2) (e)–(g)—

25 Omit section 35 (2) (e), insert instead:

(e) has contravened an order made in respect of the solicitor by the Professional Standards Board or the Tribunal;

(f) is a disqualified person within the meaning of section 121;
or

30 (g) has contravened a provision of this Act.

(7) Section 216 (**Regulations**)—

Section 216 (3) (a)—

After “certificate”, insert “and the refund of the whole or a part of fees paid for practising certificates”.

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

(Sec. 2)

- (1) Section 3 (**Interpretation**)—
- 5 (a) Section 3 (1), definition of “investigator”—
After the definition of “insurer”, insert:
“investigator” means an investigator appointed under section 55;
- 10 (b) Section 3 (1), definition of “trust account inspector”—
After the definition of “Tribunal”, insert:
“trust account inspector” means a trust account inspector appointed under section 55;
- (2) Section 41 (**Solicitor to be insured etc.**)—
Section 41 (4)—
- 15 After section 41 (3), insert:
(4) The Law Society may negotiate with insurers and other persons in relation to the provision of indemnity insurance to any solicitor or former solicitor with respect to civil liability that may arise in connection with—
- 20 (a) the solicitor’s or former solicitor’s practice or former practice; or
(b) the solicitor’s or former solicitor’s administration of any trust or deceased estate of which the solicitor or former solicitor is or was a trustee or executor,
- 25 and may do any other thing necessary for or in connection with the Law Society Council’s functions under this section.
- (3) Section 50 (**Lay representation on committees**)—
Section 50 (3)—
After “rights”, insert “and such obligations”.
- 30 (4) Section 53 (**Lay representation on committees**)—
Section 53 (3)—
After “rights”, insert “and such obligations”.
- (5) Section 54 (**Functions of Law Society Council**)—
(a) Section 54 (a)—
- 35 Omit the paragraph, insert instead:
(a) take such steps as in the opinion of the Law Society Council may be necessary or proper for or with respect to the investigation in accordance with this Act of any question—

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

- (i) as to the conduct of a solicitor;
- (ii) as to the conduct of a person who is or was a clerk to a solicitor or who is or was employed or paid by a solicitor in connection with his or her practice as a solicitor; or
- (iii) as to conduct that is, or may be, a contravention of a provision of Part 9;
- (b) Section 54 (c), (d), (e)—
After section 54 (b), insert:
- (c) institute prosecutions and other proceedings for the breach of any of the provisions of this Act or the regulations or rules made under this Act;
- (d) appear by solicitor or counsel before, and be heard by, any court in any matter affecting the Law Society or its members or in which the Law Society is concerned or interested; and
- (e) recover as a debt due to the Law Society any money payable to the Law Society under this Act or the regulations.
- (c) Section 54 (2)—
At the end of section 54, insert:
- (2) In this section—
“solicitor” includes—
- (a) a firm of solicitors;
- (b) a former solicitor; and
- (c) a deceased solicitor and a deceased former solicitor.
- (6) Section 55 (**Investigation of affairs of solicitor**)—
- (a) Section 55 (1)—
Omit the subsection, insert instead:
- (1) The Law Society may, by instrument signed by the President or 2 members of the Law Society Council, appoint—
- (a) one or more trust account inspectors to inspect, either generally or in a particular case, accounts kept under Part 6 by or on behalf of solicitors or to investigate the affairs, or specified affairs, of a solicitor or solicitors; and
- (b) an investigator to investigate the affairs, or specified affairs, of a solicitor or solicitors,

Legal Profession (Amendment) 1987

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

and any such trust account inspector or investigator shall provide the Law Society Council with a report on each inspection or investigation carried out.

- (b) Section 55 (2)—
5 Omit “An”, insert instead “A trust account inspector or an”.
- (c) Section 55 (3)—
After “A solicitor under”, insert “inspection or”.
- (d) Section 55 (3)—
10 After “of the solicitor”, insert “or relating to the affairs of the solicitor”.
- (e) Section 55 (3)—
Before “an investigator”, insert “a trust account inspector or”.
- (f) Section 55 (3)—
15 Omit “the investigator”, insert instead “the trust account inspector or investigator”.
- (g) Section 55 (3) (a)—
Before “affairs”, insert “accounts being inspected or the”.
- (h) Section 55 (3) (b)—
Omit “and affairs”, insert instead “, accounts and affairs”.
- (i) Section 55 (3) (c)—
20 Omit “or affairs”, insert instead “, accounts or affairs”.
- (j) Section 55 (5)—
Before “an investigator”, insert “a trust account inspector or”.
- (k) Section 55 (7)—
25 Omit “An investigator”, insert instead “A trust account inspector or an investigator”.
- (l) Section 55 (8)—
Before “investigation” wherever occurring, insert “inspection or”.
- (m) Section 55 (8) (a)—
30 Before “investigator”, insert “trust account inspector or”.
- (n) Section 55 (9), (10)—
After section 55 (8), insert:
35 (9) A person who complies with a requirement made by a trust account inspector or an investigator under subsection (3) shall not be subject, merely because of that compliance, to any liability, claim or demand.

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

(10) A person is not eligible to be appointed as a trust account inspector or an investigator under this section unless the person is—

- (a) a solicitor;
(b) an accountant; or
(c) an officer or employee of the Law Society.

(o) Section 55 (11)—

From section 55, omit “(9) In this section—”, insert instead “(11) In this section—”.

(p) Section 55 (11) (as renumbered), definition of “affairs”—

Omit paragraphs (a) and (b), insert instead:

- (a) accounts kept under Part 6 or otherwise by or on behalf of the solicitor or an associate of the solicitor;
(b) any other records kept by or on behalf of the solicitor or an associate of the solicitor;

(q) Section 55 (11) (as renumbered)—

After the definition of “affairs”, insert:

“associate”, in relation to a solicitor, has the same meaning as it has in Part 6;

(r) Section 55 (11) (as renumbered), definition of “investigator”—

Omit the definition.

(s) Section 55 (11) (as renumbered), definition of “solicitor”—

Before “an investigator”, insert “a trust account inspector or”.

(7) Section 56 (**Secrecy**)—

(a) Section 56 (1)—

Omit “An investigator”, insert instead “A trust account inspector or an investigator”.

(b) Section 56 (1) (a)—

Before “investigator”, insert “trust account inspector,”.

(c) Section 56 (1) (b)—

Before “investigation”, insert “inspection or”.

(d) Section 56 (1) (c)—

Before “investigator’s”, insert “trust account inspector’s or”.

(e) Section 56 (2), (3) (a), (4) (a)—

Before “an investigator” wherever occurring, insert “a trust account inspector or”.

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

- (f) Section 56 (2) (b), (3)—
Before “an investigator’s” wherever occurring, insert “a trust
account inspector’s or”.
- 5 (g) Section 56 (2)—
Before “the investigator”, insert “the trust account inspector or”.
- (h) Section 56 (4) (a)—
Before “investigated”, insert “inspected or”.
- (8) Section 216 (**Regulations**)—
Section 216 (3) (j)—
10 Omit the paragraph, insert instead:
(j) the functions and fees of a trust account inspector or an
investigator appointed under section 55 and the duties of
the solicitor whose accounts are being inspected or whose
affairs are being investigated; and

15 **SCHEDULE 4—AMENDMENTS RELATING TO TRUST
ACCOUNTS**

(Sec. 2)

- (1) Section 60 (**Interpretation**)—
(a) Section 60 (1) (a)—
20 Omit “includes”, insert instead “is”.
- (b) Section 60 (2) (c)—
Omit the paragraph, insert instead:
(c) a corporation, or a member of a corporation, partnership,
syndicate or joint venture, in which the solicitor or a
25 person referred to in paragraph (a), (b) or (e) has a
beneficial interest;
- (c) Section 60 (4) (b)—
After “solicitor” where secondly occurring, insert “, but only if the
money is under the direct or indirect control of the solicitor”.
- 30 (2) Section 61 (**Money received by solicitor on behalf of another**)—
(a) Section 61 (1), (2)—
Omit the subsections, insert instead:
(1) If a solicitor, in the course of practising as a solicitor,
receives money on behalf of another person, the solicitor shall—
35 (a) hold the money exclusively for the other person; and

SCHEDULE 4—AMENDMENTS RELATING TO TRUST
ACCOUNTS—*continued*

(b) ensure that subsection (2) and the regulations are complied with in relation to the money.

(2) Money received on behalf of another person by a solicitor, in the course of practising as a solicitor—

5 (a) shall, except where the person on whose behalf the money is received otherwise directs, be paid, within the prescribed time, to the credit of a general trust account at a bank in New South Wales and be held in accordance with such regulations as may be in force in relation to trust money;

10 (b) shall, where the person on whose behalf the money is received directs that it be paid otherwise than to the credit of a general trust account and the money is to be held under the direct or indirect control of the solicitor for less than the prescribed period, be paid as directed; or

15 (c) shall, in the case of money referred to in paragraph (b) that is to be held for the prescribed period or a longer period, be paid as directed and held in accordance with such regulations as may be in force in relation to controlled money,

20 and, in any case, shall be disbursed as directed by the person on whose behalf it is held.

(b) Section 61 (3) (b)—

Omit the paragraph, insert instead:

25 (b) to prevent a solicitor from withdrawing or receiving, from trust money or controlled money, reimbursement for disbursements paid by the solicitor or money due, or to accrue due, to the solicitor for costs, if the prescribed procedure is followed.

(c) Section 61 (8)—

30 Omit the subsection, insert instead:

(8) In this section—

35 “controlled money” means money required to be dealt with in accordance with subsection (2) (c) that, under the direct or indirect control of the solicitor by or on whose behalf it is received, is for the time being held otherwise than in a general trust account at a bank in New South Wales;

“trust money” means money required to be dealt with in accordance with subsection (2) (a) that is for the time being held in a general trust account at a bank in New South Wales.

**SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS’
FIDELITY FUND**

(Sec. 2)

(1) Section 72 (**Investment of the Fidelity Fund**)—

5 (a) Section 72 (a)—

At the end of the paragraph, insert “or”.

(b) Section 72 (b)—

Omit “or”.

(c) Section 72 (c)—

10 Omit the paragraph.

(2) Section 73 (**Payments from the Fidelity Fund**)—

(a) Section 73 (1) (e)—

Omit the paragraph, insert instead:

15 (e) the costs of inspections or investigations under section 55, other than such part of those costs as are recovered under section 55 (8), including all costs incurred by the Law Society Council or on its behalf by its members, employees or agents in relation to any such inspections or investigations; and

20 (b) Section 73 (2)—

Omit “expense” wherever occurring, insert instead “money payable”.

(3) Section 78—

Omit the section, insert instead:

25 **Failure to pay contribution or levy**

78. If, after being given the prescribed notice, a solicitor fails to pay a contribution or levy in accordance with this Part, the Law Society Council may suspend the solicitor’s practising certificate while the failure continues.

30 (4) Section 79 (**Interpretation**)—

(a) Section 79 (1), definition of “failure to account”—

Omit “or on the advice of the solicitor,”, insert instead “(in the case of an associate, being money under the direct or indirect control of the solicitor)”.

35 (b) Section 79 (1), definition of “pecuniary loss”—

Omit paragraph (c), insert instead:

Legal Profession (Amendment) 1987

 SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS' FIDELITY FUND—*continued*

- (c) interest that, but for a failure to account, would have been received by a claimant, calculated to the date on which the claim succeeds, being interest at a rate up to, but not exceeding, the rate prescribed by the Supreme Court Rules in respect of unpaid judgments as at that date;
- 5
- (5) Section 80 (**Claims against the Fidelity Fund**)—
 Section 80 (4)—
 Omit “failure to account”, insert instead “act or omission from which a failure to account arises”.
- 10 (6) Section 85—
 Omit the section, insert instead:
Avoidance of double compensation
 85. (1) If, in respect of a claim, a claimant—
 (a) receives a payment from the Fidelity Fund; and
 15 (b) receives or recovers from another source a payment on account of the pecuniary loss,
 the claimant is liable to pay to the Law Society the amount of surplus (if any) after deducting from the total amount received or recovered by the claimant the amount of the pecuniary loss.
- 20 (2) If, in respect of a claim, a claimant—
 (a) receives or recovers from a source other than the Fidelity Fund a payment on account of the pecuniary loss; and
 (b) recovers judgment against the Law Society,
 the amount of any such judgment against the Law Society is
 25 reduced by the amount of surplus (if any) after deducting from the total amount received or recovered (including the amount of the judgment) by the claimant the amount of the pecuniary loss.
- (3) Any amount payable to the Law Society under subsection (1) is a debt due to the Law Society by the solicitor.
- 30 (7) Section 86 (**Final date for making claim**)—
 (a) Section 86 (1)—
 Omit “Following a failure to account, the Law Society Council may publish—”, insert instead “If the Law Society Council has
 35 reason to believe that there has been or may have been a failure to account, it may publish—”.
- (b) Section 86 (4)—
 Omit the subsection, insert instead:

Legal Profession (Amendment) 1987

 SCHEDULE 5—AMENDMENTS RELATING TO THE SOLICITORS' FIDELITY FUND—*continued*

(4) The Law Society Council may, after such date as it may fix in each case, pay successful claims from the Fidelity Fund.

(8) Section 88 (**Proceedings against the Law Society**)—

Section 88 (4)–(6)—

5 Omit the subsections, insert instead:

(4) A claimant whose claim is wholly or partly disallowed, or whose claim is not determined by the Law Society Council within the prescribed time, may appeal to the Supreme Court against the disallowance or the failure to determine the claim.

10 (5) Upon an appeal under this section, the Supreme Court may make such order as it thinks fit.

(6) A claimant referred to in subsection (2) may take proceedings under that subsection or subsection (4).

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS

15 (Sec. 2)

(1) Section 91 (**Interpretation**)—

(a) Before the definition of “expenses”, insert:

“associate”, in relation to a solicitor, has the same meaning as it has in Part 6;

20 (b) From paragraph (b) of the definition of “property”, omit “derived from money or other property”, insert instead “or any other property derived from money or property or acquired with money referred to in paragraph (a)”.

(c) Omit the definition of “receivable property”, insert instead:

25 “receivable property” means property of a solicitor or an associate of a solicitor that is the subject of an order appointing a receiver;

(d) Before the definition of “relevant solicitor”, insert:

30 “relevant associate” means an associate of a solicitor of whose property a receiver has been appointed under section 92 (5);

(2) Section 92 (**Supreme Court may appoint receiver**)—

(a) Section 92 (1)—

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS—
continued

Omit section 92 (1) (b), insert instead:

- 5 (b) that an action of the Law Society Council referred to in subsection (3) was taken in relation to the solicitor on reasonable grounds within the period of 12 months that preceded the application,
and may make the appointment whether or not the solicitor has been notified of the application or is a party to the proceedings.

(b) Section 92 (5)—

After section 92 (4), insert:

- 10 (5) If, on application by a receiver, the Supreme Court is satisfied that all or any of the property of an associate of a solicitor should be declared to be receivable property, the Court may appoint the receiver to be the receiver of all or any of that property.

15 (3) Section 93 (**Court to be closed**)—

Section 93 (2)—

After “proceedings”, insert “or an order made”.

(4) Section 94 (**Order to be served**)—

(a) Section 94 (a)—

- 20 After “relevant solicitor”, insert “or relevant associate”.

(b) Section 94 (2)—

At the end of section 94, insert:

- 25 (2) The Supreme Court may give directions as to the manner of service of a copy of the order, and may dispense with service of the order if it thinks fit.

(5) Section 95 (**Receiver may take possession of property**)—

Section 95 (1), (6)—

After “relevant solicitor” wherever occurring, insert “or relevant associate”.

30 (6) Section 96 (**Information about receivable property**)—

(a) Section 96 (1), (2)—

Omit the subsections, insert instead:

- 35 (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, shall give the information to the receiver if required by the receiver to do so.

Penalty: \$5,000.

Legal Profession (Amendment) 1987

 SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS—
continued

(2) Without limiting the generality of subsection (1), a solicitor who has information referred to in subsection (1) retained on behalf of a client or former client of the solicitor shall give the information to the receiver if required by the receiver to do so.

5 Penalty: \$5,000.

(b) Section 96 (3)—

Omit “subsection (3): \$1,000”, insert instead “\$5,000”.

(c) Section 96 (4), (5)—

After section 96 (3), insert:

10 (4) A person who complies with a requirement made by a receiver under this section shall not be subject, merely because of that compliance, to any liability, claim or demand.

(5) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than—

15 (a) proceedings taken by a receiver for the recovery of receivable property; or

(b) proceedings taken under this Part.

(7) Section 97 (**Stop order on bank account**)—

Section 97 (5)—

20 After “relevant solicitor”, insert “or relevant associate”.

(8) Section 98 (**Recovery of compensation for disposal of receivable property**)—

(a) Section 98 (1) (d)—

After “relevant solicitor”, insert “or relevant associate”.

25 (b) Section 98 (1) (d)—

After “solicitor”, where thirdly occurring, insert “, associate”.

(c) Section 98 (8) (a), (d)—

After “solicitor” wherever occurring, insert “or an associate of a solicitor”.

30 (d) Section 98 (11), (12)—

Omit section 98 (11), insert instead:

Legal Profession (Amendment) 1987

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS—
continued

- 5 (11) In addition to any other proceedings that may be taken under this section, a receiver may, if receivable property has been taken by, or paid or transferred to, a person, or otherwise used unlawfully or in breach of trust, take proceedings in the name of the receiver as if the receiver were beneficially entitled to the property at the time the property was so taken, paid, transferred or used.
- (12) In this section—
10 “receivable property” includes property that, but for its having being taken, paid or transferred unlawfully or in breach of trust, would be receivable property.
- (9) Section 100 (**Receiver may deal with property**)—
After “relevant solicitor” wherever occurring, insert “or relevant associate”.
- 15 (10) Section 101 (**Other powers of receiver**)—
Section 101 (1)—
After “relevant solicitor”, insert “or relevant associate”.
- (11) Section 102 (**Application for directions**)—
Section 102 (1)—
20 After “solicitor”, insert “or an associate of a solicitor”.
- (12) Section 103 (**Notice to claim receivable property**)—
(a) Section 103 (1) (a), (4)—
After “relevant solicitor” wherever occurring, insert “or relevant associate”.
- 25 (b) Section 103 (1)—
After “solicitor” where secondly occurring, insert “, associate”.
- (c) Section 103 (3)—
After “solicitor”, insert “, associate of a solicitor”.
- (13) Section 106 (**Termination of appointment of receiver**)—
30 (a) Section 106 (3), (5)—
After “relevant solicitor” wherever occurring, insert “or relevant associate”.
- (b) Section 106 (3)—
After “the solicitor”, insert “or associate”.

Legal Profession (Amendment) 1987

SCHEDULE 6—AMENDMENTS RELATING TO RECEIVERS—
continued

(14) Section 107 (**Property not dealt with by receiver**)—

Section 107 (1) (b), (4)—

After “relevant solicitor” wherever occurring, insert “or relevant associate”.

5 (15) Section 112 (**Receivable property not to be attached**)—

After “relevant solicitor”, insert “or relevant associate”.

SCHEDULE 7—AMENDMENTS RELATING TO UNQUALIFIED
PRACTITIONERS

(Sec. 2)

10 (1) Section 116 (**Unlawful representations**)—

Section 116 (1)—

Before “pretend”, insert “falsely”.

(2) Section 120 (**Control of employment of certain clerks**)—

Section 120 (2), (3)—

15 Omit the subsections, insert instead:

(2) The Law Society may apply for an order under subsection (4) if—

20 (a) the Law Society Council is of the opinion that a person is not a fit and proper person to be employed or paid in connection with a solicitor’s practice; or

25 (b) the Law Society Council is of the opinion that a person has been guilty of conduct which, if the person were a solicitor, would have constituted unsatisfactory professional conduct or professional misconduct within the meaning of Part 10.

(3) Section 121 (**Employment of disqualified or convicted persons**)—

Section 121 (8), definition of “disqualified person”—

In paragraph (c), after “New South Wales”, insert “or another State or Territory”.

SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT

(Sec. 2)

(1) Section 29 (Refusal of application by barrister or solicitor for practising certificate)—

5 Section 29 (4)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

(2) Section 51 (Functions of Bar Council)—

10 Section 51 (a)—

Omit “alleged professional misconduct”, insert instead “the conduct”.

(3) Section 56 (Secrecy)—

15 Section 56 (4) (a)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

(4) Section 123 (Interpretation)—

(a) Definition of “professional misconduct”—

Omit the definition, insert instead:

“professional misconduct” includes—

20 (a) unsatisfactory professional conduct, where the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence;

25 (b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with the practice of law which, if established, would justify a finding that a legal practitioner is not of good fame and character or is not a fit and proper person to remain on the roll of barristers or the roll of solicitors; or

30 (c) conduct that is declared to be professional misconduct by any provision of this Act;

(b) After the definition of “solicitor member”, insert:

35 “unsatisfactory professional conduct” includes 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.

Legal Profession (Amendment) 1987

 SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT—
continued
(5) Section 124 (**Application to ex-practitioners**)—

Section 124 (1)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

5 (6) Section 130 (**Complaints**)—

(a) Section 130 (1)—

Omit the subsection, insert instead:

10 (1) A person may make a complaint to the appropriate Council alleging that a legal practitioner is guilty of conduct that may constitute unsatisfactory professional conduct or professional misconduct.

(b) Section 130 (2) (c), (3), (4)—

Before “professional misconduct” wherever occurring, insert “unsatisfactory professional conduct or”.

15 (7) Section 134 (**Decisions of Councils**)—

(a) Section 134 (1) (a)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

(b) Section 134 (1) (b)—

20 Omit “minor professional misconduct”, insert instead “unsatisfactory professional conduct”.

(c) Section 134 (1) (c)—

Omit “serious”.

(d) Section 134 (3)—

25 After “the decision”, insert “and notice of the complainant’s rights (if any) under section 137”.

(8) Section 135 (**Complaints made by Councils**)—

Before “professional misconduct”, insert “unsatisfactory professional conduct or”.

30 (9) Section 140 (**Recommendations of the Panel**)—

Section 140 (2), (3)—

Omit section 140 (2), insert instead:

35 (2) Before making a recommendation under subsection (1) (b) or (c), the Panel shall notify the relevant Council of its intention to make the recommendation.

Legal Profession (Amendment) 1987

 SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT—
continued

- (3) The Panel shall make such a recommendation only if—
- (a) a period of one month or more has elapsed since notice of its intention to do so was given to a Council under subsection (2); and
 - 5 (b) the matter has not been referred by a Council to the Board or the Tribunal.
- (10) Part 10, Division 5, heading—
 Omit the heading, insert instead:
 DIVISION 5—*Unsatisfactory professional conduct*
- 10 (11) Section 143 (**Hearings**)—
 Section 143 (3)—
 Omit “serious”.
- (12) Section 149 (**Determinations of the Board**)—
- 15 (a) Section 149 (1), (2), (3), (6)—
 Omit “minor professional misconduct” wherever occurring, insert instead “unsatisfactory professional conduct”.
 - (b) Section 149 (3)—
 Omit “misconduct” where secondly occurring, insert instead “conduct”.
 - 20 (c) Section 149 (4)—
 After “order” where firstly occurring, insert “(other than an order for the payment of compensation not exceeding \$2,000)”.
- (13) Section 155 (**Professional misconduct**)—
 Omit “serious”.
- 25 (14) Part 10, Division 7, heading—
 Omit the heading, insert instead:
 DIVISION 7—*Professional misconduct*
- (15) Section 163 (**Determinations of the Tribunal**)—
- 30 (a) Section 163 (1)—
 Omit “serious”.
 - (b) Section 163 (2)—
 Omit “minor professional misconduct”, insert instead “unsatisfactory professional conduct”.

SCHEDULE 8—AMENDMENTS RELATING TO MISCONDUCT—
continued

(c) Section 163 (3), (6)—

Before “professional misconduct” wherever occurring, insert “unsatisfactory professional conduct or”.

(d) Section 163 (3)—

5 Omit “misconduct” where secondly occurring, insert instead “conduct”.

(e) Section 163 (4)—

After “order” where firstly occurring, insert “(other than an order for the payment of compensation not exceeding \$2,000)”.

