

LEGAL PROFESSION BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Legal Practitioners (Amendment) Bill 1987;

Miscellaneous Acts (Legal Profession) Amendment Bill 1987.

The object of this Bill is to repeal the Legal Practitioners Act 1898 and replace it with a modern statute which, while again dealing with a large number of matters the subject of the Act to be repealed, provides for—

- (a) the reorganisation of the Barristers Admission Board and the Solicitors Admission Board;
- (b) a procedure to obtain an early decision as to whether particular conduct disclosed by a student-at-law, or an applicant for registration as a student-at-law, would have an adverse effect on an assessment of his or her good fame or character;
- (c) the introduction of annual practising certificates for barristers;
- (d) continuation of the system of mandatory further legal education for solicitors to be introduced by the cognate Legal Practitioners (Amendment) Bill 1987;
- (e) continuation of the Solicitors' Mutual Indemnity Fund to be established by that cognate Bill;
- (f) lay representation, at the direction of the Attorney General, on a committee of the Bar Council or the Law Society Council;
- (g) the constitution of a Legal Profession Advisory Council;

Legal Profession 1987

- (h) revision of the obligations of a solicitor in relation to money received by, or brought under the control of, the solicitor on behalf of another person; and
- (i) a new system of disciplinary proceedings against legal practitioners.

PART 1—PRELIMINARY

This Part contains general provisions relating to the whole of the proposed Act, being those providing for—

- (a) the short title of the proposed Act (clause 1);
- (b) the commencement of the proposed Act on a day to be appointed by the Governor-in-Council (clause 2); and
- (c) the definition of certain expressions for the purposes of the whole Act including a definition of “legal practitioner” as meaning the holder of a current practising certificate issued by the Bar Council or the Law Society Council (clause 3).

PART 2—BARRISTERS AND SOLICITORS

DIVISION 1—*Barristers*

This Division deals with the admission of persons as barristers and contains provisions—

- (a) for the admission of barristers by the Supreme Court (clause 4);
- (b) constituting the Barristers Admission Board (clauses 5 and 6 and Schedule 2);
- (c) enabling that Board to make rules for the registration of students-at-law and rules specifying the qualifications for admission as a barrister (clause 7);
- (d) authorising delegation of the examination of candidates for admission as a barrister (clause 8);
- (e) requiring the Supreme Court to be satisfied as to the good fame and character of a candidate for admission as a barrister (clause 9); and
- (f) enabling a solicitor of 5 years’ standing to be admitted as a barrister (clause 10).

DIVISION 2—*Solicitors*

This Division, in clauses 11–17, contains provisions in relation to solicitors the same as those contained in clauses 4–10 in relation to barristers and—

- (a) confers a right of audience in court on a solicitor (clause 18); and
- (b) specifies certain rights of the Crown Solicitor (clause 19).

Legal Profession 1987

DIVISION 3—*Consideration of character before admission*

This Division—

- (a) enables a student-at-law or an applicant for registration as a student-at-law to apply to the relevant Admission Board for a declaration that a particular matter will not have an adverse effect on an assessment of good fame and character (clause 20);
- (b) if such a declaration is refused—enables a further application to be made together with an application for admission as a barrister or solicitor (clause 21);
- (c) makes binding a favourable declaration unless the applicant has failed to make full disclosure (clause 22); and
- (d) provides for an appeal to the Supreme Court against a refusal to make a favourable declaration (clause 23).

DIVISION 4—*Queen's Counsel*

This Division makes provision for the appointment of Queen's Counsel (clause 24).

PART 3—PRACTISING CERTIFICATES

DIVISION 1—*General*

Since 1935, a solicitor desiring to practise as such has been required to hold a practising certificate. This Division continues the system and provides for its extension to a barrister desiring to practise as such.

The Division—

- (a) on and from a day to be decided, prohibits a barrister from practising as such without holding a practising certificate issued by the Bar Council (clause 25);
- (b) prohibits a solicitor from practising as such without holding a practising certificate issued by the Law Society Council (clause 26);
- (c) provides for the making of an application by a barrister for a practising certificate (clause 27);
- (d) provides for the making of an application by a solicitor for a practising certificate (clause 28);
- (e) requires an application for a practising certificate to be accompanied by the appropriate fee (clause 29);
- (f) requires a solicitor's application for a practising certificate to be accompanied by any contributions and levies the solicitor is required to pay (clause 30);
- (g) confers on a holder of the appropriate practising certificate a right to become, without further payment, a member of the Bar Association or the Law Society (clause 31);
- (h) specifies various forms in which practising certificates are to be issued (clauses 32 and 33);

Legal Profession 1987

- (i) provides 12 months' duration for a practising certificate or, if issued after 1 July, for the remainder of the period of 12 months commencing on 1 July (clause 34);
- (j) enables the Bar Council or the Law Society to refuse to issue, or to cancel or suspend, a practising certificate on various grounds (clause 35);
- (k) enables the Law Society to refuse to issue or to cancel or suspend, a practising certificate on grounds of infirmity, injury or illness or in the public interest (clause 36);
- (l) provides for an appeal to the Supreme Court against a refusal to issue, or a suspension or cancellation, of a practising certificate (clause 37); and
- (m) requires the Bar Council and the Law Society Council each to keep a register of the legal practitioners to whom it has issued practising certificates (clause 38).

DIVISION 2—*Solicitors' Mutual Indemnity Fund*

This Division, in clauses 39–48, continues the substance of the provisions of the Legal Practitioners Act 1898 that relate to the Solicitors' Mutual Indemnity Fund and are proposed to be inserted by the Legal Practitioners (Amendment) Bill 1987 that is cognate with this Bill.

PART 4—BAR ASSOCIATION AND LAW SOCIETY

DIVISION 1—*Bar Association*

This Division—

- (a) provides for reports by the Bar Council to the Attorney General in relation to committees of the Bar Council (clause 49);
- (b) enables the Attorney General, after consultation with the Bar Council, to give directions for lay representation on a committee of the Bar Council (clause 50); and
- (c) authorises the Bar Council to act in relation to alleged professional misconduct of a barrister and to appear before, and be heard by, the Supreme Court in relation to matters affecting barristers and the admission of barristers (clause 51).

DIVISION 2—*Law Society*

This Division, in clauses 52–54, contains provisions in relation to solicitors the same as those contained in clauses 49–51 in relation to barristers and—

- (a) contains provisions relating to an investigation of the affairs of a solicitor by an investigator appointed by the President or 2 members of the Law Society Council (clause 55); and
- (b) imposes secrecy obligations on an investigator (clause 56).

DIVISION 3—*Annual reports*

This Division requires the Bar Council and the Law Society Council each to report annually to the Attorney General on its activities under this Act and provides for the report to be laid before both Houses of Parliament (clause 57).

Legal Profession 1987

PART 5—LEGAL PROFESSION ADVISORY COUNCIL

Under this Part—

- (a) clause 58 and Schedule 3 constitute the Legal Profession Advisory Council consisting of 2 practising barristers, 3 practising solicitors and 4 lay members; and
- (b) clause 59 provides for the Advisory Council to keep the structure and functions of the legal profession under review and to make reports and recommendations to the Attorney General.

PART 6—TRUST ACCOUNTS

This Part contains provisions governing the manner in which a solicitor must deal with money that is received or controlled by the solicitor (whether or not through a nominee company or a close relative) on behalf of another person. By those provisions—

- (a) extended explanations are given for references in the Part to practising as a solicitor, an associate of a solicitor and the receipt of money by a solicitor (clause 60);
- (b) a solicitor is required, in general, to deal with another person's money in accordance with the instructions of that person or by paying it to the credit of a trust account (clause 61);
- (c) a solicitor is required to keep proper accounts relating to any such money (clause 62);
- (d) the regulations may provide for the auditing of a solicitor's records if mortgages arranged by the solicitor during a period of 12 months secured not less than \$500,000 or exceeded 50 in number (clause 63);
- (e) the existing scheme of depositing a proportion of a solicitor's trust funds with the Law Society is continued (clause 64);
- (f) a solicitor is enabled to obtain, from time to time as required, money deposited with the Law Society (clause 65);
- (g) the Law Society is required to keep accounts of the deposited money and have them audited (clause 66);
- (h) the Law Society is required to pay to a "Statutory Interest Account" interest on investment of the deposited money and to disburse it as specified (clause 67);
- (i) a solicitor is required to pay to the Treasurer any unclaimed money in a trust account (clause 68); and
- (j) a bank is excused from certain liabilities that it might otherwise incur, or have imputed to it, in relation to an account kept at the bank by a solicitor (clause 69).

Legal Profession 1987

PART 7—SOLICITORS' FIDELITY FUND

This Part, in clauses 70-90, continues the scheme at present in force for the maintenance of a fund from which compensation is payable for a pecuniary loss suffered as a result of a failure to account for money received by a solicitor. The scheme has, however, been extended to cover a failure to account for money entrusted to others on the advice of the solicitor.

PART 8—RECEIVERS

This Part, in clauses 91-114, continues the substance of the provisions of the Legal Practitioners Act 1898 that enable the Supreme Court to appoint a receiver of property controlled by the solicitor on behalf of another person.

The aim of appointing a receiver is to enable property to be accounted for if it is suspected that a solicitor will not do so or if a person is unable to obtain payment of money, or delivery of property, by a solicitor because the solicitor—

- (a) is mentally or physically infirm;
- (b) is subject to, or has applied to become subject to, the laws relating to bankruptcy, insolvency and arrangements with creditors;
- (c) is in prison;
- (d) has died;
- (e) has abandoned his or her practice;
- (f) has been struck off the roll of solicitors otherwise than at his or her own request;
or
- (g) has ceased to hold a practising certificate.

PART 9—UNQUALIFIED PRACTITIONERS

This Part, in clauses 115-122, continues the substance of the provisions of the Legal Practitioners Act 1898 that control the actions and employment of unqualified and disqualified persons in relation to legal matters. It includes amendments consequential upon the proposed introduction of practising certificates for barristers.

PART 10—PROFESSIONAL MISCONDUCT

DIVISION 1—*Preliminary*

This Division contains provisions—

- (a) defining certain expressions for the purposes of the proposed Part, in particular, the expressions "Board", "Panel" and "professional misconduct" (clause 123);
- (b) applying the proposed Part to certain persons against whom complaints have been made but who are no longer legal practitioners (clause 124); and
- (c) preserving the existing jurisdiction of the Supreme Court with respect to the discipline of barristers and solicitors (clause 125).

Legal Profession 1987

DIVISION 2—*Constitution of the Professional Conduct Review Panel, the Professional Standards Board and the Disciplinary Tribunal*

This Division contains provisions—

- (a) constituting the Professional Conduct Review Panel (clause 126 and Schedule 4);
- (b) constituting the Professional Standards Board (clause 127 and Schedule 5);
- (c) constituting the Disciplinary Tribunal (clause 128 and Schedule 6); and
- (d) enabling the Attorney General to make appointments in cases where nominations for appointments have not been duly made (clause 129).

DIVISION 3—*Complaints against legal practitioners*

This Division contains provisions—

- (a) providing for the making of complaints to the Councils against legal practitioners in respect of alleged professional misconduct (clause 130);
- (b) providing for the furnishing of further particulars and the verification of complaints and further particulars by statutory declaration (clause 131);
- (c) enabling a Council to dismiss a complaint without further investigation if further particulars of the complaint are not furnished, or the complaint or the further particulars are not verified, as required by the Council, or if the complaint is frivolous or vexatious (clause 132);
- (d) providing for the investigation of complaints by the Councils (clause 133);
- (e) requiring a Council to decide whether a complaint should be dismissed or referred to the Board or to the Tribunal (clause 134);
- (f) enabling a Council to make complaints directly to the Board and to the Tribunal (clause 135); and
- (g) enabling a Council, by resolution, to delegate to any of its committees the exercise of any or all of its functions under the proposed Division (clause 136).

DIVISION 4—*Review of Councils' decisions*

This Division contains provisions—

- (a) providing for the making of applications to the Panel for review of a Council's decision to dismiss a complaint (clause 137);
- (b) specifying the composition of the Panel in respect of reviews conducted by it (clause 138);
- (c) requiring the Panel to review decisions the subject of applications made to it (clause 139);
- (d) requiring the Panel to decide whether to uphold a Council's decision or to recommend that a matter be referred to the Board or to the Tribunal (clause 140); and
- (e) requiring the Attorney General to act on a recommendation referred to in clause 140 (clause 141).

Legal Profession 1987

DIVISION 5—*Minor professional misconduct*

This Division contains provisions—

- (a) specifying the composition of the Board in respect of hearings conducted by it (clause 142);
- (b) requiring the Board to hear complaints referred to it (clause 143);
- (c) specifying who shall be considered to be parties to a hearing conducted by the Board (clause 144);
- (d) requiring the Board's hearings to be conducted in the absence of the public (clause 145);
- (e) enabling the Board to summon witnesses to give evidence and to produce documents (clause 146);
- (f) enabling the Board to require persons to produce documents (clause 147);
- (g) enabling the Board to give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing (clause 148); and
- (h) enabling the Board to make certain orders in relation to legal practitioners whom it has found guilty of professional misconduct, including orders of a compensatory nature (clause 149).

DIVISION 6—*Review of the Board's decisions*

This Division contains provisions—

- (a) providing for the making of applications to the Tribunal for reviews of the Board's determinations with respect to complaints (clause 150);
- (b) specifying the composition of the Tribunal in respect of reviews conducted by it (clause 151);
- (c) specifying who shall be considered to be parties to a review conducted by the Tribunal (clause 152);
- (d) requiring the Tribunal to review determinations the subject of applications made to it (clause 153);
- (e) requiring the Tribunal to decide whether to uphold the Board's determination with respect to a complaint or to make some other order with respect to the complaint (clause 154); and
- (f) providing the course that the Tribunal must follow if it is of the opinion that a complaint involves a question of serious professional misconduct (clause 155).

DIVISION 7—*Serious professional misconduct*

This Division contains provisions—

- (a) specifying the composition of the Tribunal in respect of hearings conducted by it (clause 156);
- (b) requiring the Tribunal to hear complaints referred to it (clause 157);

Legal Profession 1987

- (c) specifying who shall be considered to be parties to a hearing conducted by the Tribunal (clause 158);
- (d) requiring the Tribunal's hearings to be conducted in the presence of the public unless the interests of justice require a hearing to be conducted in the absence of the public (clause 159);
- (e) enabling the Tribunal to summon witnesses to give evidence and to produce documents (clause 160);
- (f) enabling the Tribunal to require persons to produce documents (clause 161);
- (g) enabling the Tribunal to give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing (clause 162);
- (h) enabling the Tribunal to make certain orders in relation to legal practitioners whom it has found guilty of professional misconduct, including orders of a compensatory nature (clause 163); and
- (i) providing for the making of appeals to the Supreme Court against the Tribunal's determination of a complaint (clause 164).

DIVISION 8—*Miscellaneous*

This Division contains provisions—

- (a) providing that an order of the Board or the Tribunal shall be enforceable in the same way as a judgment or order of the Supreme Court (clause 165);
- (b) providing for the authentication of the Board's and the Tribunal's documents (clause 166);
- (c) requiring payment to the Law Society of fines imposed as referred to in clauses 149 and 163 (clause 167);
- (d) providing for the funding of the Panel, the Board and the Tribunal (clause 168);
- (e) providing for the making of rules of practice and procedure for the Board (clause 169);
- (f) providing for the making of rules of practice and procedure for the Tribunal (clause 170);
- (g) requiring the submission to the Attorney General of reports by the Councils, the Panel and the Board (clause 171); and
- (h) protecting the members of the Councils, the Panel, the Board and the Tribunal from personal liability in relation to matters and things done for the purpose of executing the proposed Part (clause 172).

Legal Profession 1987

PART 11—SOLICITORS' REMUNERATION

DIVISION 1—*Preliminary*

This Division consists of a provision that defines certain expressions for the purposes of the proposed Part, in particular, "bill of costs", "Board", "client", "contentious business", "non-contentious business", "non-contentious business agreement" and "solicitor" (clause 173).

DIVISION 2—*The Legal Fees and Costs Board*

This Division contains provisions—

- (a) providing for the constitution of the Legal Fees and Costs Board (clause 174);
- (b) providing for the membership and procedure of the Board (clause 175 and Schedule 7);
- (c) enabling the Board to make use of the staff or facilities of a government department, administrative office or public authority (clause 176);
- (d) enabling the Board to investigate and make reports with respect to bills of costs, the taxation or other ascertainment of costs and any other aspect of the remuneration of solicitors (clause 177); and
- (e) providing that formal proof is not required of certain matters concerning the constitution and procedure of the Board (clause 178).

DIVISION 3—*Determination of solicitors' remuneration*

This Division contains provisions—

- (a) enabling the Board to make determinations regulating the remuneration of solicitors for non-contentious business (clause 179);
- (b) enabling the Board to make determinations fixing the maximum amount of costs payable in respect of contentious business transacted in connection with civil proceedings before the Supreme Court, the District Court or a Local Court (clause 180);
- (c) specifying the principles that may be employed by the Board in making a determination (clause 181);
- (d) enabling a determination to authorise solicitors to charge interest on the unpaid costs of non-contentious business and to fix the maximum rate at which any such interest may be charged (clause 182);
- (e) requiring the Board to conduct an inquiry before making a determination (clause 183);
- (f) requiring the Board to have regard to the quantum and principles determined in State Wage Cases in making a determination (clause 184);
- (g) requiring the Board to make a report to the Attorney General of its determinations and requiring such a report to be published in the Gazette (clause 185);
- (h) providing for the commencement of determinations (clause 186);

Legal Profession 1987

- (i) requiring the reports made in connection with determinations to be tabled in each House of Parliament (clause 187);
- (j) enabling either House of Parliament to disallow a determination at any time before the expiration of 15 sitting days after the tabling of the relevant report (clause 188);
- (k) requiring judicial notice to be taken of determinations (clause 189);
- (l) providing for the presumption, in legal proceedings, of procedural regularity in the making of determinations (clause 190);
- (m) enabling determinations to be amended and revoked (clause 191);
- (n) requiring the Board to review each determination every 12 months (clause 192);
- (o) providing that the taxation of bills of costs under the proposed Division 5, together with any other aspect of the remuneration of solicitors, in respect of non-contentious business shall be regulated by determinations (clause 193); and
- (p) providing that the taxation of bills of costs under the proposed Division 5, together with any other taxation or other ascertainment of costs, in respect of contentious business transacted in connection with civil proceedings before the Supreme Court, the District Court or a Local Court shall be regulated by determinations (clause 194).

DIVISION 4—Non-contentious business agreements

This Division contains provisions—

- (a) enabling solicitors and their clients to make non-contentious business agreements (clause 195);
- (b) specifying the formal requirements of a non-contentious business agreement (clause 196); and
- (c) providing for the enforcement and setting aside of a non-contentious business agreement (clause 197).

DIVISION 5—Bills of costs

This Division contains provisions—

- (a) preventing solicitors from commencing or maintaining proceedings against a person for the recovery of costs until one month has passed since the person was given a bill of costs (clause 198);
- (b) providing for the making of applications for the taxation of bills of costs (clause 199);
- (c) enabling the Supreme Court to make orders referring bills of costs for taxation (clause 200);
- (d) ensuring that an application for taxation of a bill of costs operates to prevent proceedings for the recovery of those costs from being commenced or maintained until after the bill has been taxed (clause 201);

Legal Profession 1987

- (e) enabling the Supreme Court to order that a person be given a copy of a bill of costs if the person has applied, or is entitled to apply, for taxation of the bill (clause 202);
- (f) providing that bills of costs shall be taxed in accordance with the rules of the Supreme Court (clause 203);
- (g) enabling the Supreme Court to make orders with respect to the disbursement of money brought into court in connection with the taxation of a bill of costs (clause 204);
- (h) restricting the circumstances under which a bill of costs can be retaxed (clause 205); and
- (i) providing for the effect of a taxing officer's certificate as to the amount to be paid in respect of a bill of costs and for the recovery of the amount so certified (clause 206).

DIVISION 6—*Miscellaneous*

This Division contains provisions—

- (a) enabling a solicitor to take security from a client for business yet to be transacted by the solicitor (clause 207);
- (b) enabling the Supreme Court to order a solicitor to deliver up a client's documents that are in the solicitor's possession (clause 208); and
- (c) enabling a solicitor who is or becomes a mortgagee to recover mortgagee's costs from the mortgagor (clause 209).

PART 12—MISCELLANEOUS

Under this Part—

- (a) the imposition of a penalty for a contravention of the proposed Act does not affect the power of the Supreme Court to punish a contempt of the Court (clause 210);
- (b) bodies and persons exercising functions for the purposes of the proposed Act are exonerated from liability (clause 211);
- (c) offences are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone (clause 212);
- (d) proof of certain matters is dispensed with unless contrary evidence is given (clause 213);
- (e) effect is given to Schedule 1 which lists the repeals effected by the proposed Act (clause 214);
- (f) effect is given to the savings and transitional provisions specified in Schedule 8 (clause 215); and
- (g) the making of regulations is authorised (clause 216).

Schedule 1 specifies the Acts to be repealed by the proposed Act.

Schedule 2 provides for the procedure at meetings of the Admission Boards.

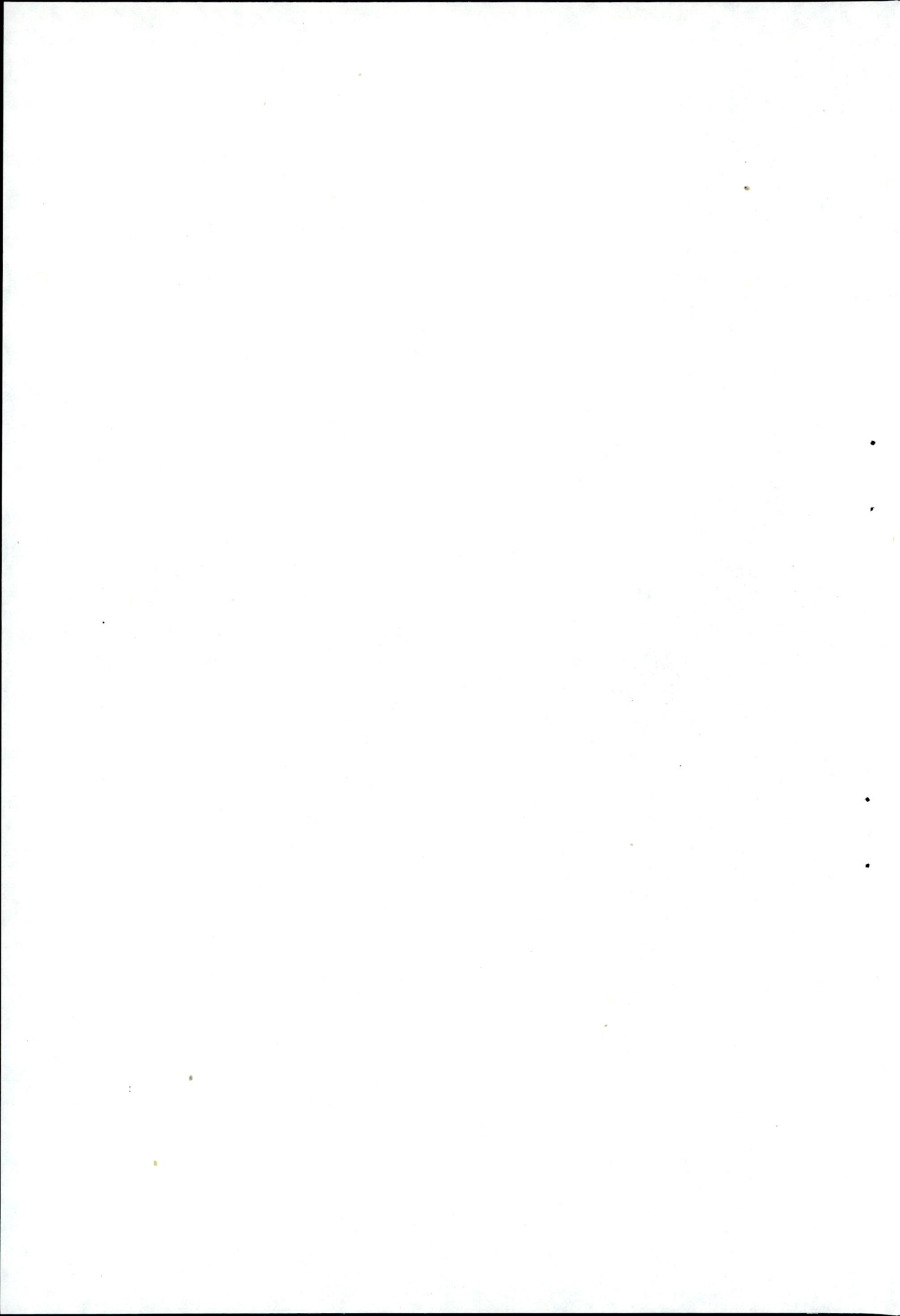
Legal Profession 1987

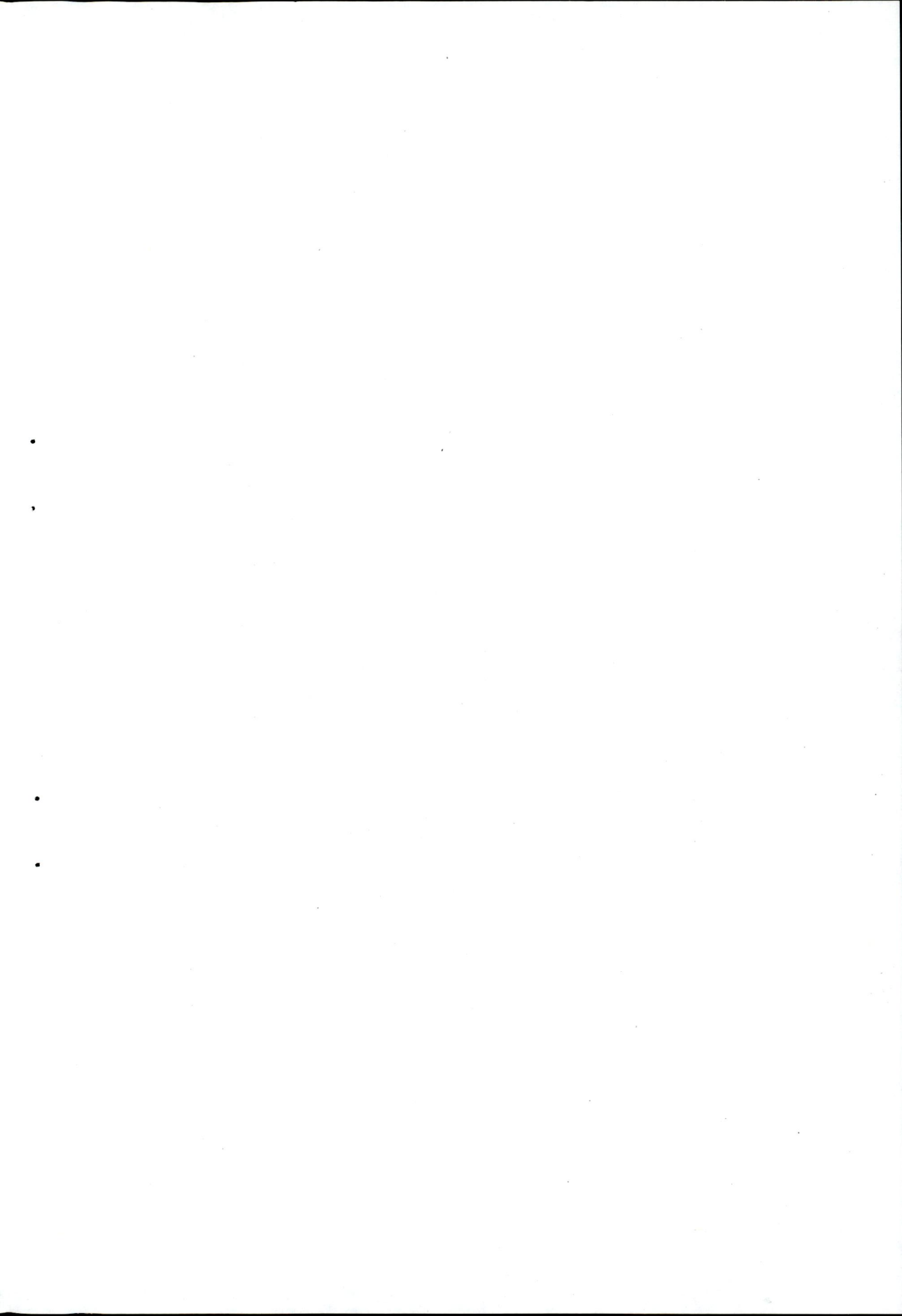
Schedule 3 contains the formal provisions relating to the Advisory Council and its meetings.

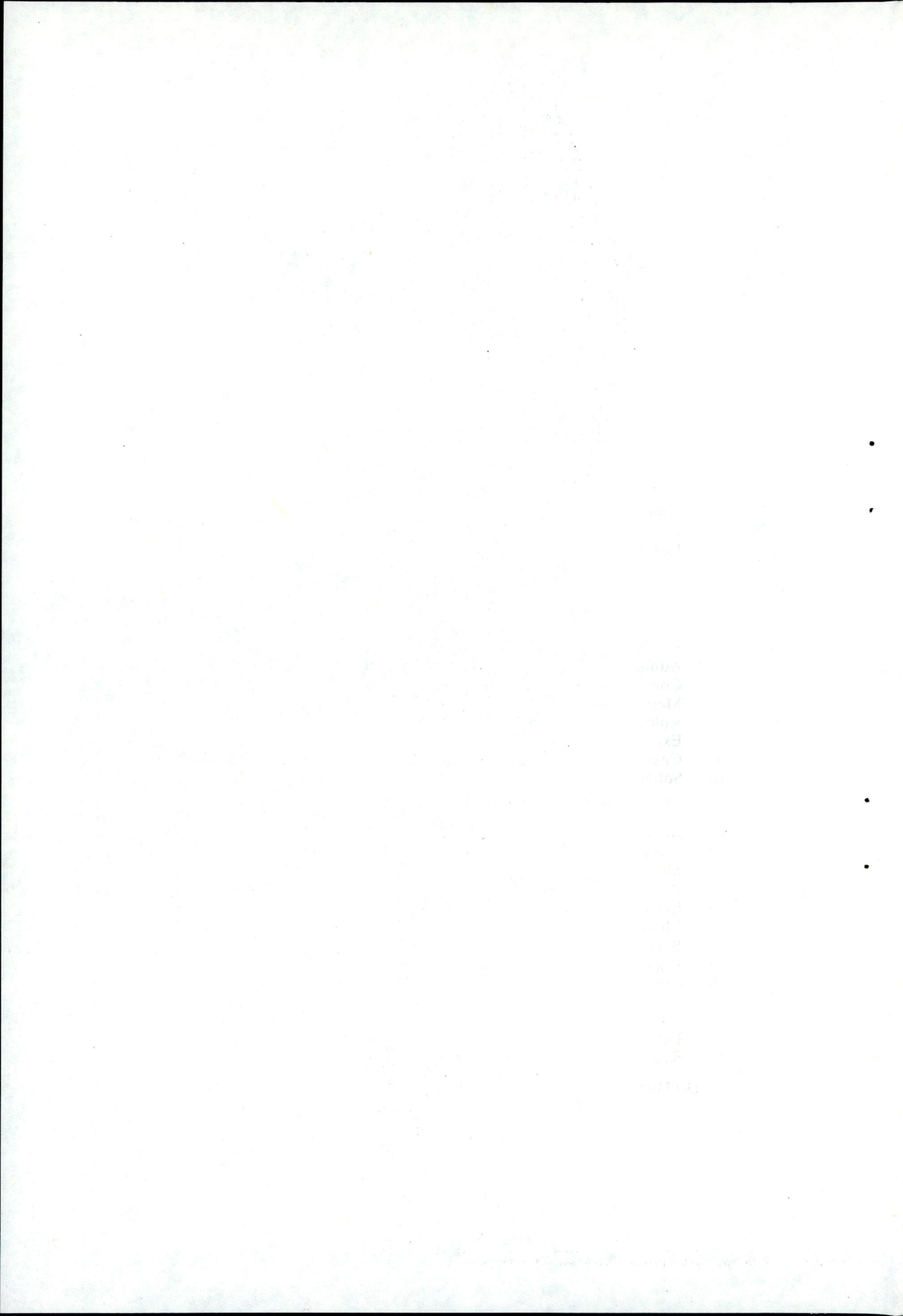
Schedules 4, 5 and 6 contain the formal provisions relating to the Professional Conduct Review Panel, the Professional Standards Board and the Disciplinary Tribunal.

Schedule 7 contains the formal provisions relating to the members of the Legal Fees and Costs Board and the procedure at its meetings.

Schedule 8 contains savings and transitional provisions.







LEGAL PROFESSION BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2—BARRISTERS AND SOLICITORS

DIVISION 1—*Barristers*

4. Admission of barristers
5. Constitution of Barristers Admission Board
6. Membership of Barristers Admission Board
7. Rules for registration and admission
8. Examiners
9. Character of candidates
10. Solicitors of 5 years' standing

DIVISION 2—*Solicitors*

11. Admission of solicitors
12. Constitution of Solicitors Admission Board
13. Membership of Solicitors Admission Board
14. Rules for registration and admission
15. Examiners
16. Character of candidates
17. Barristers of 5 years' standing
18. Right of audience
19. Crown Solicitor

DIVISION 3—*Consideration of character before admission*

20. Early consideration of character
21. Refusal of application for declaration on character

Legal Profession 1987

- 22. Binding effect of declaration
- 23. Appeals

DIVISION 4—*Queen's Counsel*

- 24. Queen's Counsel

PART 3—PRACTISING CERTIFICATES

DIVISION 1—*General*

- 25. Practising as barrister
- 26. Practising as solicitor
- 27. Application by barrister for practising certificate
- 28. Application by solicitor for practising certificate
- 29. Refusal of application by barrister or solicitor for practising certificate
- 30. Refusal of application by solicitor for practising certificate
- 31. Membership of Bar Association or Law Society
- 32. Form of practising certificate issued to a barrister
- 33. Form of practising certificate issued to a solicitor
- 34. Duration of practising certificate
- 35. Refusal, suspension or cancellation of practising certificate
- 36. Infirmary of solicitor
- 37. Appeal against refusal or suspension of practising certificate
- 38. Registers of practising barristers and solicitors

DIVISION 2—*Solicitors' Mutual Indemnity Fund*

- 39. Interpretation
- 40. Solicitors' Mutual Indemnity Fund
- 41. Solicitor to be insured etc.
- 42. Separate bank account
- 43. Investment of the Indemnity Fund
- 44. Payments from the Indemnity Fund
- 45. Contributions
- 46. Levies
- 47. Failure to pay contribution or levy
- 48. Application of Division to other persons

PART 4—BAR ASSOCIATION AND LAW SOCIETY

DIVISION 1—*Bar Association*

- 49. Report on committees
- 50. Lay representation on committees
- 51. Functions of Bar Council

DIVISION 2—*Law Society*

- 52. Report on committees
- 53. Lay representation on committees
- 54. Functions of Law Society Council

Legal Profession 1987

- 55. Investigation of affairs of solicitor
- 56. Secrecy

DIVISION 3—*Annual reports*

- 57. Council to submit annual report

PART 5—LEGAL PROFESSION ADVISORY COUNCIL

- 58. Constitution of the Advisory Council
- 59. Functions of the Advisory Council

PART 6—TRUST ACCOUNTS

- 60. Interpretation
- 61. Money received by solicitor on behalf of another
- 62. Keeping of accounts
- 63. Audits
- 64. Deposit of trust funds with Law Society
- 65. Repayment of deposit with Law Society
- 66. Accounts to be kept by Law Society
- 67. Statutory Interest Account
- 68. Money not claimed from solicitor
- 69. Relief for bankers

PART 7—SOLICITORS' FIDELITY FUND

DIVISION 1—*General*

- 70. The Solicitors' Fidelity Fund
- 71. Separate bank account
- 72. Investment of the Fidelity Fund
- 73. Payments from the Fidelity Fund
- 74. Management Committee
- 75. Audit

DIVISION 2—*Contributions and levies*

- 76. Contributions
- 77. Levies
- 78. Failure to pay contribution or levy

DIVISION 3—*Claims*

- 79. Interpretation
- 80. Claims against the Fidelity Fund
- 81. Reimbursement of solicitors and others
- 82. Claim must be pursued
- 83. Interest payable even if not claimed
- 84. Costs where claim partly or wholly disallowed
- 85. Avoidance of double compensation
- 86. Final date for making claim
- 87. Ceiling on payments from the Fidelity Fund
- 88. Proceedings against the Law Society

Legal Profession 1987

- 89. Subrogation
- 90. Sufficiency of the Fidelity Fund

PART 8—RECEIVERS

- 91. Interpretation
- 92. Supreme Court may appoint receiver
- 93. Court to be closed
- 94. Order to be served
- 95. Receiver may take possession of property
- 96. Information on receivable property
- 97. Stop order on bank account
- 98. Recovery of compensation for disposal of receivable property
- 99. Improper dealing with property
- 100. Receiver may deal with property
- 101. Other powers of receiver
- 102. Application for directions
- 103. Notice to claim receivable property
- 104. Lien for costs on receivable property
- 105. Examination by receiver
- 106. Termination of appointment of receiver
- 107. Property not dealt with by receiver
- 108. Investment of money by receiver
- 109. Receiver may be reimbursed for damages
- 110. Payment of expenses of receivership
- 111. Supreme Court may review expenses of receivership
- 112. Receivable property not to be attached
- 113. Supreme Court may give general directions
- 114. Receiver to report to the Supreme Court

PART 9—UNQUALIFIED PRACTITIONERS

- 115. Person acting as a barrister or solicitor
- 116. Unlawful representations
- 117. Limitation on general legal work and probate work
- 118. Offence by corporation or officers
- 119. Receipts not to be shared by solicitor and unqualified person
- 120. Control of employment of certain clerks
- 121. Employment of disqualified or convicted persons
- 122. Consent of Attorney General to prosecution

PART 10—PROFESSIONAL MISCONDUCT

DIVISION 1—*Preliminary*

- 123. Interpretation
- 124. Application to ex-practitioners
- 125. Jurisdiction of the Supreme Court not affected

DIVISION 2—*Constitution of the Professional Conduct Review Panel, the Professional Standards Board and the Disciplinary Tribunal*

- 126. The Professional Conduct Review Panel
- 127. The Professional Standards Board

Legal Profession 1987

- 128. The Disciplinary Tribunal
- 129. Absence of nominations

DIVISION 3—*Complaints against legal practitioners*

- 130. Complaints
- 131. Further particulars etc.
- 132. Summary dismissal of complaints
- 133. Investigation of complaints
- 134. Decisions of Councils
- 135. Complaints made by Councils
- 136. Delegation

DIVISION 4—*Review of Councils' decisions*

- 137. Applications for reviews
- 138. Composition of the Panel
- 139. Reviews
- 140. Recommendations of the Panel
- 141. Determinations by the Attorney General

DIVISION 5—*Minor professional misconduct*

- 142. Composition of the Board
- 143. Hearings
- 144. Parties
- 145. Hearings to be conducted in camera
- 146. Power to summon witnesses and take evidence
- 147. Power to obtain documents
- 148. Release of information
- 149. Determinations of the Board

DIVISION 6—*Review of the Board's decisions*

- 150. Applications for reviews
- 151. Composition of the Tribunal
- 152. Parties
- 153. Reviews
- 154. Decisions of the Tribunal
- 155. Serious professional misconduct

DIVISION 7—*Serious professional misconduct*

- 156. Composition of the Tribunal
- 157. Hearings
- 158. Parties
- 159. Hearings to be conducted in public
- 160. Power to summon witnesses and take evidence
- 161. Power to obtain documents
- 162. Release of information
- 163. Determinations of the Tribunal
- 164. Appeals from orders of the Tribunal

DIVISION 8—*Miscellaneous*

- 165. Enforcement of orders
- 166. Authentication of documents

Legal Profession 1987

- 167. Payment of fines and costs
- 168. Costs of administering Part
- 169. Rules of procedure for the Board
- 170. Rules of procedure for the Tribunal
- 171. Reports
- 172. Liability

PART 11—SOLICITORS' REMUNERATION

DIVISION 1—*Preliminary*

- 173. Interpretation

DIVISION 2—*The Legal Fees and Costs Board*

- 174. Constitution of the Board
- 175. Membership of the Board
- 176. Staff of the Board
- 177. Reports etc. by the Board on matters concerning the remuneration of solicitors
- 178. Proof of certain matters not required

DIVISION 3—*Determination of solicitors' remuneration*

- 179. Non-contentious business
- 180. Contentious business
- 181. Principles of determination
- 182. Interest
- 183. Inquiries by the Board
- 184. Application of quantum and principles determined in State Wage Cases
- 185. Reports of the Board's determinations
- 186. Commencement of determinations
- 187. Reports to be tabled
- 188. Disallowance of determinations
- 189. Judicial notice of determinations
- 190. Presumption of validity of determinations
- 191. Amendment and revocation of determinations
- 192. Periodic review of determinations
- 193. Effect of determinations: non-contentious business
- 194. Effect of determinations: contentious business

DIVISION 4—*Non-contentious business agreements*

- 195. Making of agreements
- 196. Formal requirements of agreements
- 197. Enforcement of agreements

DIVISION 5—*Bills of costs*

- 198. Delivery of signed bill of costs before action
- 199. Applications for taxation of bills of costs
- 200. Orders referring bills of costs for taxation
- 201. Stay of action pending taxation of bills of costs
- 202. Delivery of bills of costs to third parties
- 203. Taxation of bills of costs

Legal Profession 1987

- 204. Disbursement of money brought into court
- 205. No relaxation except under special circumstances
- 206. Effect of taxing officer's certificate

DIVISION 6—*Miscellaneous*

- 207. Security for costs
- 208. Supreme Court may order delivery up of documents etc.
- 209. Remuneration of a solicitor who is a mortgagee

PART 12—MISCELLANEOUS

- 210. Contempt of the Supreme Court
- 211. Protection from liability
- 212. Offences
- 213. Proof of certain matters not required
- 214. Repeals
- 215. Savings and transitional provisions
- 216. Regulations

SCHEDULE 1—REPEALS

SCHEDULE 2—THE ADMISSION BOARDS

SCHEDULE 3—THE LEGAL PROFESSION ADVISORY COUNCIL

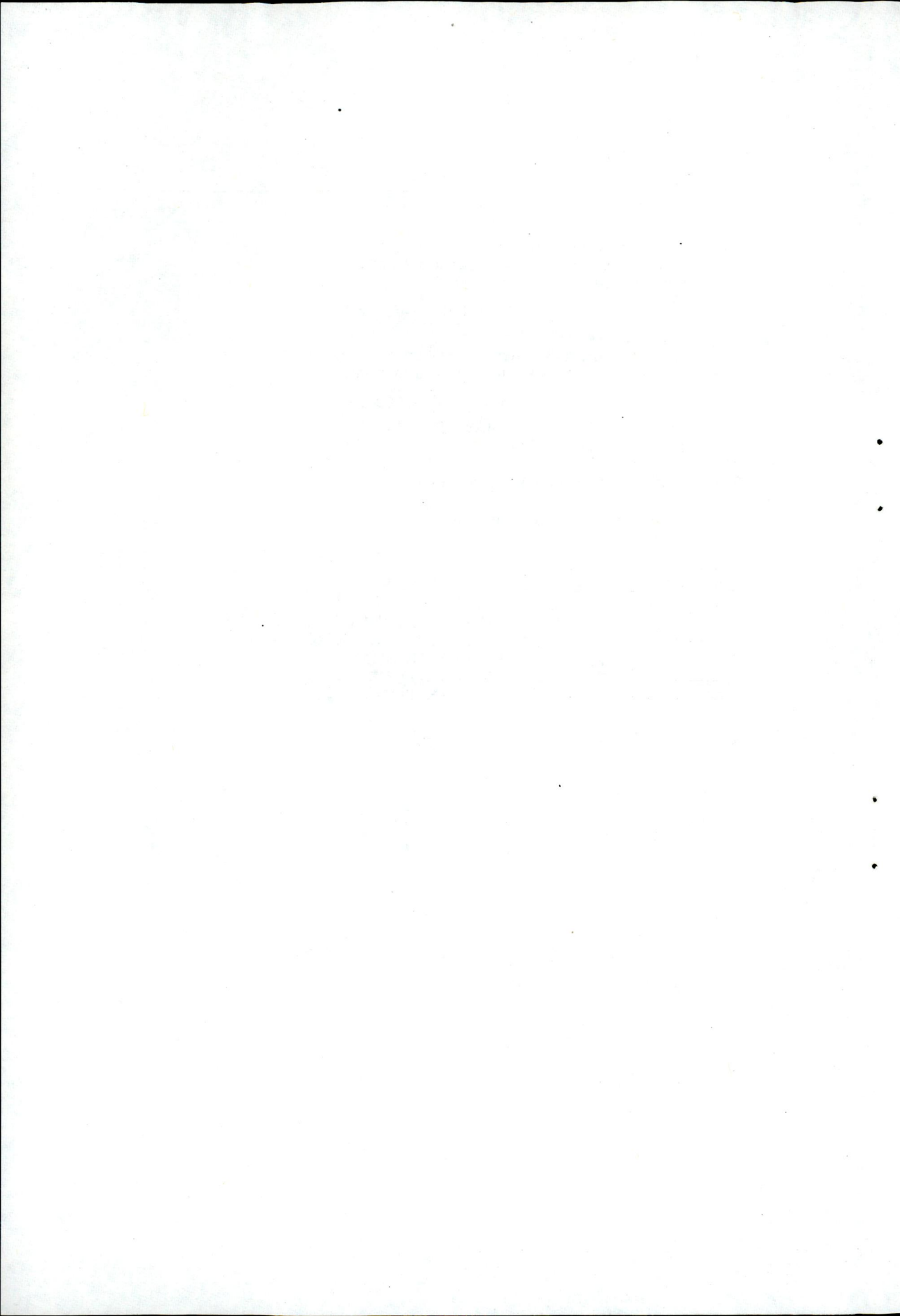
SCHEDULE 4—THE PROFESSIONAL CONDUCT REVIEW PANEL

SCHEDULE 5—THE PROFESSIONAL STANDARDS BOARD

SCHEDULE 6—THE DISCIPLINARY TRIBUNAL

SCHEDULE 7—THE LEGAL FEES AND COSTS BOARD

SCHEDULE 8—SAVINGS AND TRANSITIONAL PROVISIONS



LEGAL PROFESSION BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to regulate the admission and practice of barristers and solicitors;
to repeal the Legal Practitioners Act 1898; and for other purposes.

See also Legal Practitioners (Amendment) Bill 1987; Miscellaneous Acts (Legal Profession) Amendment Bill 1987.

Legal Profession 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the "Legal Profession Act 1987".

Commencement

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

15 **Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"accountant" means an accountant registered under the Public Accountants Registration Act 1945;

- 20 "Admission Board" means the Barristers Admission Board or the Solicitors Admission Board;

"Advisory Council" means the Legal Profession Advisory Council constituted under Part 5;

"bank" means—

- 25 (a) a bank constituted by a law of the State or of the Commonwealth or another State; or

(b) a bank within the meaning of the Banking Act 1959 of the Commonwealth;

"Bar Association" means the New South Wales Bar Association;

- 30 "Bar Council" means the Council of the Bar Association;

"barrister" means a person enrolled in the Supreme Court as a barrister;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“Council” means the Bar Council or the Law Society Council;

“Fidelity Fund” means the Solicitors’ Fidelity Fund established and maintained under Part 7;

5 “insurer” means a person (whether or not a corporation) who or which carries on insurance business in New South Wales or elsewhere;

“Law Society” means the Law Society of New South Wales;

“Law Society Council” means the Council of the Law Society;

10 “legal practitioner” means the holder of a current practising certificate issued under Part 3 by the Bar Council or the Law Society Council;

“money” includes an instrument enabling a bank to credit or debit an amount of money to an account with the bank;

“regulations” means regulations made under this Act;

“solicitor” means a person enrolled in the Supreme Court as a solicitor;

15 “Statutory Interest Account” means the Statutory Interest Account maintained by the Law Society under Part 6;

“Supreme Court Charter” means the Charter dated 13 October 1823 under the Act 4 Geo. IV c. 96 establishing Courts of Justice in New South Wales;

20 “Tribunal” means the Disciplinary Tribunal constituted under Part 10;

“unrestricted practising certificate” means a practising certificate that is not subject to a condition.

(2) In this Act—

25 (a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

PART 2
BARRISTERS AND SOLICITORS
DIVISION 1—*Barristers*

Admission of barristers

5 **4. (1)** The Supreme Court may admit persons as barristers, whether or not as provided by subsection (2).

(2) The Supreme Court shall, on any day appointed by the Supreme Court for the purpose, hear and determine any application made on that day for the admission as a barrister of a person approved by the Barristers
10 Admission Board as a suitable candidate for admission.

(3) A barrister is an officer of the Supreme Court.

(4) The Supreme Court Charter is revoked in New South Wales in so far as it relates to the admission of Barristers and Advocates.

Constitution of Barristers Admission Board

15 **5. (1)** There is constituted by this Act a board with the name "Barristers Admission Board".

(2) The Board—

 (a) has and may exercise the functions conferred or imposed on it by or under this or any other Act; and

20 (b) does not, for any purpose, represent the Crown.

Membership of Barristers Admission Board

6. **(1)** The Barristers Admission Board shall consist of 6 members.

(2) Of the members—

25 (a) 3 shall be Judges of the Supreme Court for the time being nominated by the Chief Justice;

 (b) 1 shall be the Attorney General or a person for the time being nominated by the Attorney General; and

 (c) 2 shall be practising barristers for the time being nominated by the Bar Council.

30 **(3)** One of the member Judges shall be nominated by the Chief Justice to preside at meetings of the Board.

(4) Schedule 2 has effect with respect to the Board.

Rules for registration and admission

7. (1) The Barristers Admission Board may make rules for or with respect to—
- 5 (a) the qualifications for registration, and registration, as a student-at-law;
 - (b) the qualifications for admission as a barrister;
 - (c) without limiting paragraphs (a) and (b), the examination in such branches of knowledge as the Board thinks fit of candidates for admission as a student-at-law or barrister;
 - 10 (d) the establishment and conduct of boards or other bodies with functions concerning—
 - (i) the examination of candidates for admission as a barrister; and
 - (ii) the approval of a properly qualified person to be admitted as a barrister; and
 - 15 (e) any other matters relating to the exercise of its functions.
- (2) In exercising its functions under this section, the Board may act jointly with the Solicitors Admission Board concerning the establishment and conduct of boards or other bodies having among their functions the examination of candidates for admission as a barrister or solicitor.
- 20 (3) Rules made under this section do not limit the powers of the Supreme Court to admit any person as a barrister.
- (4) The provisions of sections 34 (II), 41 (I), (II) and (III) and 42 (I) of the Interpretation Act 1897 apply to and in respect of a rule made under subsection (1) in the same way as they apply to and in respect of a regulation
25 referred to in those provisions.

Examiners

8. The Barristers Admission Board may delegate the examination of candidates for admission as a barrister to such persons as it considers competent to examine the candidates.

30 Character of candidates

9. A candidate, however qualified in other respects, shall not be admitted as a barrister unless the Supreme Court is satisfied that the candidate is of good fame and character.

Solicitors of 5 years' standing

10. (1) A solicitor of 5 years' standing from the date of admission in New South Wales, upon having his or her name on his or her own application removed from the Roll of Solicitors in the Supreme Court, is
5 entitled, upon compliance with any conditions imposed under subsection (2), to be admitted as a barrister.

(2) The Barristers Admission Board may withhold its approval of a candidate for admission under this section pending compliance with any conditions imposed by the Board in relation to the candidate.

10

DIVISION 2—Solicitors**Admission of solicitors**

11. (1) The Supreme Court may admit persons as solicitors, whether or not as provided by subsection (2).

(2) The Supreme Court shall, on any day appointed by the Supreme
15 Court for the purpose, hear and determine any application made on that day for the admission as a solicitor of a person approved by the Solicitors Admission Board as a suitable candidate for admission.

(3) A solicitor is an officer of the Supreme Court.

(4) The Supreme Court Charter is revoked in New South Wales in so far
20 as it relates to the admission of Proctors, Solicitors and Attorneys.

Constitution of Solicitors Admission Board

12. (1) There is constituted by this Act a board with the name "Solicitors Admission Board".

(2) The Board—

25 (a) has and may exercise the functions conferred or imposed on it by or under this or any other Act; and

(b) does not, for any purpose, represent the Crown.

Membership of Solicitors Admission Board

13. (1) The Solicitors Admission Board shall consist of 6 members.

30 (2) Of the members—

(a) 3 shall be Judges of the Supreme Court nominated by the Chief Justice;

Legal Profession 1987

- (b) 1 shall be the Attorney General or a person nominated by the Attorney General; and
- (c) 2 shall be practising solicitors for the time being nominated by the Law Society Council.
- 5 (3) One of the member Judges shall be nominated by the Chief Justice to preside at meetings of the Board.
- (4) Schedule 2 has effect with respect to the Board.

Rules for registration and admission

- 10 14. (1) The Solicitors Admission Board may make rules for or with respect to—
- (a) the qualifications for registration, and registration, as a student-at-law;
- (b) the qualifications for admission as a solicitor;
- 15 (c) without limiting paragraphs (a) and (b), the examination in such branches of knowledge as the Board thinks fit of candidates for admission as a student-at-law or solicitor;
- (d) the establishment and conduct of boards or other bodies with functions concerning—
- 20 (i) the examination of candidates for admission as a solicitor; and
- (ii) the approval of a properly qualified person to be admitted as a solicitor; and
- (e) any other matters relating to the exercise of its functions.
- (2) In exercising its powers under this section, the Board may act jointly with the Barristers Admission Board concerning the establishment and 25 conduct of boards or other bodies having among their functions the examination of candidates for admission as a barrister or solicitor.
- (3) Rules made under this section do not limit the powers of the Supreme Court to admit any person as a solicitor.
- 30 (4) The provisions of sections 34 (II), 41 (I), (II) and (III) and 42 (I) of the Interpretation Act 1897 apply to and in respect of a rule made under this section in the same way as they apply to and in respect of a regulation referred to in those provisions.

Examiners

15. The Solicitors Admission Board may delegate the examination of candidates for admission as a solicitor to such persons as it considers competent to examine the candidates.

5 Character of candidates

16. A candidate, however qualified in other respects, shall not be admitted as a solicitor unless the Supreme Court is satisfied that the candidate is of good fame and character.

Barristers of 5 years' standing

10 17. (1) A barrister of 5 years' standing from the date of admission in New South Wales, upon having his or her name on his or her own application removed from the Roll of Barristers in the Supreme Court, is entitled, upon compliance with any conditions imposed under subsection (2), to be admitted as a solicitor.

15 (2) The Solicitors Admission Board may withhold its approval of a candidate for admission under this section pending compliance with any conditions imposed by the Board in relation to the candidate.

Right of audience

20 18. A solicitor who holds a current practising certificate may appear, and has the right of audience, in any court in New South Wales in a matter or proceeding in which the solicitor is instructed to act by or on behalf of any person.

Crown Solicitor

25 19. (1) In this section, a reference to a State or a Territory of the Commonwealth includes a reference to—

- (a) the Crown in right of the State or Territory; and
- (b) the Government of the State or Territory.

(2) The Crown Solicitor may, in his or her official capacity, act as solicitor for—

- 30 (a) the State of New South Wales;
- (b) a person suing or being sued on behalf of the State of New South Wales;

-
- (c) a Minister of the Crown in his or her official capacity as such a Minister;
- (d) a body established by an Act or other law of New South Wales;
- (e) an officer or employee of—
- 5 (i) the Public Service or any other service of the State of New South Wales; or
- (ii) a body established by an Act or other law of New South Wales;
- (f) a person holding office—
- (i) under an Act or other law of New South Wales; or
- 10 (ii) by reason of the person's appointment to that office by the Governor or a Minister of the Crown; or
- (g) with the approval of the Attorney General—any other person or body.
- (3) The Crown Solicitor may act under subsection (2)—
- 15 (a) with or without charge; or
- (b) for a party in a matter that is not the subject of litigation, even if also acting under that subsection for another party in the matter.
- (4) The Crown Solicitor may, in his or her official capacity, act as agent for—
- 20 (a) another State;
- (b) a Territory of the Commonwealth; or
- (c) at the request of another State or of such a Territory—an instrumentality of, or a person in the service of, that State or Territory.

25 DIVISION 3—*Consideration of character before admission*

Early consideration of character

20. (1) A person may—
- (a) on applying for registration as a student-at-law; or
- (b) after being registered as a student-at-law,

Legal Profession 1987

apply to the registering Admission Board for a declaration that matters disclosed in the application will not, without more, adversely affect an assessment by the Admission Board of his or her good fame or character.

(2) A decision on an application to an Admission Board under this section shall be made by a joint meeting of both Admission Boards.

(3) A copy of an application to an Admission Board under this section shall be served by the applicant on the Bar Council and the Law Society Council in accordance with the rules of the Admission Board.

(4) The Bar Council and the Law Society Council are each entitled to be represented, and to be heard, in relation to an application made and considered under this section.

Refusal of application for declaration on character

21. (1) If—

- (a) a declaration sought by a person under section 20 is refused; and
- (b) the person later lodges with an Admission Board an application for admission as a barrister or solicitor,

the application may be accompanied by a further application for the declaration previously sought.

(2) The provisions of section 20 (2), (3) and (4) apply to an application under this section.

Binding effect of declaration

22. A declaration made under section 20 or 21, or an order or declaration of the Supreme Court under section 23, is binding on both Admission Boards unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought on the application or appeal.

Appeals

23. (1) If a declaration sought under section 20 or 21 is refused, the applicant may appeal to the Supreme Court against refusal of the declaration.

(2) If a declaration sought under section 20 or 21 is made, a Council may appeal to the Supreme Court against the making of the declaration.

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

 DIVISION 4—*Queen's Counsel*
Queen's Counsel

24. (1) Nothing in this Act affects any law or practice under which the Governor, acting on the recommendation of the Attorney General, may
5 appoint Queen's Counsel.

(2) No law or practice prevents a person who was Queen's Counsel immediately before admission as a solicitor from being eligible—

(a) to be Queen's Counsel at the time of that admission; or

(b) to be, or to be appointed as, Queen's Counsel while a solicitor.

10 (3) A reference in this section to Queen's Counsel extends to King's Counsel where appropriate.

 PART 3

PRACTISING CERTIFICATES

DIVISION 1—*General*15 **Practising as barrister**

25. (1) On and after a date determined by the Attorney General in consultation with the Bar Council and notified by the Governor by proclamation published in the Gazette, a barrister shall not—

20 (a) practise as a barrister without being the holder of a current practising certificate issued by the Bar Council; or

(b) being the holder of such a certificate, fail to comply with a condition to which the certificate is subject.

(2) If a complaint against a barrister is made under Part 10 by the Bar Council in respect of a contravention of subsection (1), the Supreme Court
25 may—

(a) on the application of the Bar Council; and

(b) without an undertaking being required as to damages or costs, grant an injunction, in such terms as the Supreme Court considers to be appropriate, restraining the barrister from contravening subsection (1).

Practising as solicitor

26. (1) A solicitor shall not—

- (a) act or practise as a solicitor without being the holder of a current practising certificate issued by the Law Society Council;
- 5 (b) on behalf of another commence, defend or maintain any proceedings in a court without being the holder of such a certificate; or
- (c) being the holder of such a certificate, fail to comply with a condition to which the certificate is subject.

10 (2) An action does not lie for recovery of any costs claimed in respect of anything done by a solicitor acting or practising as a solicitor at any time while he or she is not the holder of a current practising certificate.

(3) 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 Supreme Court may—

15 (a) on the application of the Law Society Council; and

(b) without an undertaking being required as to damages or costs,

grant an injunction, in such terms as the Supreme Court considers to be appropriate, restraining the solicitor from contravening subsection (1).

Application by barrister for practising certificate

20 27. (1) A barrister who holds a current practising certificate may, during the prescribed period before the certificate expires, apply to the Bar Council for a new practising certificate.

25 (2) A barrister who, after the date notified under section 25, does not hold a current practising certificate may at any time apply to the Bar Council for a practising certificate unless there is in force an order of the Tribunal preventing the issue of the certificate.

(3) Subsection (1) does not prevent the Bar Council from accepting an application made after the prescribed period and before the next succeeding 1 July.

30 Application by solicitor for practising certificate

28. (1) A solicitor who holds a current practising certificate may, during the prescribed period before the certificate expires, apply to the Law Society Council for a new practising certificate.

(2) A solicitor who does not hold a current practising certificate may at any time apply to the Law Society Council for a practising certificate unless there is in force an order of the Tribunal preventing the issue of the certificate.

- 5 (3) Subsection (1) does not prevent the Law Society Council from accepting an application made after the prescribed period and before the next succeeding 1 July.

Refusal of application by barrister or solicitor for a practising certificate

10 29. (1) A Council may refuse to issue a practising certificate unless the application for it is accompanied by—

- (a) a fee of such amount as is determined by the Council and approved by the Attorney General; and
- (b) a declaration in the prescribed form.

15 (2) A Council may determine different fees according to such different factors as are specified in the determination and approved by the Attorney General.

(3) A Council may refuse to issue a practising certificate applied for by the holder of a suspended practising certificate.

20 (4) A Council may refuse to issue a practising certificate if a finding of professional misconduct has been made in respect of the applicant and—

- (a) a fine imposed because of the finding has not been paid; or
- (b) costs awarded against the applicant because of the finding have been taxed but have not been paid or, if an arrangement for their payment has been made, the applicant is in default under the arrangement.

25 (5) If an application for a practising certificate is accepted by a Council after the expiration of the prescribed period during which the application is authorised to be made, payment of a prescribed late fee may, if the Council thinks fit, be required as a condition of acceptance of the application.

Refusal of application by solicitor for practising certificate

30. The Law Society Council may refuse to issue a practising certificate to a solicitor—

- 5 (a) if the solicitor is required by section 76 to contribute to the Fidelity Fund and the application is not accompanied by the contribution payable under that section; or
- (b) if any levy payable by the solicitor under section 46 or 77 is unpaid.

Membership of Bar Association or Law Society

10 31. (1) A barrister who holds a current practising certificate is entitled to be a member of the Bar Association without being required to pay any amount additional to that paid for issue of the practising certificate.

(2) A solicitor who holds a current practising certificate is entitled to be a member of the Law Society without being required to pay any amount additional to that paid for issue of the practising certificate.

15 Form of practising certificate issued to a barrister

32. (1) The practising certificate issued to a barrister who—

- (a) was admitted before the notified date;
- (b) is practising as a barrister immediately before that date; and
- (c) is not a pupil on that date,

20 shall be an unrestricted practising certificate.

(2) The practising certificate issued to a barrister who, immediately before the notified date, is a pupil whose period as a pupil is incomplete shall—

- (a) until the period as a pupil has been completed, be subject to a condition requiring the holder to complete the period as a pupil; and
- 25 (b) thereafter, be an unrestricted practising certificate.

(3) The practising certificate issued to a barrister admitted on or after the notified date or not practising as a barrister immediately before that date—

- (a) may be an unrestricted practising certificate; or
- 30 (b) may be subject to a condition requiring the holder to serve a specified period as a pupil.

Legal Profession 1987

(4) Instead of a practising certificate referred to in subsection (1), (2) or (3), a barrister who—

- (a) under a contract of service, or a contract for services, entered into by the barrister with the Crown; or
- 5 (b) as the holder of an office under the Crown,

is, or may be, required to practise as a barrister is entitled, if he or she so elects, to be issued with a practising certificate that is subject to a condition requiring the holder to practise as a barrister only under the contract or as holder of the office.

10 (5) In this section—

“notified date” means the date notified under section 25;

“pupil” means a pupil in accordance with the rules of the Bar Association.

Form of practising certificate issued to a solicitor

33. (1) The practising certificate issued to a solicitor—

- 15 (a) may entitle the holder to practise as a solicitor on his or her own account or may impose a condition limiting the practising rights of the holder as provided by subsection (2); and
- (b) if the Council so determines, may impose a condition requiring the solicitor to undertake and complete a specified course of further legal
- 20 education.

(2) The practising certificate issued to a solicitor may limit the practising rights of the holder to a right to practise—

- (a) in partnership with a solicitor who holds an unrestricted practising certificate;
- 25 (b) as an employee of a solicitor who holds an unrestricted practising certificate;
- (c) as an employee of 2 or more solicitors practising in partnership of whom at least one holds an unrestricted practising certificate; or
- (d) in any other manner determined by the Law Society Council in
- 30 relation to the holder.

(3) For the purposes of subsection (1) (b), the Law Society Council shall arrange for the establishment and administration of courses of further legal education.

Duration of practising certificate

34. (1) A practising certificate issued on application by the holder of a current practising certificate—

5 (a) takes effect on 1 July next succeeding the making of the application; and

(b) remains in force for 12 months.

(2) Any other practising certificate—

(a) takes effect on the date it bears; and

(b) remains in force until immediately before the next succeeding 1 July.

10 (3) If an application referred to in subsection (1) is not determined before 1 July next succeeding the making of the application, the practising certificate already held continues in force until a new practising certificate is issued or the application is refused.

Refusal, suspension or cancellation of practising certificate

15 35. (1) The Bar Council may refuse to issue, may cancel, or may by order suspend, a practising certificate applied for, or held by, a barrister who is in prison.

20 (2) The Law Society Council may refuse to issue, may cancel, or may by order suspend, a practising certificate applied for, or held by, a solicitor who—

(a) is in prison;

25 (b) fails, and continues to fail, to comply with section 61 or any other law relating to money received on behalf of another by the solicitor or a partnership of which, at the time of the failure, he or she is, or was, a member;

(c) being required by the Law Society Council to explain specified conduct by him or her as a solicitor fails, and continues to fail, to give an explanation satisfactory to the Council;

30 (d) in the opinion of the Law Society Council, has failed to comply with a condition of his or her practising certificate imposed under section 33 (1) (b), or by regulations referred to in section 216 (3) (b), in relation to further legal education; or

(e) has contravened or failed to comply with a provision of this Act.

(3) The Law Society Council may refuse to issue, may cancel, or may by order suspend, a practising certificate applied for, or held by, a solicitor if the solicitor—

5 (a) is bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; and

10 (b) in the conduct of his or her affairs as a solicitor did anything that, in the opinion of the Law Society Council, contributed to the situation referred to in paragraph (a) and amounted to conduct unbecoming a solicitor.

15 (4) If a Council acts under this section and, within 14 days after being notified of the action, the barrister or solicitor affected requires the Council to state its reasons for the action, the Council shall comply with the requirement without delay.

Infirmity of solicitor

36. (1) The Law Society Council may refuse to issue, may cancel, or may by order suspend, a practising certificate applied for, or held by, a solicitor if the Council is satisfied, on such evidence as to it seems proper—

20 (a) that the solicitor is, because of infirmity, injury or mental or physical illness, unfit to practise as a solicitor; and

(b) that it is in the public interest or the interest of the solicitor's clients that the practising certificate should not be issued or should be cancelled or suspended.

25 (2) Before acting under subsection (1), the Law Society Council—

(a) may require the solicitor to be medically examined by a medical practitioner nominated by the Council; and

(b) may hold an inquiry.

30 (3) A refusal or failure by a solicitor to comply with a requirement for medical examination may be accepted by the Law Society Council as evidence of the unfitness of the solicitor to practise.

Appeal against refusal or suspension of practising certificate

37. (1) If a Council—

(a) refuses to issue a practising certificate;

Legal Profession 1987

- (b) refuses to issue a practising certificate of the kind applied for; or
 (c) cancels or suspends a practising certificate,

the applicant for, or holder of, the practising certificate may appeal to the Supreme Court which may make such order in the matter as it thinks fit.

- 5 (2) Except to the extent, if any, that may be ordered by the Supreme Court, the lodging of an appeal does not stay the effect of the refusal, cancellation or suspension appealed against.

Registers of practising barristers and solicitors

- 10 38. A Council shall, in such form as it thinks fit, keep a register of the legal practitioners to whom it has issued current practising certificates.

DIVISION 2—Solicitors' Mutual Indemnity Fund

Interpretation

39. In this Division—

15 “approved insurance policy” means a policy of indemnity insurance that is an approved insurance policy as provided by section 41;

“company” means the company that, immediately before the commencement of this Act, was managing the Solicitors' Mutual Indemnity Fund established by the Legal Practitioners Act 1898;

20 “Indemnity Fund” means the Solicitors' Mutual Indemnity Fund managed by the company;

“insurable solicitor” means a solicitor required by the regulations to be an insured solicitor.

Solicitors' Mutual Indemnity Fund

- 25 40. (1) The Solicitors' Mutual Indemnity Fund managed by the company consists of—

(a) the Solicitors' Mutual Indemnity Fund established by the Legal Practitioners Act 1898;

30 (b) the money paid on account of the Indemnity Fund by insurable solicitors either as annual contributions or as levies under this Division;

(c) the interest or other income accruing from investment of the money in the Indemnity Fund;

- (d) any other money lawfully paid into the Indemnity Fund;
- (e) investments made under section 43; and
- (f) such other assets as are acquired as part of the Indemnity Fund.

(2) The company may arrange with an insurer for insurance of the
5 Indemnity Fund or any part of it.

(3) The Indemnity Fund is the property of the Law Society and may be used only for the purposes of this Division.

Solicitor to be insured etc.

41. (1) The Law Society Council may not issue a practising certificate
10 to an insurable solicitor unless it is satisfied that there is, or will be, in force with respect to the solicitor an approved insurance policy.

(2) A policy of indemnity insurance is an approved insurance policy if—

- (a) the policy is not to expire before the expiration of the practising certificate of the solicitor to whom the policy relates;
- 15 (b) the insurer and the terms of the policy have been approved by the Attorney General by order in writing given to the Law Society; and
- (c) any conditions imposed by the order are complied with.

(3) The Law Society Council may not issue a practising certificate to an
20 insurable solicitor whose application for the practising certificate is not accompanied by—

- (a) an application for an approved insurance policy and the premium payable; and
- (b) the contribution payable under section 45.

Separate bank account

25 42. The company shall maintain with a bank in New South Wales a separate account with the name "Solicitors' Mutual Indemnity Fund".

Investment of the Indemnity Fund

43. Money in the Indemnity Fund that is not immediately required for the purposes of the Fund may be invested—

- 30 (a) in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds;
- (b) on deposit with the Treasurer;

- (c) in the purchase of securities or shares listed on a stock exchange in Australia;
- (d) in the acquisition of an interest in real estate in Australia; or
- (e) in bills of exchange drawn, accepted or endorsed by a bank.

5 **Payments from the Indemnity Fund**

44. (1) There shall be paid from the Indemnity Fund in such order as the company decides—

- (a) the expenses incurred by the company in carrying on its business;
- 10 (b) such amount as the company determines towards meeting any difference between the indemnity provided by the approved insurance policy required by section 41 and the liability of a person insured under the policy; and

(c) such other amounts as the company determines.

(2) The company may make determinations under subsection (1)—

- 15 (a) that differ according to different circumstances; or
- (b) that are subject to compliance with conditions imposed by the company,

or that do both.

(3) The company may—

- 20 (a) divide solicitors into classes approved by the Law Society Council; and
- (b) under subsection (1) (b), make a different determination for each of the classes.

Contributions

25 **45. (1)** An insurable solicitor is liable to pay to the Indemnity Fund an annual contribution of an amount determined by the company and approved by the Law Society Council.

(2) The company may—

- 30 (a) divide solicitors into classes approved by the Law Society Council; and
- (b) under subsection (1), make a different determination for each of the classes.

(3) If a solicitor applies for a practising certificate that will be in force for part only of a year commencing on 1 July, the contribution is such proportion of the amount determined for the solicitor under subsection (1) as is borne to 1 year by the number of days for which the practising
5 certificate will be in force.

(4) The contribution under subsection (1) that accompanies an application for a practising certificate shall be paid by the Law Society to the company for credit of the Indemnity Fund.

Levies

10 46. (1) If the company is at any time of the opinion that the assets of the Indemnity Fund may be insufficient to meet its liabilities, the company may impose on each insurable solicitor a levy payable to the company on account of the Indemnity Fund.

15 (2) A levy shall be of such amount as the company determines and may differ according to the different factors in relation to which contributions under this Division have been determined.

(3) A levy is payable at the time, and in the manner, fixed by the company which may, in a special case, allow time for payment.

Failure to pay contribution or levy

20 47. If, after being given written notice, an insurable solicitor fails to pay a premium, contribution or levy in accordance with this Division—

- (a) the company shall report the failure to the Law Society Council; and
- (b) while the failure continues, the solicitor's practising certificate is suspended.

25 Application of Division to other persons

48. The company may apply this Division (sections 41 and 47 excepted) to persons who—

- (a) are not insurable solicitors;
- 30 (b) are within a class of persons approved by the Law Society Council for the purposes of this section;
- (c) are insured under a policy of insurance that, if the persons were insurable solicitors, would be an approved policy of indemnity insurance for the purposes of section 41; and

- (d) pay to the Indemnity Fund such contributions and levies as the company determines and the Law Society Council approves.
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PART 4

BAR ASSOCIATION AND LAW SOCIETY

5 DIVISION 1—*Bar Association*

Report on committees

49. (1) The Bar Council shall, at least once in each year, and at such times as the Attorney General directs, report to the Attorney General on the committees of the Bar Association and the Bar Council.

10 (2) The report shall—

(a) list the committees that existed at any time during the last preceding 12 months or the period since the last report (whichever is the shorter period);

(b) specify the functions and membership of each committee; and

15 (c) include such other information relating to the committees as the Attorney General directs.

(3) The report need not refer to any committee of a kind that the Attorney General for the time being exempts from the operation of this section.

20 **Lay representation on committees**

50. (1) The Attorney General may, after consultation with the Bar Council, direct, by written order, that any specified committees or kinds of committees of the Bar Association or Bar Council must include in their membership a specified or determinable number of lay members.

25 (2) A direction has no effect to the extent that it would require the membership of a committee to have more than one-quarter of its membership composed of lay members.

(3) A lay member has such voting and other rights as are provided in the constitution of the committee or as are provided by the regulations, and the
30 regulations prevail to the extent of any inconsistency.

(4) For the purposes of this section, a lay member is a person who is not a barrister or solicitor.

Functions of Bar Council

51. In addition to its other functions, the Bar Council may—
- 5 (a) take such steps as in the opinion of the Bar Council may be necessary or proper for or with respect to alleged professional misconduct of a barrister or conduct that is, or may be, a contravention of a provision of Part 9; and
- 10 (b) appear by counsel before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court—
- (i) under this Act or otherwise, in relation to barristers; or
- (ii) in relation to candidates for admission as a barrister.

DIVISION 2—*Law Society*

Report on committees

- 15 52. (1) The Law Society Council shall, at least once in each year, and at such times as the Attorney General directs, report to the Attorney General on the committees of the Law Society and the Law Society Council.
- (2) The report shall—
- 20 (a) list the committees that existed at any time during the last preceding 12 months or the period since the last report (whichever is the shorter period);
- (b) specify the functions and membership of each committee; and
- (c) include such other information relating to the committees as the Attorney General directs.
- 25 (3) The report need not refer to any committee of a kind that the Attorney General for the time being exempts from the operation of this section.

Lay representation on committees

53. (1) The Attorney General may, after consultation with the Law Society Council, direct, by written order, that any specified committees or kinds of committees of the Law Society or Law Society Council must include in their membership a specified or determinable number of lay members.

(2) A direction has no effect to the extent that it would require the membership of a committee to have more than one-quarter of its membership composed of lay members.

10 (3) A lay member has such voting and other rights as are provided in the constitution of the committee or as are provided by the regulations, and the regulations prevail to the extent of any inconsistency.

(4) For the purposes of this section, a lay member is a person who is not a barrister or solicitor.

15 Functions of Law Society Council

54. In addition to its other functions, the Law Society Council may—

(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 charge or question as to—

20 (i) alleged professional misconduct of a solicitor or any other improper conduct of a solicitor;

(ii) the conduct of a person who is or was a clerk to a solicitor but who is not a solicitor; or

25 (iii) conduct that is, or may be, a contravention of a provision of Part 9; and

(b) appear by solicitor or counsel before, and be heard by, the Supreme Court in the exercise of the functions of the Supreme Court—

(i) under this Act or otherwise, in relation to solicitors; or

(ii) in relation to candidates for admission as a solicitor.

30 Investigation of affairs of solicitor

55. (1) The Law Society may, by instrument signed by the President or 2 members of the Law Society Council, appoint an investigator—

(a) to investigate the affairs of a solicitor or solicitors; and

(b) to provide the Law Society Council with a report on the investigation.

(2) An investigator may, with the approval of the Law Society Council, appoint an assistant.

5 (3) A solicitor under investigation and any other person who has possession or control of any records of the solicitor shall, if required to do so by an investigator who produces evidence of his or her appointment, provide the investigator, or his or her assistant, with—

10 (a) access to such of the records as relate to the affairs being investigated;

(b) information that the solicitor or other person is able to give in relation to those records and affairs; and

15 (c) authorities or orders on bankers and others that relate to those records or affairs and that the solicitor or other person is able to provide.

Penalty: \$1,000.

(4) If a record—

(a) is not in writing;

(b) is not written in the English language; or

20 (c) is not decipherable on sight,

a requirement to provide access to the record is not complied with unless access is provided to a statement, written in the English language and decipherable on sight, that contains all the information in the record.

25 (5) A person shall not hinder, obstruct or delay an investigator in the exercise of his or her functions.

Penalty: \$1,000.

(6) A solicitor who contravenes subsection (3) or (5) is, whether or not convicted for the contravention, guilty of professional misconduct.

(7) An investigator shall—

30 (a) send a copy of his or her report to the solicitor by post to the address of the solicitor last known to the Law Society; and

c

Legal Profession 1987

(b) provide the Attorney General with a copy of the report if it indicates that there are reasonable grounds for suspecting professional misconduct, improper conduct or irregularity in relation to affairs of the solicitor.

5 (8) The amount of the costs of an investigation, as certified by the Law Society Council, is a debt due to the Law Society by the solicitor under investigation unless—

10 (a) the investigator reports that the investigation did not disclose any suspected professional misconduct, improper conduct or irregularity; or

(b) payment is waived by the Law Society.

(9) In this section—

“affairs”, in relation to a solicitor, includes—

(a) accounts kept by or on behalf of a solicitor under Part 6;

15 (b) any other records kept by or on behalf of the solicitor;

(c) any transactions to which the solicitor was a party or in which the solicitor acted for a party; and

(d) any related matter that an investigator considers should be further investigated;

20 “investigator” means—

(a) a solicitor;

(b) an accountant; or

(c) an officer or employee of the Law Society;

25 “record” includes any book, account, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

“solicitor”, except as an investigator, includes—

(a) a firm of solicitors;

30 (b) a former solicitor;

(c) in relation to anything done or omitted by a solicitor—a deceased solicitor and a deceased former solicitor; and

- (d) except in relation to anything done or omitted by a solicitor—the personal representative of a deceased solicitor or a deceased former solicitor.

Secrecy

5 **56. (1)** An investigator shall not, unless making a requirement under section 55 (3), and his or her assistant shall not, make an unauthorised disclosure of—

- (a) the appointment of the investigator or assistant;
 10 (b) any matter that comes to his or her notice in the course of the investigation; or
 (c) anything in the investigator's report.

Penalty: \$1,000.

(2) Subsection (1) is not contravened if—

- (a) an investigator discloses anything to his or her assistant; or
 15 (b) an investigator's assistant discloses anything to the investigator.

(3) A member of the Law Society Council or a solicitor, officer or agent of the Law Society shall not make an unauthorised disclosure of—

- (a) the appointment of an investigator or an investigator's assistant; or
 (b) anything in an investigator's report.

20 Penalty: \$1,000.

(4) Subsection (3) is not contravened if—

- (a) an investigator states in his or her report that there are reasonable grounds for suspecting professional misconduct, improper conduct or irregularity in relation to the affairs investigated; and
 25 (b) a member of the Law Society Council, or a solicitor, officer or agent of the Law Society, discloses information in the report to a person to whom the Law Society Council decides that the information should be disclosed.

(5) For the purposes of subsections (1) and (3) but without affecting 30 subsections (2) and (4), a disclosure is an unauthorised disclosure if it is made to a person other than—

- (a) the Attorney General;
 (b) a member of the Law Society Council;

Legal Profession 1987

- (c) a solicitor, agent or officer of the Law Society;
- (d) the Supreme Court;
- (e) the Professional Conduct Review Panel, the Professional Standards Board or the Disciplinary Tribunal;
- 5 (f) a member of the police force; or
- (g) a person to whom a copy of the report is required by this Act to be sent.

DIVISION 3—*Annual reports***Council to submit annual report**

- 10 57. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Bar Council and the Law Society Council shall each prepare and forward to the Attorney General a report of its work and activities under this Act for the 12 months ending on 30 June in that year.
- (2) The Attorney General shall lay the report, or cause it to be laid, before
15 both Houses of Parliament as soon as practicable after receiving the report.
- (3) If the regulations so provide, a report shall include prescribed information.
- (4) This section does not affect any other provision of this Act requiring a report to be made to the Attorney General.

20

PART 5

LEGAL PROFESSION ADVISORY COUNCIL

Constitution of the Advisory Council

58. (1) There is constituted by this Act a council with the name "Legal Profession Advisory Council".
- 25 (2) The Advisory Council shall consist of 9 members appointed by the Attorney General, one of whom shall, by the instrument of appointment or another instrument, be appointed to preside at meetings of the Advisory Council.

(3) Of the members—

- (a) 2 shall be practising barristers, of whom 1 shall be nominated by the Bar Council;
 - 5 (b) 3 shall be practising solicitors, of whom 2 shall be nominated by the Law Society Council; and
 - (c) 4 shall be appointed to represent the community, of whom not more than 1 may be, or be eligible to be admitted as, a barrister or solicitor.
- (4) Schedule 3 has effect with respect to the Advisory Council.

10 Functions of the Advisory Council

59. (1) The Advisory Council does not, for any purpose, represent the Crown.

(2) The Advisory Council shall keep under constant review the structure and functions of the legal profession and shall make reports and
15 recommendations to the Attorney General upon—

- (a) any matter relating to the legal profession that is referred to it by the Attorney General;
- 20 (b) any matter relating to the legal profession that the Advisory Council considers should be brought to the notice of the Attorney General; and
- (c) any proposed regulations referred to it by the Attorney General.

PART 6**TRUST ACCOUNTS****Interpretation**

25 60. (1) In this Part—

- (a) a reference to practising as a solicitor includes a reference to acting as a solicitor in New South Wales, whether or not also acting as a trustee, stakeholder, agent or bailee or in any other capacity; and
- 30 (b) a reference to money is not limited to a reference to money in New South Wales.

(2) In this Part, a reference to an associate of a solicitor is a reference to—

- (a) a partner of the solicitor, whether or not the partner is a solicitor;
- (b) an employee or agent of the solicitor;
- 5 (c) a member of a syndicate, or other joint venturer, with the solicitor;
- (d) a co-trustee of the solicitor;
- (e) a person who bears a prescribed relationship to the solicitor or to a person referred to in paragraphs (a)–(d); or
- 10 (f) a corporation that (if the solicitor or a person referred to in paragraphs (a)–(e) were, or is, a corporation) would be, or is, a subsidiary of the solicitor or person within the meaning of the Companies (New South Wales) Code; or
- (g) a person prescribed by the regulations as an associate of the solicitor.

(3) For the purposes of subsection (2), a person bears a prescribed
15 relationship to a solicitor or other person if the relationship is that of—

- (a) a spouse;
- (b) a de facto partner within the meaning of the De Facto Relationships Act 1984;
- 20 (c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise; or
- (d) a kind prescribed by the regulations for the purposes of this section.

(4) A reference in this Part to money received by a solicitor includes a
reference to—

- 25 (a) money coming under the direct control of the solicitor, whether or not by the exercise of an express power or authority or by operation of law;
- (b) money paid to an associate of the solicitor on the advice of the solicitor; and
- 30 (c) money in relation to which the solicitor (whether or not through an associate) has a power of disposal exercisable jointly and severally with the person on whose behalf it was received or a nominee of the person.

Money received by solicitor on behalf of another

5 **61. (1)** If a solicitor, in the course of practising as a solicitor, receives money on behalf of another person, the solicitor shall comply with subsection (2) in relation to the money and, until then, shall hold the money exclusively for the other person.

(2) This subsection is complied with if the solicitor—

10 (a) complies with such regulations as may be in force in relation to trust money and, within the prescribed time, pays the money to the credit of a general or separate trust account at a bank in New South Wales; or

(b) complies with such regulations as may be in force in relation to controlled money and pays the money to, or as directed by, the person for whom the money is held.

(3) This section does not operate—

15 (a) to prevent a solicitor from depositing money with the Law Society in compliance with section 64, but it continues to apply to any money so deposited that is repaid to the solicitor; or

(b) in relation to money due, or to accrue due, to the solicitor for costs if the prescribed procedure is followed.

20 (4) Money received by a solicitor on behalf of another person is not—

(a) available for payment to a creditor of the solicitor; or

(b) liable to be taken in execution of an order or process of a court at the instance of a creditor of the solicitor,

25 unless the creditor is the person on whose behalf the money is held by the solicitor.

(5) If a Crown Solicitor's Trust Account is established as prescribed, this section applies to money received by the Crown Solicitor from a person for whom, or a body for which, the Crown Solicitor acts.

30 (6) If a trust account kept by a solicitor under this section is, as authorised by or under the regulations, operated on by a person other than the solicitor, section 53 of the Trustee Act 1925 does not apply to the person in relation to the operation on the trust account.

(7) A wilful contravention of subsection (1) is professional misconduct.

(8) In this section—

“controlled money” means money referred to in subsection (1) that is not proposed to be paid under subsection (2) (a) to the credit of a trust account;

5 “trust money” means money referred to in subsection (1) that is not proposed to be dealt with under subsection (2) (b).

Keeping of accounts

62. (1) A solicitor shall keep accounting records that disclose at all times the true position in relation to money received by the solicitor on behalf of
10 another person.

(2) The accounting records referred to in subsection (1) shall be kept in a manner that enables them to be conveniently and properly audited.

(3) Without limiting the generality of subsection (2), the accounting records referred to in subsection (1) shall, if the regulations so require, be
15 kept in such manner as the regulations prescribe.

(4) A wilful contravention of subsection (1), (2) or (3) is professional misconduct.

Audits

63. (1) The regulations may make provision for or with respect to—

20 (a) the auditing of a solicitor’s records relating to mortgages in respect of which the solicitor acted for a party if, during the last preceding period of 12 months, the mortgages secured not less than \$500,000 or such other amount as may be prescribed or exceeded 50 in number;

25 (b) the reports to be made by auditors; and

(c) the submission of auditors’ reports to the Law Society.

(2) A solicitor shall, if required to do so by an auditor carrying out an audit referred to in subsection (1), and notwithstanding any legal professional privilege—

30 (a) produce for inspection by the auditor any accounting or other records relating to the solicitor’s practice; and

(b) give the auditor such other information as is reasonably necessary for the purposes of the audit.

- (3) If a record relating to a solicitor's practice—
- (a) is not in writing;
 - (b) is written in a language other than English; or
 - (c) is not decipherable on sight,
- 5 a requirement under subsection (2) to produce the record is a requirement to produce, in addition to the record if it is in writing, or instead of the record if it is not in writing, a statement, written in English and decipherable on sight, that contains all the information in the record.
- (4) Except in proceedings under Part 10, the production of a record or
10 statement, or the giving of information, under this section does not subsequently affect any legal professional privilege to which, but for subsection (2), the record, statement or information would be subject.
- (5) A wilful contravention of subsection (2) is professional misconduct.

Deposit of trust funds with Law Society

- 15 **64. (1)** Out of the money that is paid to a trust account kept by a solicitor, the solicitor shall cause to be deposited with the Law Society, and to be kept deposited with the Law Society, an amount calculated as prescribed.
- (2) Subsection (1) applies to each member of a firm of solicitors, and to
20 money paid to a trust account kept by the firm, in the same way as it applies to a solicitor and a trust account kept by the solicitor.
- (3) Subsection (1) does not apply—
- (a) to a separate trust account kept on the instructions of a client for the exclusive use of the client; or
 - 25 (b) to a Crown Solicitor's Trust Account established as prescribed.
- (4) This section does not affect any enforceable lien or claim that a solicitor has to any money.
- (5) It is professional misconduct—
- 30 (a) by a solicitor if subsection (1) is not complied with in relation to a trust account kept by the solicitor; or
 - (b) by each member of a firm of solicitors if subsection (1) is not complied with in relation to a trust account kept by the firm.

Repayment of deposit with Law Society

65. (1) Money deposited with the Law Society under section 64—

(a) is held by the Law Society in trust for the solicitor depositing the money; and

5 (b) is repayable on demand.

(2) Subsection (1) does not excuse a failure to comply with section 64.

(3) Until repaid, money deposited under section 64 may be invested by the Law Society—

(a) in securities authorised by the Trustee Act 1925;

10 (b) on deposit with the Treasurer; or

(c) in bills of exchange drawn, accepted or endorsed by a bank.

Accounts to be kept by Law Society

66. The Law Society shall—

15 (a) keep accounts of money deposited with it under section 64 and repaid or invested by it under section 65;

(b) have the accounts audited annually by a firm of accountants appointed by the Law Society Council with the approval of the Prothonotary; and

20 (c) without delay, provide both the Attorney General and the Prothonotary with a copy of the auditor's report.

Statutory Interest Account

67. (1) The Law Society shall maintain with a bank in New South Wales an account with the name "Statutory Interest Account" and shall pay to the credit of the account all interest on investments made under section 65.

25 (2) The Law Society shall pay from the Statutory Interest Account—

(a) for the purposes authorised by subsection (3)—such amounts as are determined by the Law Society Council and approved by the Attorney General; and

(b) the amounts required to be paid under subsection (4).

30 (3) The purposes authorised by this subsection are—

(a) the supplementation of the Legal Aid Fund established under the Legal Aid Commission Act 1979;

Legal Profession 1987

- (b) the supplementation of the Fidelity Fund;
- (c) the payment under section 168 of costs related to the administration of Part 10;
- 5 (d) the costs incurred by the Bar Council in exercising its functions for the purposes of Parts 9 and 10;
- (e) the costs incurred by the Law Society Council in exercising its functions for the purposes of Parts 9 and 10;
- (f) the promotion and furtherance of legal education in New South Wales;
- 10 (g) the promotion and furtherance of the objects of the Law Foundation of New South Wales; and
- 15 (h) the payment of the costs, charges and expenses incurred in collecting the interest payable to the Statutory Interest Account, the administration of the Statutory Interest Account and the administration of the Fidelity Fund.

(4) The Law Society shall pay to the Law Foundation of New South Wales amounts equal to 10 per cent of the interest credited to the Statutory Interest Account during the 6 months last preceding 30 June and 31 December in each year.

- 20 (5) A payment under subsection (4) shall be made as soon as practicable, but not later than 2 months, after the end of the period in respect of which it is calculated.

Money not claimed from solicitor

- 25 **68. (1)** If a solicitor holding money in a trust account cannot find the person on whose behalf the money is held or a person authorised to receive it, the solicitor may—

- (a) pay the money to the Treasurer for credit to the Consolidated Fund; and
- 30 (b) provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held by the solicitor.

(2) If a solicitor pays money to the Treasurer under subsection (1), the solicitor is relieved from any further liability in relation to the money.

- 35 (3) The Treasurer shall pay money deposited under this section to a person who satisfies the Treasurer as to his or her entitlement to the money.

(4) Payment of money to a person under subsection (3)—

(a) discharges the Crown and the Treasurer from any liability in relation to the money; and

5 (b) does not discharge the person from any liability to another person who establishes a right to the money.

(5) The Treasurer may require any person to provide information that the person has, or can obtain, about the entitlement of a person to money paid to the Treasurer under this section and attempts made to locate the person.

10 (6) A person of whom a requirement is made under subsection (5)—

(a) shall comply with the requirement; and

(b) shall not, in purported compliance with the requirement, give information that he or she knows is false or misleading in a material particular.

15 Penalty—subsection (6): \$500.

Relief for bankers

69. (1) A bank does not, in relation to a transaction on an account kept by a solicitor at the bank or another bank—

20 (a) incur any obligation to make inquiries, or any liability, other than an obligation or liability to which it would be subject apart from this Act; or

(b) have imputed to it any knowledge of the right of a person to money credited to the account,

25 that it would not incur, or have imputed to it, if the account were kept by the bank for a person absolutely entitled to the money credited to it.

(2) A bank at which a solicitor keeps an account for clients' money has no recourse against money at credit in the account in respect of a liability of the solicitor to the bank other than a liability in respect of the account.

(3) In subsection (2)—

30 "recourse" includes any right, whether by way of set-off, counter-claim or charge or otherwise.

PART 7

SOLICITORS' FIDELITY FUND

DIVISION 1—*General***The Solicitors' Fidelity Fund**

- 5 **70. (1)** The Law Society shall establish and maintain a Solicitors' Fidelity Fund consisting of—
- (a) the money (including invested money) that, immediately before the commencement of this Act, made up the Solicitors' Fidelity Fund maintained under the Legal Practitioners Act 1898;
 - 10 (b) the money paid on account of the Fidelity Fund by solicitors, either as annual contributions or levies under this Part;
 - (c) the interest or other income accruing from investment of the money in the Fidelity Fund;
 - (d) money paid to the Fidelity Fund from the Statutory Interest
 - 15 Account; and
 - (e) any other money lawfully paid to the Fidelity Fund.
- (2) The Fidelity Fund is the property of the Law Society, shall be administered by the Law Society Council and shall be applied in accordance with this Part.
- 20 **(3)** The Law Society may, on such terms as the Law Society Council thinks fit, arrange with an insurer for insurance of the Fidelity Fund.

Separate bank account

- 25 **71. (1)** The Law Society shall maintain with a bank in New South Wales a separate account with the name "Solicitors' Fidelity Fund Account" and shall pay to the credit of the account all money received on account of the Fidelity Fund.

(2) The account shall be operated on in the manner determined by the Law Society Council.

Investment of the Fidelity Fund

- 30 **72.** Money in the Fidelity Fund that is not immediately required for the purposes of the Fund may be invested—
- (a) in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds;

- (b) on deposit with the Treasurer; or
- (c) in bills of exchange drawn, endorsed or accepted by a bank.

Payments from the Fidelity Fund

73. (1) There shall be paid from the Fidelity Fund in such order as the
5 Law Society Council decides—

- (a) premiums for insurance of the Fidelity Fund;
- (b) legal expenses incurred in investigating or defending claims made
10 against the Fidelity Fund, or against the Law Society in relation to
the Fidelity Fund, or otherwise incurred in relation to the Fidelity
Fund;
- (c) the amount of a claim (including interest and costs) allowed or
established against the Law Society in respect of the Fidelity Fund;
- (d) the expenses of administering the Fidelity Fund, including
15 allowances and travelling expenses for members of the Law Society
Council and the Fidelity Fund Management Committee in
connection with the exercise of their functions in relation to the
Fidelity Fund;
- (e) the costs of investigations under section 55, other than such part of
those costs as are recovered under section 55 (8); and
- 20 (f) any other money payable from the Fidelity Fund under this Part or
under rules or regulations made under this Act.

(2) If there is insufficient money in the Fidelity Fund to meet any expense
under subsection (1), the Law Society, with the approval of the Attorney
General—

- 25 (a) may borrow money to meet the expense; and
- (b) in order to secure the repayment of the money borrowed—may
create a charge over the money in the Statutory Interest Account.

Management Committee

74. (1) The Law Society Council may by resolution delegate all or any
30 of its functions in relation to the Fidelity Fund to a Management Committee
consisting of not fewer than 3 members of the Council and not more than
5 other persons who are members of the Law Society or the Council.

(2) The Law Society Council may by resolution rescind or vary a
resolution made under subsection (1).

Legal Profession 1987

(3) The Law Society Council may terminate a person's membership of the Committee and may fill the subsequent or any other vacancy.

(4) At a meeting of the Committee, 3 members, including at least 1 member of the Law Society Council, constitute a quorum.

5 (5) At a meeting of the Committee—

(a) a member of the Committee appointed for the purpose by the Law Society Council shall preside; or

10 (b) if he or she is absent from the meeting, another member of the Committee elected for the purpose by those present at the meeting shall preside.

(6) The decision of a majority of the members present and voting at a meeting of the Committee is a decision of the Committee and, in the event of an equality of votes, the member presiding at the meeting is entitled to an additional vote as a casting vote.

15 (7) The Committee may call, adjourn, and regulate the conduct of, its meetings as it thinks fit.

Audit

20 75. The Law Society Council shall cause the accounts relating to the Fidelity Fund to be audited annually by a firm of accountants approved by the Prothonotary.

*DIVISION 2—Contributions and levies***Contributions**

25 76. (1) A solicitor shall, when applying for a practising certificate, pay to the Law Society on account of the Fidelity Fund the appropriate contribution to the Fidelity Fund for the year ending on 30 June during which the practising certificate would be in force.

(2) The amount of a contribution to the Fidelity Fund is an amount determined by the Law Society Council and approved by the Attorney General.

30 (3) The Law Society Council may determine different contributions for different classes of solicitors and may permit a contribution to be paid by instalments under an arrangement approved by the Council.

Legal Profession 1987

(4) If application for a practising certificate is made after 31 December in a year ending on 30 June, the amount of the contribution that would otherwise be payable for that year is reduced by one-half.

(5) In this section—

5 “solicitor” does not include the Crown Solicitor or any other solicitor who—

(a) is employed by the Crown or by a corporation prescribed for the purposes of this section; and

(b) practises as a solicitor only in the course of that employment.

10 Levies

77. (1) If the Law Society Council is at any time of the opinion that the Fidelity Fund is likely to be insufficient to meet the liabilities to which it is subject, the Council may, by resolution, impose on each solicitor liable to contribute to the Fidelity Fund a levy payable to the Council on account
15 of the Fidelity Fund.

(2) A levy shall be of such amount as the Law Society Council determines and may differ according to whether a solicitor is practising—

(a) on his or her own account or in partnership;

(b) as an employee of another solicitor; or

20 (c) as an employee of a person who is not a solicitor, or of a corporation.

(3) A levy is payable at the time, and in the manner, fixed by the Law Society Council which may, in a special case, allow time for payment.

Failure to pay contribution or levy

78. If, after being given the prescribed notice, a solicitor fails to pay a
25 contribution or levy in accordance with this Part, his or her practising certificate is suspended while the failure continues.

DIVISION 3—*Claims*

Interpretation

79. (1) In this Division, except in so far as the context or subject-matter
30 otherwise indicates or requires—

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

Legal Profession 1987

“claim” means a written claim against the Fidelity Fund lodged with the Law Society Council in relation to a failure to account;

5 “failure to account” means a failure by a solicitor before or after the commencement of this Act to account for, pay or deliver money or other valuable property received by or entrusted to the solicitor or an associate in the course of the solicitor’s practice or on the advice of the solicitor, but only if the failure arises from an act or omission of the solicitor or associate—

10 (a) for which the solicitor or associate has been convicted of an offence involving dishonesty; or

(b) which the Law Society Council has found to be dishonest,

whether the act, omission, conviction or finding of dishonesty took place before or after the commencement of this Act;

“pecuniary loss” includes—

15 (a) the costs of a claimant that are due to a failure to account;

(b) the costs involved in making a claim; and

(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;

20 “solicitor” means a solicitor required by section 76 to contribute to the Fidelity Fund;

“successful claim” means—

(a) a claim allowed by the Law Society Council; or

25 (b) a claim in respect of which judgment is recovered against the Law Society.

30 (2) The reference in the definition of “failure to account” in subsection (1) to money or other valuable property received by, or entrusted to, a solicitor includes a reference to money or other valuable property that is received by, or entrusted to, the solicitor as trustee, agent, bailee or stakeholder, or in any other capacity.

(3) A finding by the Law Society Council that an act or omission is, or is not, dishonest is conclusive for the purposes of paragraph (b) of the definition of “failure to account” in subsection (1).

Claims against the Fidelity Fund

80. (1) The Fidelity Fund is held, and shall be applied, by the Law Society for the purpose of compensating persons who suffer pecuniary loss because of a failure to account.

5 **(2)** If a claim is made against the Fidelity Fund, the Law Society Council shall—

(a) investigate the claim; and

(b) wholly or partly allow, compromise, settle or disallow it.

10 **(3)** The Law Society Council may wholly or partly disallow a claim made by a person who knowingly assisted in or contributed towards, or was party or accessory to, the act or omission from which the failure to account arose.

(4) A person is not prevented from making a claim merely because, after the failure to account, a solicitor—

(a) dies;

15 (b) has his or her name removed from the roll of solicitors;

(c) ceases to practise as a solicitor; or

(d) ceases to hold a current practising certificate.

20 **(5)** If, in accordance with the regulations, a solicitor authorises a person to operate on an account for clients' money kept by the solicitor at a bank, an act or omission by the person in relation to those operations is, for the purposes of this Division, an act or omission of an agent of the solicitor.

25 **(6)** If the amount of a claim against the Fidelity Fund does not exceed \$2,500 or such other amount as may be prescribed, the Law Society Council may allow the claim after waiving compliance with such of the provisions of this Division as it thinks fit.

(7) A claim does not lie in respect of a failure to account unless the prospective claimant notifies the Law Society of the failure within a reasonable time after becoming aware of it.

(8) In subsection (7)—

30 "reasonable time" means—

(a) as soon as practicable, but not later than 3 months, after the prospective claimant becomes aware of the failure to account;

(b) if the Law Society Council allows further time after that period of 3 months—the time allowed by the Council; or

- (c) if the Law Society refuses to allow further time but the Supreme Court does so—the time allowed by the Supreme Court.

Reimbursement of solicitors and others

5 **81. (1)** If, in respect of a failure to account by an associate of a solicitor—

- (a) all claims (other than claims under this section) have been met;
- (b) the solicitor has paid compensation for a pecuniary loss due to the failure to account; and
- 10 (c) the solicitor has, in the opinion of the Law Society Council, at all times acted honestly and reasonably in relation to the failure to account,

the solicitor may make a claim as if the compensation paid by the solicitor were a pecuniary loss suffered as a result of the failure to account.

(2) In subsection (1)—

15 “solicitor” includes—

- (a) a former solicitor; and
- (b) in relation to the payment of compensation and the making of a claim—the personal representative of a deceased solicitor or a deceased former solicitor.

20 Claim must be pursued

82. (1) The Law Society Council may give a claimant not less than 21 days’ written notice requiring the claimant—

- (a) to take such steps for the purpose of pursuing the claim;
- (b) to supply such particulars in connection with the claim;
- 25 (c) to produce or deliver to it any securities or documents necessary or available to support the claim or enable it to establish any rights of the Law Society against a solicitor or an associate of the solicitor; or
- (d) to do such things in connection with the claim,

30 as are specified in the notice.

(2) If the claimant fails to comply with the notice, the Law Society Council—

(a) may wholly or partly disallow the claim; or

5 (b) direct that the whole, or a specified part, of any interest otherwise payable under section 83 be not paid.

Interest payable even if not claimed

83. (1) Even if a successful claim did not include a claim for interest, there is payable to the claimant from the Fidelity Fund interest at the prescribed rate on—

10 (a) the amount allowed by the Law Society Council; or

(b) the amount of the judgment recovered against the Law Society, from the date on which the claim was made until the date on which it succeeded.

15 (2) Subsection (1) does not apply to a claim to any extent directed by the Law Society Council under section 82 (2).

Costs where claim partly or wholly disallowed

84. (1) If a claim is partly disallowed, there shall be paid to the claimant from the Fidelity Fund, in respect of costs incurred by the claimant as a result of the failure to account, an amount assessed—

20 (a) by agreement between the claimant and the Law Society Council; or

(b) in default of agreement—as if taxed on a reference for taxation under Part 11.

25 (2) If a claim is wholly disallowed but the Law Society Council decides that a specified amount should be paid in respect of costs incurred by the claimant as a result of the failure to account, that amount shall be paid to the claimant from the Fidelity Fund.

Avoidance of double compensation

85. (1) If a successful claimant receives or recovers from a source other than the Fidelity Fund a payment on account of the pecuniary loss and—

30 (a) a payment has been made to the claimant from the Fidelity Fund—the claimant is liable to pay the prescribed amount to the Law Society; or

(b) the claimant has a judgment against the Law Society—the liability of the Law Society under the judgment is reduced by the prescribed amount.

(2) In subsection (1)—

5 “prescribed amount” means the difference between the amount of the pecuniary loss and the sum of—

(a) the amount of the payment from the Fidelity Fund or the amount of the judgment; and

10 (b) the amount of the payment received or recovered from the other source.

Final date for making claim

86. (1) Following a failure to account, the Law Society Council may publish—

15 (a) in a newspaper published and circulating in the district in which the solicitor is, or was, practising or carrying on business; and

(b) in a newspaper published and circulating in Sydney,

a notice in or to the effect of a form approved by the Attorney General that fixes a date on or before which claims relating to the failure must be made.

20 (2) The date fixed by the notice must be a date that is not earlier than 3 months after its first or only publication and a claim made after that date is barred unless—

(a) the Law Society Council allows further time; or

(b) if the Law Society Council refuses to allow further time, it is allowed by the Supreme Court.

25 (3) The publication in a newspaper in good faith of a notice under this section does not subject—

(a) the Law Society;

(b) the Law Society Council;

(c) a Management Committee established under section 74;

30 (d) a member, employee or agent of the Society, Council or Committee; or

(e) the proprietor, editor or publisher of the newspaper,

to a liability to any person.

(4) The Law Society Council may, having regard only to successful claims, pay from the Fidelity Fund—

(a) after the date fixed by a notice under this section; or

(b) after a date fixed by the Law Society Council,

5 the amounts from time to time available as compensation under this Part for the failure to account.

Ceiling on payments from the Fidelity Fund

87. (1) If a failure to account by a solicitor, or a firm of solicitors, that occurred before the commencement of this Act was the first such failure by
10 the solicitor or firm in respect of which—

(a) a claim against the Fidelity Fund maintained under the Legal Practitioners Act 1898 was made; or

(b) judgment to be satisfied from the Fidelity Fund so maintained was entered against the Law Society,

15 the maximum aggregate amount that may be paid from the Fidelity Fund under this Act in respect of all such failures by the solicitor or firm is the maximum amount fixed by section 57 of the Legal Practitioners Act 1898 as in force at the time of the failure.

(2) Except as provided by subsection (1), the maximum aggregate amount
20 that may be paid from the Fidelity Fund in respect of all failures to account by the same solicitor or firm of solicitors is such amount as the Law Society Council determines.

(3) The Law Society Council may make a payment from the Fidelity Fund that, but for this subsection, could not be made because of the limit
25 imposed by subsection (1) or (2) if the Council is satisfied, after taking into account all ascertained and contingent liabilities of the Fidelity Fund, that it would be reasonable to do so.

Proceedings against the Law Society

88. (1) An action does not lie against the Law Society in relation to the
30 Fidelity Fund except—

(a) with the leave of the Society; or

(b) as provided by this section.

(2) If the Law Society Council wholly or partly disallows a claim relating to a failure to account in respect of which a solicitor or an associate has been convicted of an offence involving dishonesty—

- 5 (a) the claimant may take proceedings in the Supreme Court as for a debt due by the Law Society; and
- (b) in any such proceedings, the defences that would have been available to the solicitor are available to the Law Society.

10 (3) If the Law Society Council wholly or partly disallows a claim, it shall, without delay, give written notice of the disallowance to the claimant or the claimant's solicitor.

(4) A claimant may, within 3 months after being given notice under subsection (3) or within any further time allowed by the Supreme Court, require the Law Society Council to state a case for the opinion of the Supreme Court on all or any matters relating to the disallowance.

15 (5) The reference in subsection (4) to matters relating to a disallowance does not include a reference to a finding of the Law Society Council under section 79 (3) as to whether or not an act or omission is dishonest.

(6) The Law Society Council shall comply without delay with a requirement under subsection (4) to state a case.

20 Subrogation

89. (1) Upon payment being made under a claim, the Law Society is subrogated to all the rights and remedies of the claimant against—

- 25 (a) the solicitor or associate in respect of whom the claim was made;
- (b) in the case of a deceased or insolvent solicitor or associate—the person authorised to administer the estate of the solicitor; or
- (c) any other person,

in relation to the failure to account.

30 (2) Subsection (1) does not extend to a right or remedy against a solicitor who is a partner of a claimant under section 81 and who, in the opinion of the Law Society Council, acted honestly and reasonably in relation to the failure to account.

35 (3) The Law Society may exercise its rights or remedies under subsection (1) in its own name or the name of the claimant and shall pay into the Fidelity Fund any money paid as a result of its exercise of the rights or remedies.

(4) If the Law Society brings proceedings under this section in the name of a claimant, the Society indemnifies the claimant against any costs awarded against the claimant in the proceedings.

Sufficiency of the Fidelity Fund

5 **90. (1)** If the Fidelity Fund is at any time insufficient to meet all outstanding judgments and claims then enforceable against it—

- 10 (a) the Law Society Council may determine the manner of division among the successful claimants, or any of them to the exclusion of the others, of the money for the time being available in the Fidelity Fund; and
- (b) the judgments and claims shall, subject to any limitations imposed by this Act, be finally satisfied from future accumulations of the Fidelity Fund.

15 (2) The Fidelity Fund is the only property of the Law Society available for the satisfaction of a successful claim.

(3) Proceedings based upon, or for the enforcement of, a judgment against the Law Society that is to be satisfied from the Fidelity Fund may not be taken without the leave of the Supreme Court.

PART 8 RECEIVERS

20

Interpretation

91. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“expenses”, in relation to a receivership, means—

- 25 (a) the remuneration payable to the receiver;
- (b) the expenses incurred in the course of the receivership;
- (c) the costs of legal proceedings involved in the receivership; or
- (d) any reimbursement of the receiver under section 109;

30 “firm of solicitors” includes any solicitors who share remuneration as solicitors, whether or not on the same basis for each of them;

“property”, in relation to a solicitor, means—

- (a) money or other property that could, in accordance with Part 7, be the subject of a pecuniary loss for which compensation would be payable from the Fidelity Fund;
- 5 (b) interest, dividends or other income or profits derived from money or other property referred to in paragraph (a);
- (c) documents and records of any description relating to anything referred to in paragraphs (a) and (b) or to the practice of the solicitor; or
- 10 (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing;

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

15 “receiver” means a receiver appointed by the Supreme Court under section 92;

“relevant solicitor” means a solicitor of whose property a receiver has been appointed;

“solicitor” includes—

- (a) a firm of solicitors;
- 20 (b) a former solicitor;
- (c) in relation to anything done or omitted by a solicitor—a deceased solicitor and a deceased former solicitor; and
- (d) except in relation to anything done or omitted by a solicitor—the personal representative of a deceased solicitor or a deceased
- 25 former solicitor.

Supreme Court may appoint receiver

92. (1) The Supreme Court may, on the application of the Law Society, appoint a receiver of all or any property of a solicitor if it is satisfied—

- 30 (a) that an opinion of the Law Society Council referred to in subsection (2) was formed in relation to the solicitor on reasonable grounds; or
- (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.

(2) An opinion of the Law Society Council in relation to a solicitor is an opinion for the purposes of subsection (1) (a) if it is—

- (a) an opinion that there has, or may have been, a failure to account by the solicitor within the meaning of Part 7; or
- 5 (b) an opinion that a person is unable to obtain payment or delivery of property of the solicitor because the solicitor—
 - (i) is mentally or physically infirm;
 - (ii) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit;
 - 10 (iii) is in prison;
 - (iv) has died;
 - (v) has abandoned his or her practice as a solicitor;
 - 15 (vi) has had his or her name removed from the roll of solicitors otherwise than at his or her own request; or
 - (vii) has ceased to hold a practising certificate.

(3) An action of the Law Society Council in relation to a solicitor is an action for the purposes of subsection (1) (b) if it is—

- 20 (a) a refusal to issue a practising certificate to the solicitor;
- (b) the cancellation of the solicitor's practising certificate; or
- (c) a decision to make a complaint against the solicitor under Part 10.

(4) A receiver is not, in the exercise of his or her functions as receiver, a personal representative of a deceased solicitor.

25 Court to be closed

93. (1) Before commencing to hear an application for the appointment of a receiver, the Supreme Court shall order from the precincts of the Court any person who is not—

- (a) an officer of the Court;
- 30 (b) a party, a legal representative of a party or a clerk of such a legal representative;
- (c) a member of the same firm of solicitors as the respondent;

(d) a person who is in the course of giving evidence; or

(e) a person permitted by the Court to be present in the interests of justice.

(2) The Supreme Court may, whether or not at the instance of a party, prohibit the publication of any report relating to the evidence or other proceedings on the hearing of an application for the appointment of a receiver.

Order to be served

94. Upon the appointment of a receiver, the Law Society shall serve a copy of the order of appointment on—

(a) the relevant solicitor; and

(b) any other person upon whom the Supreme Court directs the Law Society to serve a copy of the order.

Receiver may take possession of property

95. (1) A receiver may take possession of receivable property of the relevant solicitor.

(2) A person in possession, or having control, of receivable property shall permit the receiver to take possession of the property if required by the receiver to do so.

(3) If a person fails to comply with a requirement of a receiver under subsection (2), the Supreme Court may, on application by the receiver, order the person to deliver the property to the receiver.

(4) If, on application by a receiver, the Supreme Court is satisfied that an order made under subsection (3) has not been complied with, the Court may—

(a) order the seizure of any receivable property located on premises specified in the order; and

(b) make such further order in the matter as it thinks fit.

(5) An order under subsection (4) (a) operates to authorise—

(a) any member of the police force; or

(b) the receiver, or a person authorised by the receiver, together with any member of the police force,

to enter the premises specified in the order and search for, seize and remove any property that appears to be receivable property.

(6) An application by a receiver under subsection (3) may be made—

- 5 (a) if the property is in the possession, or under the control, of the relevant solicitor—in the name of the receiver; or
 (b) in any other case—in the name of the relevant solicitor.

(7) A receiver shall, as soon as possible, return property seized under this section if it transpires that it is not receivable property.

Information on receivable property

- 10 **96. (1)** A person who has information relating to receivable property shall give the information to the receiver if required by the receiver to do so.

Penalty: \$1,000.

- 15 (2) Subsection (1) does not apply to a person who has a lawful excuse for refusing or failing to give the required information.

(3) A person shall not hinder, obstruct or delay a receiver in the exercise of his or her functions.

Penalty—subsection (3): \$1,000.

Stop order on bank account

- 20 **97. (1)** A receiver who believes on reasonable grounds that money at credit in a bank account is receivable property may serve on the bank an order prohibiting operations on the account by a person other than the receiver or a person authorised by the receiver.

(2) An order referred to in subsection (1)—

- 25 (a) may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the bank at which the account is kept; and
 (b) is ineffective unless there is annexed to it a copy of the order appointing the receiver.

- 30 (3) A bank served with an order under subsection (1) in relation to an account—

(a) shall permit the receiver, or a person authorised by the receiver, to operate on the account; and

(b) shall not permit any withdrawal from the account except by, or by the authority of, the receiver.

(4) A receiver may withdraw money from an account the subject of an order under subsection (1) and pay it to the credit of an account with the bank in the name of the receiver to be dealt with as receivable property.

(5) In connection with an account—

(a) referred to in subsection (3)—the bank has the same obligations and protections; or

(b) referred to in subsection (4)—the bank has the same protections, as it would have if the receiver were the relevant solicitor.

Recovery of compensation for disposal of receivable property

98. (1) If receivable property has been taken by, or paid or transferred to, a person unlawfully or in breach of trust and—

(a) the person knew or believed at the time of the taking, payment or transfer that it was unlawful or in breach of trust—the receiver may recover from the person as a debt the amount of the payment or the value of the property;

(b) there was no consideration for the taking, payment or transfer—the receiver may recover from the person as a debt the amount of the payment or the value of the property;

(c) there was inadequate consideration for the taking, payment or transfer—the receiver may recover from the person as a debt the amount of the inadequacy; or

(d) because of the taking, payment or transfer, the person became indebted or otherwise liable to the relevant solicitor or a client of the solicitor—the receiver may recover from the person as a debt the amount of the debt or liability of the person to the solicitor or client.

(2) A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.

(3) If receivable property has been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in respect of a cause of action the person claims to have against another, the receiver—

(a) may recover from the person as a debt the amount of the payment or the value of the property; or

- 5 (b) to the extent that the full amount or value is not recovered from the person under paragraph (a)—may, in the name of the receiver and as if the receiver were beneficially entitled, or in the name of the person, take such proceedings in relation to the claimed cause of action as the person could have taken.
- (4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3) (a) to recover property paid or transferred to the person in respect of the cause of action.
- 10 (5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge.
- 15 (6) If, under Part 7, a claimant is paid from the Fidelity Fund compensation for a pecuniary loss relating to receivable property and is later paid another amount in respect of the pecuniary loss, the receiver may recover from the claimant as a debt—
- 20 (a) if the amount paid from the Fidelity Fund is compensation for the whole pecuniary loss—the amount of the later payment; or
- (b) if the amount paid from the Fidelity Fund is compensation for part only of the pecuniary loss—any amount by which the amount of the pecuniary loss is exceeded by the sum of—
- 25 (i) the amount paid from the Fidelity Fund; and
- (ii) the amount of the later payment received.
- (7) Recovery proceedings under this section may be taken in the name of the receiver as if the receiver were beneficially entitled or in the name of any person who, if the receiver had not been appointed, would have been entitled to take the proceedings.
- 30 (8) A receiver, or a person authorised by the Law Society, may give a certificate as to all or any of the following:
- (a) the receipt of property by a solicitor, the nature and value of the property, the date of its receipt by the solicitor and the identity of the person from whom it was received;
- 35 (b) the taking of property by a person or the transfer of property to a person, the nature and value of the property, the date of its taking or transfer and the identity of the person;

Legal Profession 1987

- (c) the payment of money to a person, the amount of money paid, the date of the payment and the identity of the person who received the payment;
- 5 (d) the entries made in the records of a solicitor and the truth or falsity of the entries;
- (e) the use of property unlawfully or in breach of trust.
- (9) A certificate given under subsection (8) is, in any proceedings taken by a receiver under subsection (1), (3) or (5), evidence of the matters specified in the certificate.
- 10 (10) Proceedings taken under this section in the name of a receiver in relation to any money or other property may be so taken as if the receiver were beneficially entitled to the money or property.
- (11) In this section—
- 15 “receivable property” includes property that, but for being taken, paid or transferred unlawfully or in breach of trust, would be receivable property.

Improper dealing with property

99. (1) A person shall not, with intent to defeat the purposes of this Part—
- 20 (a) operate on a bank account;
- (b) destroy or conceal receivable property;
- (c) move receivable property from one place to another;
- (d) deliver possession of receivable property to another person; or
- (e) deliver control of receivable property to another person.
- 25 Penalty: \$2,000.
- (2) In this section—
- “receivable property” includes property likely to become receivable property.

Receiver may deal with property

- 30 100. (1) A receiver may deal with receivable property in any manner in which the relevant solicitor could, but for the appointment of the receiver, have dealt with it.

(2) A receiver shall, as soon as possible, vest receivable property in the person by whom it was given to the relevant solicitor.

Other powers of receiver

5 **101. (1)** A receiver may, in his or her own name or the name of the relevant solicitor—

(a) prove, grant, claim or draw a dividend in respect of a debt that is receivable property;

(b) take proceedings to recover damages for a tort committed in relation to receivable property;

10 (c) give a receipt for money that is receivable property; or

(d) employ a legal practitioner or other person to advise or act in relation to receivable property.

(2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see the application of the money for which
15 the receipt was given.

Application for directions

102. (1) A receiver, a solicitor who held receivable property or a person who claims receivable property may apply to the Supreme Court for directions as to the performance of the functions of the receiver.

20 **(2)** On an application under subsection (1), the Supreme Court may give such directions as it thinks fit.

Notice to claim receivable property

103. (1) A receiver may give notice to—

(a) the relevant solicitor; or

25 (b) any other person,

that any claim the solicitor or other person has to receivable property must be submitted to the receiver within 1 month from the giving of the notice or such longer period as is stated in the notice.

(2) A claim submitted in response to such a notice must state—

30 (a) full particulars of the property; and

(b) the grounds of the claim.

(3) A receiver may disregard a claim made by a solicitor or other person given a notice under this section unless the claim is made in accordance with the notice.

(4) The relevant solicitor is not entitled—

- 5 (a) to enforce a claim to receivable property; or
 (b) except against a client—to the benefit of a lien against a document that is receivable property,

unless all other enforceable claims against the property have been satisfied and the expenses of the receivership paid.

10 **Lien for costs on receivable property**

104. (1) If a solicitor claims a lien for costs on receivable property, the receiver may serve on the solicitor a written notice requiring the solicitor to give the receiver within a specified period of not less than 1 month—

- (a) particulars sufficient to identify the property; and
 15 (b) a detailed bill of costs.

(2) The notice, or a subsequent written notice served on the solicitor, may require the solicitor to tax the bill of costs within a reasonable time specified in the notice.

20 (3) If the solicitor requests the receiver in writing to allow such access to receivable property as is reasonably necessary to enable the solicitor to tax a bill of costs in compliance with a notice under subsection (1) or (2), the time allowed for taxation does not begin to run until the access is provided.

25 (4) If a requirement of a notice under subsection (1) or (2) is not complied with, the receiver may, in dealing with the property claimed to be subject to a lien, disregard the claim.

Examination by receiver

105. (1) The Supreme Court may, on application by a receiver, make such order as it thinks fit for the examination by the receiver of a solicitor or other person in relation to receivable property.

30 (2) On an examination under this section—

- (a) the solicitor or other person may be represented by solicitor or counsel; and

Legal Profession 1987

(b) the Supreme Court may put, or allow to be put, to the solicitor or other person such questions as it thinks fit.

(3) The solicitor or other person shall be examined on oath or affirmation.

(4) The solicitor or other person is compellable to answer all questions put to him or her in the course of the examination.

(5) Subsection (4) applies to any question to which objection is made on the ground that the answer would tend to incriminate the person to whom it is put.

(6) An answer given by a person to a question referred to in subsection (5) is not admissible in any criminal proceedings other than proceedings relating to the falsity of the answer.

Termination of appointment of receiver

106. (1) The Supreme Court may—

(a) terminate the appointment of a receiver; and

(b) if it thinks fit, appoint a new receiver then or within the next 14 days.

(2) If a new receiver is appointed under subsection (1) (b), the former receiver shall—

(a) as soon as possible; and

(b) in compliance with any directions given by the Supreme Court, transfer or deliver the receivable property to the new receiver.

Penalty: \$1,000.

(3) If a new receiver is not appointed under subsection (1) (b), the former receiver shall, if the relevant solicitor so requires by notice in writing served on the receiver, transfer and deliver the receivable property to the solicitor—

(a) as soon as possible; and

(b) in compliance with any directions given by the Supreme Court.

Penalty: \$1,000.

(4) A former receiver is not required to comply with subsection (3) unless—

(a) the expenses of the receivership have been paid to the Law Society;
or

(b) the Law Society Council otherwise directs in relation to those expenses.

(5) Subject to any directions given by the Supreme Court, a former receiver may, without being given a notice under subsection (3), transfer and deliver the receivable property to the relevant solicitor.

Property not dealt with by receiver

107. (1) If receivable property under the control of the receiver has not been dealt with in accordance with this Part, the receiver shall notify the Law Society accordingly and—

- 10 (a) if the Law Society so requires within 1 month after being notified—shall transfer and deliver the property to the Law Society; or
 (b) if such a requirement is not made—shall transfer and deliver the property to the relevant solicitor.

(2) If property other than money is transferred or delivered to the Law Society under subsection (1), the Law Society—

- 15 (a) shall deal with it as the Supreme Court directs on application by the Law Society; and
 (b) if the property is sold—shall treat the proceeds as money paid to it under subsection (1).
 20 (3) The Law Society shall apply money paid to it under subsection (1)—
 (a) firstly—in reimbursing the Fidelity Fund for claims paid from it in relation to the relevant solicitor;
 (b) secondly—towards the satisfaction of wholly or partly unsatisfied claims against the relevant solicitor; and
 25 (c) thirdly—in payment of the expenses of the receivership.

(4) Any money paid to the Law Society under subsection (1) that is surplus to the requirements of this section shall be paid to the relevant solicitor.

Investment of money by receiver

30 **108. (1)** A receiver may invest money that is receivable property in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds.

(2) Income received from an investment under subsection (1), and any profit made on the sale of such an investment, is receivable property.

Receiver may be reimbursed for damages

109. (1) The Law Society may reimburse a receiver for any damages and costs recovered against the receiver, or an employee or agent of the receiver, for an act or omission in good faith and the purported exercise of a function
5 under this Act.

(2) Reimbursement under subsection (1) shall be by way of payment from the Fidelity Fund.

Payment of expenses of receivership

110. (1) So much of the expenses of receivership as have not otherwise
10 been paid to the receiver shall be paid to the receiver by the Law Society from the Fidelity Fund.

(2) An amount paid under subsection (1) is recoverable by the Law Society as a debt owed by the relevant solicitor.

(3) If the Law Society Council and a receiver fail to agree upon the
15 remuneration to be paid to the receiver, the Supreme Court shall, on the application of the Law Society or the receiver, determine the amount to be paid.

(4) The Supreme Court may, on application by the relevant solicitor—

20 (a) re-open any agreement by the Law Society Council for remuneration of the receiver; and

(b) determine the amount to be paid.

Supreme Court may review expenses of receivership

111. (1) This section applies to a receivership if the Supreme Court is satisfied—

25 (a) by evidence given in proceedings (whether or not in the Supreme Court) under section 110 (2) for recovery by the Law Society of the expenses of receivership; or

(b) on application by the relevant solicitor,

that the expenses of the receivership are excessive.

30 (2) If this section applies to a receivership, the Supreme Court may order the taking of an account between the Law Society and the receiver and—

(a) relieve the relevant solicitor from payment of any amount in excess of that determined by the Supreme Court to be fairly payable; or

- (b) if the receiver has been paid, or allowed on account, an amount that includes such an excess—order the receiver to repay the excess.

Receivable property not to be attached

- 5 **112.** The receivable property of a relevant solicitor is not liable to be taken in execution of an order or process of any court.

Supreme Court may give general directions

- 10 **113. (1)** The Supreme Court may—
- (a) authorise a receiver to do such things in the exercise of his or her functions as the Supreme Court considers to be necessary or desirable; and
 - (b) give directions for the exercise of authority conferred under paragraph (a).

- (2) Subject to any applicable directions given by the Supreme Court, a receiver may exercise any authority conferred under subsection (1).

15 **Receiver to report to the Supreme Court**

- 114. (1)** A receiver shall—
- (a) at such times as are fixed by the Supreme Court; and
 - (b) in accordance with any directions given by the Supreme Court,
- 20 report to the Supreme Court and the Law Society Council on the receivership.

- (2) A report shall include such information as the Supreme Court directs.

- (3) Upon the conclusion of a receivership, the receiver shall, when giving the Supreme Court his or her final report, lodge with the Court all the records of the receiver that relate to the receivership.

- 25 (4) Unless the Supreme Court orders their destruction, records lodged under subsection (3) shall remain in the custody of the Court.
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PART 9

UNQUALIFIED PRACTITIONERS

Person acting as a barrister or solicitor

5 **115. (1)** A person shall not, on or after the date notified under section 25, act as a barrister unless he or she holds a current practising certificate issued by the Bar Council.

Penalty: \$2,000.

(2) A person shall not act as a solicitor unless he or she holds a current practising certificate issued by the Law Society Council.

10 Penalty: \$2,000.

(3) A person shall not, as a solicitor and whether or not in the name of another person—

(a) issue a writ or process out of a court in New South Wales;

15 (b) commence, maintain or defend an action, suit or proceeding in a court in New South Wales; or

(c) act in a cause or matter to be determined in a court in New South Wales,

unless the person holds a current practising certificate issued by the Law Society Council.

20 Penalty: \$2,000.

(4) A person who contravenes subsection (1), (2) or (3) is, whether or not prosecuted or convicted for the contravention, guilty of contempt of any court in relation to which the contravention takes place.

(5) If a solicitor contravenes subsection (2) or (3)—

25 (a) no action lies for the recovery of costs in respect of anything done in the course of the contravention; and

(b) if any such costs have been paid, the amount paid may be recovered as a debt owed by the solicitor to the person who paid them.

Unlawful representations

30 **116. (1)** A person shall not pretend to be qualified to act as a barrister or solicitor.

(2) A person shall not, on or after the date notified under section 25—

(a) take or use a name, title, addition or description implying; or

(b) do anything, or permit or suffer anything to be done, that holds out, advertises or represents,

5 that he or she is qualified to act as a barrister unless he or she holds a current practising certificate issued by the Bar Council.

(3) A person shall not—

(a) take or use a name, title, addition or description implying; or

10 (b) do anything, or permit or suffer anything to be done, that holds out, advertises or represents,

that he or she is qualified to act as a solicitor unless he or she holds a current practising certificate issued by the Law Society Council.

Penalty: \$2,000.

Limitation on general legal work and probate work

15 **117. (1)** In this section—

“fee” includes any form of, and any expectation of, a fee, gain or reward;

“general legal work” means the work involved in drawing, filling up or preparing an instrument that—

(a) is a will or other testamentary instrument;

20 (b) creates or regulates rights between parties;

(c) affects real or personal property; or

(d) relates to a legal proceeding;

“probate work” means the work involved in—

25 (a) taking instructions for a grant of probate or letters of administration; or

(b) drawing or preparing papers on which to found or oppose a grant of probate or letters of administration.

(2) A person shall not—

(a) do any general legal work for a fee; or

30 (b) do any probate work for a fee,

Legal Profession 1987

unless the person is a legal practitioner.

Penalty: \$2,000.

(3) If a person does any general legal work, or any probate work, that relates to, or is done in conjunction with, other work done by the person
5 for a fee, it shall be presumed that the general legal work or probate work was done for a fee unless it is proved—

(a) that it was done without the person who did it receiving any advantage or benefit; and

(b) that it was not offered as an inducement to do the other work.

10 (4) Subsection (2) does not apply to—

(a) a public officer drawing instruments in the course of his or her duty;

(b) a person employed merely to engross an instrument; or

(c) a land agent in respect of an instrument he or she is entitled to draw,
15 fill up or prepare, and to charge for, under the Land Agents Act 1927.

(5) Subsections (2) and (3) do not apply to a person acting as an employee—

(a) if the person so acts in the ordinary course of his or her employment;
and

20 (b) receives no fee, gain or reward for so acting other than his or her ordinary remuneration as an employee.

(6) Subsections (2) and (3) do not apply to—

(a) a person, or a class or persons; or

(b) a work, or a class of work,

25 prescribed as being exempt from the operation of this section.

Offence by corporation or officers

118. (1) A corporation shall not do anything of a kind, or do anything in a manner, that is calculated to imply that the corporation is qualified to act as a solicitor.

30 Penalty: \$5,000.

(2) A director, officer or employee of a corporation shall not—

(a) do anything of a kind, or do anything in a manner; or

- (b) cause the corporation to do anything of a kind, or do anything in a manner,

that is calculated to imply that the corporation is qualified to act as a solicitor.

5 Penalty: \$2,000.

Receipts not to be shared by solicitor and unqualified person

119. (1) It is professional misconduct for a solicitor to share with another person the receipts of a business of the kind usually conducted by a solicitor unless—

- 10 (a) the other person holds a current practising certificate issued by the Law Society Council; or
- (b) the Law Society Council has first given its consent.

(2) If a solicitor is employed under a contract of service, subsection (1) does not operate to limit any right of the employer to recover costs in
15 relation to the conduct of business by the solicitor on behalf of the employer.

Control of employment of certain clerks

120. (1) This section applies to a person who—

- (a) is not a solicitor; and
- (b) is, or was, a clerk to a solicitor.

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

- (a) a complaint has been or, in the opinion of the Law Society Council, might be, made against a solicitor under Part 10; and
- (b) in the opinion of the Law Society Council, a person to whom this section applies was a party to, or the cause of, the act or omission
25 on which the complaint against the solicitor is, or could be, based.

(3) An application may be made under subsection (2) whether or not the solicitor in relation to whom the Law Society Council has formed its opinion—

- 30 (a) was a party to, or caused, the act or omission on which the complaint against the solicitor is, or could be, based;
- (b) acted in such a way as to condone the act or omission; or
- (c) failed to act in a way that might have prevented the act or omission.

(4) On application by the Law Society, the Tribunal may make an order prohibiting any solicitor from employing or paying in connection with the solicitor's practice a specified person to whom this section applies unless the person has been given leave under section 121.

5 (5) On making an order under this section, the Tribunal may make an order for costs.

(6) An order made under this section (other than an order for costs) may be revoked by the Tribunal on application by the Law Society or the person against whom the order was made.

10 (7) A person the subject of an order under this section may appeal to the Supreme Court against the order and the Supreme Court may stay the order pending determination of the appeal.

(8) The Law Society shall—

(a) retain in its office an order made under this section; and

15 (b) permit any such order to be inspected during office hours and without charge, but only if the inspection is made by a solicitor.

(9) The death of a solicitor does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a clerk to the solicitor.

20 (10) A person to whom this section applies may be represented by counsel or solicitor at the hearing of an application under this section.

(11) In any proceedings under this Act, a document that purports—

(a) to be an order under this section; and

25 (b) to be signed by the member constituting, or presiding at the sitting of, the Tribunal when the order was made,

is, without further proof, evidence of the order it purports to be.

(12) For the purposes of this section, the Tribunal shall in each case be constituted as determined by the President of the Tribunal.

Employment of disqualified or convicted persons

30 121. (1) It is professional misconduct if a solicitor, in connection with his or her practice as a solicitor, employs or pays a person the solicitor knows to be—

(a) a disqualified person; or

Legal Profession 1987

- (b) a person who has been convicted of an indictable offence and does not hold a current practising certificate.
- (2) Subsection (1) does not apply in relation to a person employed or paid in accordance with leave given—
- 5 (a) in the case of a disqualified person—by the Law Society Council;
- (b) in the case of a person who has been convicted of an indictable offence—the Tribunal; or
- (c) in either case—by the Supreme Court on an appeal under subsection (3).
- 10 (3) If the Law Society Council or the Tribunal decides to refuse an application by a person for leave under this section, the person may appeal against the decision to the Supreme Court which may—
- (a) confirm the decision appealed against; or
- (b) give leave for the appellant to be employed or paid in connection
- 15 with the practice of a solicitor.
- (4) Leave given under this section may be limited as to time or given subject to specified conditions.
- (5) A disqualified person shall not seek employment or payment in connection with a solicitor's practice unless he or she first informs the
- 20 solicitor of the disqualification or conviction.
- Penalty: \$1,000.
- (6) Proceedings for an offence under subsection (5) may be brought at any time within 6 months after discovery of the offence.
- (7) For the purposes of this section, the Tribunal shall in each case be
- 25 constituted as determined by the President of the Tribunal.
- (8) In this section—
- “disqualified person” means a person (other than a person who has been convicted of an indictable offence)—
- 30 (a) whose name has, otherwise than at his or her own request, been removed from the roll of barristers, or the roll of solicitors, in the Supreme Court;
- (b) whose name has been removed from a roll kept outside the State that corresponds to the roll of barristers, or the roll of solicitors, in the Supreme Court;

- (c) who is suspended from practising as a barrister or solicitor in New South Wales; or
- (d) who is the subject of an order in force under section 120.

Consent of Attorney General to prosecution

5 **122. (1)** Proceedings for an offence under this Part may not be instituted without the written consent of the Attorney General.

(2) In any such proceedings, a consent purporting to have been signed by the Attorney General is, without proof of the signature, evidence of that consent.

PART 10

PROFESSIONAL MISCONDUCT

DIVISION 1—*Preliminary*

Interpretation

123. In this Part—

15 “appropriate Council” means—

- (a) in relation to a complaint concerning a person who was a barrister when the conduct the subject of the complaint allegedly occurred—the Bar Council; or
- (b) in relation to a complaint concerning a person who was a solicitor when the conduct the subject of the complaint allegedly occurred—the Law Society Council;

“barrister member” means—

- (a) in relation to the Panel—the member of the Panel appointed under section 126 (2) (a);
- 25 (b) in relation to the Board—a member of the Board appointed under section 127 (2) (a); or
- (c) in relation to the Tribunal—a member of the Tribunal appointed under section 128 (2) (b);

30 “Board” means the Professional Standards Board constituted under this Part;

Legal Profession 1987

“complainant” means a person by whom a complaint has been made under section 130;

“judicial member” means, in relation to the Tribunal, the Chief Justice or a Judge of the Supreme Court appointed under section 128 (2) (a);

5 “lay member” means—

(a) in relation to the Panel—a member of the Panel appointed under section 126 (2) (c);

(b) in relation to the Board—a member of the Board appointed under section 127 (2) (c);

10 (c) in relation to the Tribunal—a member of the Tribunal appointed under section 128 (2) (d); or

(d) in relation to any other body—a member of the body who is neither a solicitor nor a barrister;

15 “Panel” means the Professional Conduct Review Panel constituted under this Part;

“professional misconduct” includes—

20 (a) conduct (whether consisting of an act or omission and whether occurring in connection with the practice of law or otherwise) that falls short of the standard of conduct that a member of the public is entitled to expect of a legal practitioner; and

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

“solicitor member” means—

25 (a) in relation to the Panel—the member of the Panel appointed under section 126 (2) (b);

(b) in relation to the Board—a member of the Board appointed under section 127 (2) (b); or

(c) in relation to the Tribunal—a member of the Tribunal appointed under section 128 (2) (c).

Application to ex-practitioners

124. (1) Except as provided by subsection (2), this Part applies to and in respect of a person against whom a complaint has been made (being a person who was a legal practitioner when the professional misconduct the subject of the complaint allegedly occurred but who is no longer a legal practitioner) in the same way as if the person were still a legal practitioner.

(2) This Part does not apply to a judicial officer within the meaning of the Judicial Officers Act 1986.

Jurisdiction of the Supreme Court not affected

125. Nothing in this Part affects the jurisdiction of the Supreme Court with respect to the discipline of barristers and solicitors.

DIVISION 2—Constitution of the Professional Conduct Review Panel, the Professional Standards Board and the Disciplinary Tribunal

The Professional Conduct Review Panel

126. (1) There shall be a Professional Conduct Review Panel.

(2) The Panel shall consist of—

(a) 1 barrister appointed by the Attorney General on the nomination of the Bar Council;

(b) 1 solicitor appointed by the Attorney General on the nomination of the Law Society Council; and

(c) 4 lay persons (that is, persons who are neither barristers nor solicitors) appointed by the Attorney General after consultation with lay members of the Legal Aid Commission, the Law Foundation and such other bodies as the Attorney General considers appropriate.

(3) One of the lay members shall be appointed by the Attorney General as Chairperson of the Panel.

(4) Schedule 4 has effect with respect to the Panel.

The Professional Standards Board

127. (1) There shall be a Professional Standards Board.

(2) The Board shall consist of—

(a) at least 2 barristers appointed by the Attorney General on the nomination of the Bar Council;

Legal Profession 1987

- (b) at least 2 solicitors appointed by the Attorney General on the nomination of the Law Society Council; and
- (c) at least 1 lay person (that is, a person who is neither a barrister nor a solicitor) appointed by the Attorney General after consultation with lay members of the Legal Aid Commission, the Law Foundation and such other bodies as the Attorney General considers appropriate.
- (3) One of the barrister members or one of the solicitor members shall be appointed by the Attorney General, after consultation with the Bar Council and the Law Society Council, as Chairperson of the Board.
- (4) The Board shall have a seal of which all courts and persons acting judicially shall take judicial notice.
- (5) Schedule 5 has effect with respect to the Board.

The Disciplinary Tribunal

128. (1) There shall be a Disciplinary Tribunal.
- (2) The Disciplinary Tribunal shall consist of—
- (a) the Chief Justice and at least 2 other Judges of the Supreme Court appointed by the Chief Justice;
- (b) at least 2 barristers appointed by the Attorney General on the nomination of the Bar Council;
- (c) at least 2 solicitors appointed by the Attorney General on the nomination of the Law Society Council; and
- (d) at least 2 lay persons (that is, persons who are neither barristers nor solicitors) appointed by the Attorney General after consultation with lay members of the Legal Aid Commission, the Law Foundation and such other bodies as the Attorney General considers appropriate.
- (3) The Chief Justice shall be the President of the Tribunal.
- (4) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.
- (5) Schedule 6 has effect with respect to the Tribunal.

Absence of nominations

129. If, within 28 days after having been requested by the Attorney General to do so, a Council fails to nominate a person for appointment to an office under a provision of this Division—

- 5 (a) the Attorney General may appoint any qualified person to that office; and
- (b) the person so appointed shall hold office as if the person had been appointed in accordance with that provision.

DIVISION 3—*Complaints against legal practitioners***10 Complaints**

130. (1) Any person who considers that a legal practitioner is guilty of professional misconduct may make a complaint to the appropriate Council.

(2) A complaint—

- (a) shall be in writing;
- 15 (b) shall identify the complainant and the legal practitioner against whom the complaint is made; and
- (c) shall give particulars of the professional misconduct that is alleged to have occurred.

(3) A complainant who has suffered loss as a consequence of the alleged professional misconduct may, in the complaint, request the making of any one or more of the following orders:

- (a) an order that the legal practitioner waive or repay the whole or part of the fees charged by the legal practitioner in respect of work carried out by the legal practitioner for the complainant;
- 25 (b) an order that the legal practitioner carry out specified work for the complainant free of charge;
- (c) an order that the legal practitioner waive any lien in respect of a specified document or class of documents;
- (d) an order that the legal practitioner pay to the complainant an amount by way of compensation.
- 30

(4) A complaint that requests the making of such an order shall give particulars of the loss suffered by the complainant as a consequence of the alleged professional misconduct.

(5) A Council shall take all reasonable steps to ensure that a person who wishes to make a complaint is given such assistance as is necessary to enable the person to make the complaint in accordance with this section.

Further particulars etc.

- 5 **131.** A Council, by notice in writing served on the complainant—
- (a) may require further particulars of any complaint to be given; and
 - (b) may require the complaint, or any further particulars, to be verified by statutory declaration,

within such time as it may specify in the notice.

10 Summary dismissal of complaints

132. A Council may dismiss a complaint without further investigation—

- (a) if further particulars of the complaint are not furnished, or the complaint or the further particulars are not verified, as required by the Council; or
- 15 (b) if the complaint is frivolous or vexatious.

Investigation of complaints

133. (1) A Council shall conduct an investigation into each complaint made to it under section 130, other than a complaint that has been dismissed under section 132.

- 20 **(2)** A Council shall cause a record of its decision, together with the reasons for its decision, to be kept in respect of each investigation conducted by it under this Division.

Decisions of Councils

25 **134. (1)** If, after it has completed an investigation into a complaint against a legal practitioner, a Council is satisfied—

- (a) that the complaint does not involve any question of professional misconduct—it shall dismiss the complaint;
 - (b) that the complaint involves a question of minor professional misconduct—
- 30 (i) it shall refer the complaint to the Board; or
- (ii) it shall reprimand the legal practitioner; or

Legal Profession 1987

(c) that the complaint involves a question of serious professional misconduct—it shall refer the complaint to the Tribunal.

(2) A Council may not reprimand a legal practitioner in connection with a complaint except with the consent of the legal practitioner.

5 (3) A Council shall cause its decision with respect to a complaint, together with its reasons for the decision, to be notified to the complainant.

(4) For the purposes only of section 137, a Council shall be deemed to have dismissed a complaint if it has not notified the complainant of its decision with respect to the complaint within 6 months after the making of
10 the complaint.

Complaints made by Councils

135. A Council may, of its own motion, make a complaint to the Board or the Tribunal against any legal practitioner if it appears to the Council that the legal practitioner may be guilty of professional misconduct.

15 Delegation

136. (1) A Council may, by resolution, delegate to any of its committees the exercise of any or all of its functions under this Division.

(2) Such a delegation may be made only to a committee whose presiding member is a member of the Council.

20 (3) A Council may, by resolution, rescind or vary a resolution made under subsection (1).

*DIVISION 4—Review of Councils' decisions***Applications for reviews**

137. (1) A complainant may apply to the Panel for a review of a
25 Council's decision to dismiss a complaint made by the complainant.

(2) Such an application shall be made, in writing, within 2 months after the decision is made or is deemed to have been made.

Composition of the Panel

138. (1) The Panel shall, for the purpose of conducting a review of a
30 Council's decision to dismiss a complaint, be constituted—

(a) in the case of a complaint concerning a barrister—by its barrister member and 2 of its lay members; or

Legal Profession 1987

- (b) in the case of a complaint concerning a solicitor—by its solicitor member and 2 of its lay members.
- (2) The Chairperson of the Panel shall nominate the persons to constitute the Panel for the purposes of any particular review.
- 5 (3) The Chairperson of the Panel shall preside at any review for which the Panel is so constituted as to include the Chairperson.
- (4) In the case of a review for which the Panel is so constituted as not to include the Chairperson of the Panel, the Chairperson shall nominate one of the other lay members to preside at the review.
- 10 (5) More than one review may be conducted by the Panel at the same time.

Reviews

139. (1) The Panel shall review each decision to dismiss a complaint the subject of an application made to it under section 137.
- 15 (2) The Panel shall consult with a Council before it completes its review of the Council's decision to dismiss a complaint.
- (3) For the purpose of enabling it to review a Council's decision to dismiss a complaint, the Panel is entitled to view—
- (a) the record of the Council's investigation of the complaint; and
- 20 (b) all other documents held by the Council in relation to that investigation.

Recommendations of the Panel

140. When the Panel has completed its review of a Council's decision to dismiss a complaint, it may—
- 25 (a) uphold the decision;
- (b) recommend to the Attorney General that the matter be referred to the Board; or
- (c) recommend to the Attorney General that the matter be referred to the Tribunal,
- 30 as it thinks fit.

Determinations by the Attorney General

141. (1) Upon receiving a recommendation from the Panel in connection with a complaint, the Attorney General may—

- 5 (a) uphold the decision of the appropriate Council with respect to the complaint;
- (b) refer the complaint to the Board; or
- (c) refer the complaint to the Tribunal,
- as the Attorney General thinks fit.

10 (2) In exercising the Attorney General's functions under this section, the Attorney General shall take into consideration, but is not bound to follow, the recommendation made by the Panel.

(3) The Attorney General shall cause his or her decision with respect to a complaint, together with his or her reasons for the decision, to be notified to the complainant.

15 **DIVISION 5—*Minor professional misconduct***

Composition of the Board

142. (1) The Board shall, for the purpose of conducting a hearing into a complaint, be constituted—

- 20 (a) in the case of a complaint concerning a barrister—by 2 of its barrister members and 1 of its lay members; or
- (b) in the case of a complaint concerning a solicitor—by 2 of its solicitor members and 1 of its lay members.

(2) The Chairperson of the Board shall nominate the persons to constitute the Board for the purposes of any particular hearing.

25 (3) The Chairperson of the Board shall preside at any hearing for which the Board is so constituted as to include the Chairperson.

30 (4) In the case of a hearing for which the Board is so constituted as not to include the Chairperson of the Board, the Chairperson shall nominate one of the barrister members or one of the solicitor members, as the case requires, to preside at the hearing.

(5) More than one hearing may be conducted by the Board at the same time.

Hearings

143. (1) The Board shall conduct a hearing into any complaint made or referred to it under Division 3 or 4.

5 (2) For the purpose of conducting such a hearing, the Board is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

(3) If, in the course of conducting a hearing into a complaint, the Board considers that the complaint involves a question of serious professional misconduct, the Board shall—

10 (a) terminate the hearing; and

(b) refer the complaint to the Tribunal to be dealt with in accordance with Division 7.

(4) The Board shall cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing
15 conducted by it under this Division.

Parties

144. (1) The following persons are entitled to appear at a hearing into a complaint:

(a) the legal practitioner against whom the complaint has been made;

20 (b) the appropriate Council;

(c) the Attorney General;

(d) the complainant (if any).

(2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order
25 referred to in section 130 (3).

(3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(4) The Board may grant leave to any other person to appear at a hearing
30 if the Board is satisfied that it is appropriate for that person to appear at the hearing.

(5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a legal practitioner or, with the leave of the Board, by any other person.

(6) Any person who appears (otherwise than as a witness) at a hearing shall be deemed to be a party to the hearing.

Hearings to be conducted in camera

145. (1) A hearing shall be held in the absence of the public.

5 (2) No persons other than the parties to a hearing and their representatives are entitled to be present at the hearing.

Power to summon witnesses and take evidence

146. (1) A member of the Board may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The member of the Board presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Board may, at a hearing, take evidence on oath or affirmation and, for that purpose—

15 (a) a member of the Board may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Board presiding at the hearing; and

20 (b) a member of the Board may administer an oath or affirmation to a person so appearing at the hearing.

(4) A person served with a summons to appear at a hearing to give evidence shall not, without reasonable excuse—

(a) fail to attend as required by the summons; or

25 (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board.

Penalty: \$2,000.

(5) A person appearing at a hearing to give evidence shall not, without reasonable excuse—

30 (a) when required to take an oath or make an affirmation—refuse or fail to comply with the requirement;

(b) refuse or fail to answer a question that the person is required to answer by the member of the Board presiding at the hearing; or

- (c) refuse or fail to produce a document that the person is required to produce by a summons served under this section.

Penalty: \$2,000.

Power to obtain documents

- 5 **147. (1)** A member of the Board may, by notice in writing served on a person, require the person—

- (a) to attend, at a time and place specified in the notice, before a person so specified, being a member of the Board or a person authorised by the Board in that behalf; and
- 10 (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Penalty: \$2,000.

15 Release of information

148. (1) The Board may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

(2) A person shall not make a publication in contravention of a direction
20 given under this section.

Penalty: \$2,000.

Determinations of the Board

149. (1) If, after it has completed a hearing into a complaint against a barrister, the Board is satisfied that the barrister is guilty of minor
25 professional misconduct, the Board may—

- (a) reprimand the barrister;
- (b) order that the barrister undertake and complete such course of further legal education as it may specify in the order; or
- 30 (c) order that the barrister pay a fine of such amount (not exceeding \$2,000) as it may specify in the order,

or may do any combination of those things.

Legal Profession 1987

(2) If, after it has completed a hearing into a complaint against a solicitor, the Board is satisfied that the solicitor is guilty of minor professional misconduct, the Board may—

- (a) reprimand the solicitor;
- 5 (b) order that the solicitor undertake and complete such course of further legal education as it may specify in the order;
- (c) order that the solicitor's practice be subject to periodic inspection by such person or persons, and for such period, as it may specify in the order;
- 10 (d) order that the solicitor seek advice in relation to the management of his or her practice from such person or persons as it may specify in the order;
- (e) order that the solicitor cease to employ in his or her practice such person or persons as it may specify in the order;
- 15 (f) order that the solicitor employ in his or her practice a person belonging to such class of persons as it may specify in the order;
- (g) order that the solicitor cease to accept instructions in relation to such class of work as it may specify in the order;
- 20 (h) order that the solicitor's practising certificate be endorsed with a condition restricting the solicitor from acting as a solicitor otherwise than in the course of employment by a solicitor holding an unrestricted practising certificate; or
- (i) order that the solicitor pay a fine of such amount (not exceeding \$2,000) as it may specify in the order,
- 25 or may do any combination of those things.

(3) If, after it has completed a hearing into a complaint against a legal practitioner, the Board is satisfied that the legal practitioner is guilty of minor professional misconduct and that the complainant has suffered loss as a consequence of the misconduct, the Board may—

- 30 (a) order that the legal practitioner waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the legal practitioner in respect of such work as it may so specify;
- 35 (b) order that the legal practitioner carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify;

Legal Profession 1987

- (c) order that the legal practitioner waive any lien in respect of such document or class of documents as it may specify in the order; or
- (d) order that the legal practitioner pay to the complainant such amount by way of compensation as it may specify in the order,
- 5 or may do any combination of those things.
- (4) An order shall not be made under subsection (3) unless—
- (a) the complainant has, in his or her complaint, requested the making of the order; and
- 10 (b) the complainant and the legal practitioner both consent to the making of the order,
- nor shall such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court or compensation from the Fidelity Fund.
- (5) The recovery of compensation awarded under this section does not
- 15 affect any other remedy available to the complainant, but any compensation so awarded shall be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.
- (6) In addition to any other order that the Board may make under this section with respect to a legal practitioner whom it has found guilty of minor
- 20 professional misconduct, the Board—
- (a) may make ancillary orders; and
- (b) may make orders requiring the legal practitioner to pay such amounts by way of costs (including the costs of the appropriate
- 25 Council, the Attorney General and the complainant) as it may determine.
- (7) Any order made by the Board shall be filed with the Prothonotary.

DIVISION 6—*Review of the Board's decisions***Applications for reviews**

- 30 **150.** (1) Any party to a hearing conducted by the Board may apply to the Tribunal for a review of the Board's determination of a complaint.
- (2) The complainant at a hearing conducted by the Board may not make an application under this section except with respect to those aspects of the hearing that deal with the loss, if any, suffered by the complainant as a consequence of the conduct the subject of the hearing.

(3) An application under this section shall be made in accordance with the rules of the Tribunal.

Composition of the Tribunal

15 **151. (1)** The Tribunal shall, for the purpose of conducting a review of the Board's determination of a complaint, be constituted—

(a) in the case of a complaint concerning a barrister—

(i) by 1 of its judicial members, 2 of its barrister members and 2 of its lay members; or

10 (ii) by 1 of its judicial members, 1 of its barrister members and 1 of its lay members; or

(b) in the case of a complaint concerning a solicitor—

(i) by 1 of its judicial members, 2 of its solicitor members and 2 of its lay members; or

15 (ii) by 1 of its judicial members, 1 of its solicitor members and 1 of its lay members,

as the President of the Tribunal considers appropriate to the circumstances of the case.

(2) The President of the Tribunal shall nominate the persons to constitute the Tribunal for the purposes of any particular review.

20 (3) The judicial member nominated under subsection (2) for the purposes of a particular review shall preside at the review.

(4) More than one review may be conducted by the Tribunal at the same time.

Parties

25 **152.** The parties to a hearing the subject of a review under this Division shall be deemed to be the parties to the review.

Reviews

153. (1) The Tribunal shall conduct a review of each determination the subject of an application made to it under section 150.

30 (2) An application shall be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

(3) Sections 144–148 apply to and in respect of a review conducted by the Tribunal in the same way as they apply to and in respect of a hearing conducted by the Board.

(4) The Tribunal shall cause a record of its decision, together with the reasons for its decision, to be kept in respect of each review conducted by it under this Division.

Decisions of the Tribunal

154. (1) The Tribunal may—

- (a) uphold the Board's determination of a complaint; or
- 10 (b) make any one or more of the orders that the Board could have made in relation to the complaint.

(2) The Tribunal's decision in respect of a complaint is final and shall be given effect to as if it were a determination by the Board.

Serious professional misconduct

15 155. If the Tribunal considers that a complaint the subject of a determination under review involves a question of serious professional misconduct, the Tribunal shall—

- (a) terminate the review; and
- 20 (b) deal with the complaint in accordance with Division 7 as if the complaint had been made or referred to it under Division 3, 4 or 5.

DIVISION 7—Serious professional misconduct

Composition of the Tribunal

156. (1) The Tribunal shall, for the purpose of conducting a hearing into a complaint, be constituted—

- 25 (a) in the case of a complaint concerning a barrister—
 - (i) by 1 of its judicial members, 2 of its barrister members and 2 of its lay members;
 - (ii) by 1 of its judicial members, 1 of its barrister members and 1 of its lay members; or
 - 30 (iii) by 2 of its barrister members and 1 of its lay members; or

Legal Profession 1987

(b) in the case of a complaint concerning a solicitor—

(i) by 1 of its judicial members, 2 of its solicitor members and 2 of its lay members;

5 (ii) by 1 of its judicial members, 1 of its solicitor members and 1 of its lay members; or

(iii) by 2 of its solicitor members and 1 of its lay members,

as the President of the Tribunal considers appropriate to the circumstances of the case.

10 (2) The President of the Tribunal shall nominate the persons to constitute the Tribunal for the purposes of any particular hearing.

(3) If the Tribunal is constituted in accordance with the provisions of subsection (1) (a) (i) or (ii) or (b) (i) or (ii), the judicial member referred to in those provisions shall preside at the hearing.

15 (4) If the Tribunal is constituted in accordance with the provisions of subsection (1) (a) (iii) or (b) (iii), the President of the Tribunal shall nominate one of the barrister members or one of the solicitor members referred to in those provisions, as the case requires, to preside at the hearing.

(5) More than one hearing may be conducted by the Tribunal at the same time.

20 Hearings

157. (1) The Tribunal shall conduct a hearing into any complaint made or referred to it under Division 3, 4 or 5.

(2) For the purpose of conducting such a hearing, the Tribunal shall observe the rules of law governing the admission of evidence.

25 (3) The Tribunal shall cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing conducted by it under this Division.

Parties

30 158. (1) The following persons are entitled to appear at a hearing into a complaint:

(a) the legal practitioner against whom the complaint has been made;

(b) the appropriate Council;

(c) the Attorney General;

(d) the complainant (if any).

(2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 130 (3).

5 (3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(4) The Tribunal may grant leave to any other person to appear at a hearing if the Tribunal is satisfied that it is appropriate for that person to
10 appear at the hearing.

(5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a legal practitioner or, with the leave of the Tribunal, by any other person.

(6) Any person who appears at a hearing (otherwise than as a witness)
15 shall be deemed to be a party to the inquiry.

Hearings to be conducted in public

159. (1) A hearing shall be held in the presence of the public.

(2) Notwithstanding subsection (1), the Tribunal may direct that a hearing be held in the absence of the public if it is of the opinion that the
20 absence of the public will aid the ends of justice.

(3) When a hearing is held in the absence of the public, no persons other than the parties to the hearing and their representatives are entitled to be present at the hearing.

Power to summon witnesses and take evidence

25 160. (1) A member of the Tribunal may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The member of the Tribunal presiding at a hearing may require a person appearing at the hearing to produce a document.

30 (3) The Tribunal may, at a hearing, take evidence on oath or affirmation and, for that purpose—

(a) a member of the Tribunal may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Tribunal
35 presiding at the hearing; and

Legal Profession 1987

(b) a member of the Tribunal may administer an oath or affirmation to a person so appearing at the hearing.

(4) A person served with a summons to appear at a hearing to give evidence shall not, without reasonable excuse—

- 5 (a) fail to attend as required by the summons; or
 (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.

Penalty: \$2,000.

10 (5) A person appearing at a hearing to give evidence shall not, without reasonable excuse—

- (a) when required to take an oath or make an affirmation—refuse or fail to comply with the requirement;
 (b) refuse or fail to answer a question that the person is required to answer by the member of the Tribunal presiding at the hearing; or
 15 (c) refuse or fail to produce a document that the person is required to produce by a summons served under this section.

Penalty: \$2,000.

Power to obtain documents

20 **161. (1)** A member of the Tribunal may, by notice in writing served on a person, require the person—

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or a person authorised by the Tribunal in that behalf; and
 25 (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Penalty: \$2,000.

Release of information

30 **162. (1)** The Tribunal may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

(2) A person shall not make a publication in contravention of a direction given under this section.

Penalty: \$2,000.

Determinations of the Tribunal

- 5 **163. (1)** If, after it has completed a hearing into a complaint against a legal practitioner, the Tribunal is satisfied that the legal practitioner is guilty of serious professional misconduct, the Tribunal may—
- 10 (a) order that the legal practitioner's practising certificate be cancelled;
- (b) order that a practising certificate not be issued to the legal practitioner until the expiration of such period as it may specify in the order;
- (c) order that the name of the legal practitioner be removed from the roll of barristers or the roll of solicitors, as the case may be; or
- 15 (d) order that the legal practitioner pay a fine of such amount (not exceeding \$25,000) as it may specify in the order,
- or may do any combination of those things.
- (2)** If, after it has completed a hearing into a complaint against a legal practitioner, the Tribunal is satisfied that the legal practitioner is guilty of minor professional misconduct, the Tribunal may—
- 20 (a) in the case of a barrister—make any one or more of the orders referred to in section 149 (1); or
- (b) in the case of a solicitor—make any one or more of the orders referred to in section 149 (2).
- 25 **(3)** If, after it has completed a hearing into a complaint against a legal practitioner, the Tribunal is satisfied that the legal practitioner is guilty of professional misconduct and that the complainant has suffered loss as a consequence of the misconduct, the Tribunal may—
- 30 (a) order that the legal practitioner waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the legal practitioner in respect of such work as it may so specify;
- (b) order that the legal practitioner carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify;

Legal Profession 1987

(c) order that the legal practitioner waive any lien in respect of such document or class of documents as it may specify in the order; or

(d) order that the legal practitioner pay to the complainant such amount by way of compensation as it may specify in the order,

5 or may do any combination of those things.

(4) An order shall not be made under subsection (3) unless—

(a) the complainant has, in his or her complaint, requested the making of the order; and

10 (b) the complainant and the legal practitioner both consent to the making of the order,

nor shall such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court or compensation from the Fidelity Fund.

15 (5) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded shall be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

20 (6) In addition to any other order that the Tribunal may make under this section with respect to a legal practitioner whom it has found guilty of professional misconduct, the Tribunal—

(a) may make ancillary orders; and

25 (b) may make orders requiring the legal practitioner to pay such amounts by way of costs (including the costs of the appropriate Council, the Attorney General and the complainant) as it may determine.

(7) Any order made by the Tribunal shall be filed with the Prothonotary.

Appeals from orders of the Tribunal

164. (1) Any party to a hearing conducted by the Tribunal may appeal to the Supreme Court against the Tribunal's determination of a complaint.

30 (2) The complainant at a hearing conducted by the Tribunal may not make such an appeal except with respect to those aspects of the hearing that deal with the loss, if any, suffered by the complainant as a consequence of the conduct the subject of the hearing.

35 (3) The Supreme Court shall hear and determine an appeal under this section.

(4) An appeal shall be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

DIVISION 8—*Miscellaneous*

5 Enforcement of orders

165. An order of the Board or the Tribunal shall be enforceable in the same way as a judgment or order of the Supreme Court.

Authentication of documents

10 166. (1) Every document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by the Chairperson of the Board or by a member of the Board authorised to do so by the Chairperson.

15 (2) Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the President of the Tribunal or by a member of the Tribunal authorised to do so by the President.

Payment of fines and costs

167. Any fine imposed on a person under section 149 or 163 shall be paid to the Law Society for credit of the Statutory Interest Account.

20 Costs of administering Part

168. All costs incurred by the Panel, the Board and the Tribunal shall, in accordance with section 67, be paid from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund.

Rules of procedure for the Board

25 169. (1) A rule committee consisting of the Chairperson of the Board, a barrister member of the Board and a solicitor member of the Board may make rules, not inconsistent with this Part, governing the practice and procedure of the Board.

30 (2) The provisions of sections 34 (II), 41 (I), (II) and (III) and 42 (I) of the Interpretation Act 1897 apply to and in respect of a rule made under subsection (1) in the same way as they apply to and in respect of an instrument referred to in those provisions.

Rules of procedure for the Tribunal

170. (1) A rule committee consisting of the President of the Tribunal, a barrister member of the Tribunal and a solicitor member of the Tribunal may make rules, not inconsistent with this Part, governing the practice and
5 procedure of the Tribunal.

(2) The provisions of sections 34 (II), 41 (I), (II) and (III) and 42 (I) of the Interpretation Act 1897 apply to and in respect of a rule made under subsection (1) in the same way as they apply to and in respect of an instrument referred to in those provisions.

10 Reports

171. (1) Each Council shall submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on its investigations into complaints made to it.

(2) The Panel shall submit to the Attorney General, at such times and in
15 respect of such periods as the Attorney General directs, reports on its reviews of the Councils' decisions to dismiss complaints.

(3) The Board shall submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, reports on its hearings into complaints made or referred to it.

20 (4) A report shall deal with such matters as the Attorney General directs and with such other matters as the Council, Panel or Board, as the case may be, considers appropriate to include in the report.

Liability

172. (1) No matter or thing done by—

25 (a) a Council, the Panel, the Board or the Tribunal; or

(b) any member of a Council, the Panel, the Board or the Tribunal,

shall, if the matter or thing was done in good faith for the purpose of executing this Part, subject any such member personally to any action, liability, claim or demand.

30 (2) In this section—

(a) a reference to a Council includes a reference to a committee of the Council; and

- (b) a reference to a member of a Council includes a reference to a member of any such committee.

PART 11

SOLICITORS' REMUNERATION

5

DIVISION 1—*Preliminary*

Interpretation

173. In this Part—

“bill of costs” means a bill of costs given to a person in accordance with section 198;

10 “Board” means the Legal Fees and Costs Board constituted by this Act;

“Chairperson” means the Chairperson of the Board;

“client” includes—

15 (a) any person who (whether as principal or agent and whether in the capacity of a trustee or otherwise) retains, or is about to retain, a solicitor; and

(b) any other person who is, or who may become, liable to pay a solicitor's costs;

20 “contentious business” means any business transacted by a solicitor in his or her capacity as a solicitor in or for the purpose of proceedings before a court, a tribunal or an arbitrator, and includes the business of the administration of estates and trusts;

“determination” means a determination made by the Board under Division 3;

25 “Industrial Commission” means the Industrial Commission of New South Wales;

“non-contentious business” means any business, other than contentious business, transacted by a solicitor in his or her capacity as a solicitor;

“non-contentious business agreement” means an agreement made under Division 4;

“solicitor” includes—

- (a) a solicitor’s assignee;
- (b) the executor of a solicitor’s will or other testamentary instrument;
- (c) the trustee of a solicitor’s estate; and
- 5 (d) the receiver of a solicitor’s property appointed under Part 8;

“trustee” includes administrator.

DIVISION 2—*The Legal Fees and Costs Board*

Constitution of the Board

10 **174. (1)** There is constituted by this Act a corporation under the corporate name of the “Legal Fees and Costs Board”.

(2) The Board—

- (a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act; and
- (b) does not, for any purpose, represent the Crown.

15 Membership of the Board

175. (1) The Board shall consist of 4 members who shall be appointed by the Governor.

(2) Of the members—

- 20 (a) 1 shall be a judicial member of the Industrial Commission and shall, in and by the instrument by which the member is appointed, be appointed as Chairperson of the Board;
- (b) 1 shall be a practising solicitor; and
- (c) 2 shall be persons (not being practising barristers or practising solicitors) having experience in, and knowledge of, wage-fixing, economics and associated matters.

(3) Schedule 7 has effect with respect to the Board.

Staff of the Board

176. (1) The Board may—

- (a) with the approval of the Attorney General; and

Legal Profession 1987

- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

- 5 (2) For the purposes of this Act, a person whose services are made use of under subsection (1) is an officer of the Board.

Reports etc. by the Board on matters concerning the remuneration of solicitors

177. The Board may investigate, and report and make recommendations to the Attorney General on, any matter relating to—

- 10 (a) bills of costs;
 (b) the taxation, or other ascertainment, of costs; or
 (c) any other aspect of the remuneration of solicitors.

Proof of certain matters not required

15 178. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Board;
 (b) any resolution of the Board;
 (c) the appointment of, or the holding of office by, any member of the Board; or
 20 (d) the presence or nature of a quorum at any meeting of the Board.

DIVISION 3—Determination of solicitors' remuneration

Non-contentious business

25 179. The Board may make determinations regulating the remuneration of solicitors for non-contentious business, including determinations fixing the maximum amount of costs payable in respect of any item, or class of items, of any such business transacted by solicitors.

Contentious business

180. The Board may make determinations fixing the maximum amount of costs payable in respect of any item, or class of items, of contentious business transacted by solicitors in, or for the purpose of—

- 5 (a) proceedings (other than criminal proceedings) before the Supreme Court or the District Court; or
- (b) proceedings before a Local Court exercising jurisdiction under the Local Courts (Civil Claims) Act 1970.

Principles of determination

10 **181. (1)** A determination may provide that solicitors shall be remunerated—

- (a) according to a scale of rates of commission or a scale of percentages;
- (b) by a gross sum;
- 15 (c) by a fixed sum for each document prepared or perused, without regard to length; or
- (d) in any other manner.

(2) A provision of a determination may apply differently according to different factors of a specified kind, including (but without limiting the foregoing)—

- 20 (a) the position of the client (for example, whether the client is vendor or purchaser, lessor or lessee or mortgagor or mortgagee);
- (b) the place where, and the circumstances in which, the business or any part of it is transacted;
- 25 (c) the amount of money (whether capital, rent or otherwise) to which the business relates;
- (d) the skill, labour and responsibility on the part of the solicitor which the business involves;
- (e) the number and importance of the documents prepared or perused, without regard to length; and
- 30 (f) the amount claimed or recovered in any proceedings.

(3) A provision of a determination may authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

Interest

182. A determination may authorise solicitors to charge interest on the unpaid costs of non-contentious business and may fix the maximum rate at which any such interest may be charged.

5 Inquiries by the Board

183. (1) Before making a determination, the Board may conduct an inquiry.

(2) In the exercise of its functions, the Board—

- (a) may inform itself in such manner as it thinks fit;
- 10 (b) may receive written or oral submissions;
- (c) shall take into consideration submissions received by it relating to the remuneration of solicitors, whether or not those submissions were received in response to an invitation under subsection (3);
- (d) is not required to conduct any proceedings in a formal manner; and
- 15 (e) is not bound by rules of evidence.

(3) Without affecting the generality of subsection (2), the Board may invite submissions from Ministers of the Crown, the Law Society Council and any other persons.

(4) The Board shall, as far as practicable, conduct in public proceedings
20 in which oral submissions are received.

Application of quantum and principles determined in State Wage Cases

184. The Board, in making a determination, shall have regard to—

- (a) the most recent determination of the Industrial Commission under section 57 of the Industrial Arbitration Act 1940 of—
 - 25 (i) the amount; or
 - (ii) the method by which an amount may be determined, by which rates of wages in awards made under that Act shall be varied, following a decision of the Australian Conciliation and Arbitration Commission; and
- 30 (b) the principles of wage fixation for the time being adopted by the Industrial Commission, as a general ruling or declaration of principle, in connection with awards made under that Act.

Reports of the Board's determinations

185. (1) When the Board has made a determination, it shall submit to the Attorney General a report containing the determination and its reasons for making the determination.

5 (2) Such a report shall be published in the Gazette as soon as practicable after the report is received by the Attorney General.

Commencement of determinations

186. (1) A determination in respect of which a report is published in the Gazette shall take effect on the day on which the report is so published
10 or, if a later day is specified in the determination for that purpose, on the later day so specified.

(2) Subsection (1) does not prevent a determination from specifying different days for the commencement of different portions of the determination.

15 Reports to be tabled

187. (1) A report shall be laid before each House of Parliament within 14 sitting days of that House after the day on which it is published in the Gazette.

20 (2) Failure to lay a report before each House of Parliament in accordance with this section does not affect the validity of a determination, but the report must nevertheless be laid before each House.

Disallowance of determinations

188. (1) Either House of Parliament may pass a resolution disallowing a determination—

- 25 (a) at any time before the relevant report is laid before the House; or
(b) at any time after the relevant report is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after the relevant report was so laid.

30 (2) On the passing of a resolution disallowing a determination, the determination shall cease to have effect.

(3) The disallowance of a determination has the same effect as a repeal of the determination.

(4) If—

(a) a determination ceases to have effect by virtue of its disallowance;
and

5 (b) the determination amended or repealed some other determination
that was in force immediately before the determination took effect,

the disallowance of the determination has the effect of restoring or reviving
the other determination, as it was immediately before it was amended or
repealed, as if the disallowed determination had not been made.

10 (5) The restoration or revival of a determination pursuant to subsection
(4) takes effect on the day on which the determination by which it was
amended or repealed ceases to have effect.

(6) This section applies to a portion of a determination in the same way
as it applies to the whole of a determination.

Judicial notice of determinations

15 **189.** Judicial notice shall be taken of every determination in respect of
which a report has been published in the Gazette and of the date of
publication in the Gazette of every such report.

Presumption of validity of determinations

20 **190.** It shall be presumed, in the absence of evidence to the contrary,
that all conditions and preliminary steps precedent to the making of a
determination have been complied with and performed.

Amendment and revocation of determinations

191. A determination may be amended or revoked at any time by a
subsequent determination.

25 Periodic review of determinations

192. The Board shall review each determination at least once in the
period of 12 months after it is made and at least once in each subsequent
period of 12 months.

Effect of determinations: non-contentious business

193. Except as provided by a non-contentious business agreement and except as provided by or under any other Act—

- 5 (a) the taxation of bills of costs under Division 5 in respect of non-contentious business transacted by solicitors; and
- (b) any other aspect of the remuneration of solicitors in respect of any such business,

shall be regulated by the determinations in force in respect of that business.

Effect of determinations: contentious business

10 194. (1) A reference in this section to the taxation of costs includes a reference to—

- (a) the taxation of bills of costs under Division 5; and
- 15 (b) the taxation, or other ascertainment, of costs to be paid to a party to any proceedings either by another party to the proceedings or out of a fund.

(2) Except as provided by or under any other Act, the taxation of costs payable in respect of contentious business transacted by solicitors in, or for the purpose of—

- 20 (a) proceedings (other than criminal proceedings) before the Supreme Court or the District Court; or
- (b) proceedings before a Local Court exercising jurisdiction under the Local Courts (Civil Claims) Act 1970,

shall be regulated by the determinations in force in respect of that business.

25 (3) Nothing in subsection (2) shall be construed as limiting any power of a court, or of a taxing officer of a court, to determine in any particular case the amount of costs payable in respect of any contentious business.

DIVISION 4—*Non-contentious business agreements***Making of agreements**

30 195. (1) A solicitor and client may make an agreement as to the solicitor's remuneration in respect of the transaction by the solicitor of any non-contentious business.

(2) Such an agreement may be made before, during or after the transaction of the business.

(3) The provisions of such an agreement may be inconsistent with the provisions of any determination in force in respect of the business.

Formal requirements of agreements

196. (1) A non-contentious business agreement is not enforceable
5 against any person unless the agreement is in writing signed by or on behalf of the client.

(2) Without limiting the generality of subsection (1), a non-contentious business agreement that provides for the payment of an amount greater than
10 that business is not enforceable against any person unless, before the agreement is made—

- (a) a notice in writing to the effect that the client is, by entering the agreement, waiving his or her rights to pay a lesser amount has been given to the client; and
- 15 (b) a statement in writing to the effect that the client acknowledges the waiving of those rights has been signed by or on behalf of the client and been given to the solicitor.

(3) If the regulations so require, the notice or statement shall be in such form, and given or made in such manner, as may be prescribed by the
20 regulations.

Enforcement of agreements

197. (1) A non-contentious business agreement may be enforced or set aside in the same manner and on the same grounds as any other agreement.

(2) If on any taxation of a bill of costs under Division 5 in respect of
25 non-contentious business transacted by a solicitor—

- (a) a non-contentious business agreement is relied on by the solicitor and objected to by the client; and
 - (b) the Supreme Court is of the opinion that the agreement is unfair or unreasonable,
- 30 the Supreme Court may set aside the agreement, or reduce the amount payable under the agreement, and may give such consequential directions as it considers appropriate.

DIVISION 5—*Bills of costs***Delivery of signed bill of costs before action**

5 **198. (1)** Proceedings for the recovery of costs incurred by a solicitor in transacting any business shall not be commenced or maintained against any person unless at least one month has passed since the person has been given a bill of the costs so incurred.

(2) A bill of costs must be signed by the solicitor or by some other solicitor who is a partner of, or is employed by, the solicitor.

10 (3) It is sufficient compliance with subsection (2) if a letter that is so signed is attached to, or enclosed with, the bill of costs.

(4) If the regulations so require, a bill of costs shall be in such form, and contain such particulars, as may be prescribed by those regulations.

15 (5) In the event of any inconsistency between the requirements made by the regulations and the requirements made by or under any other Act, the requirements made by the regulations shall prevail.

(6) A bill of costs may be given to a person—

(a) by delivering it personally to the person;

20 (b) by sending it by post to, or by leaving it for the person at, the person's place of business or residence last known to the solicitor; or

(c) by delivering it to the appropriate place in a document exchange in which the person has receiving facilities.

25 (7) Nothing in this section prevents the Supreme Court from making an order authorising a solicitor to commence or maintain proceedings against a person before one month has passed since the person has been given a bill of costs, but such an order shall not be made unless the Supreme Court is satisfied that the person is about to leave New South Wales.

Applications for taxation of bills of costs

30 **199. (1)** An application for taxation of a bill of costs may be made to the Supreme Court—

(a) by any person who is liable to pay those costs; and

(b) if any such person is a trustee—by any other person who has an interest in the property out of which those costs are payable.

(2) Such an application may be made even if the bill has been paid.

(3) If an application for taxation of a bill of costs is made by a person who is liable to pay those costs and is made within one month after the bill has been given, the bill shall be referred for taxation.

(4) Except as provided by subsection (3), a bill of costs shall not be referred for taxation unless the Supreme Court so orders.

Orders referring bills of costs for taxation

200. (1) The Supreme Court may make an order referring a bill of costs for taxation subject to such conditions as it considers appropriate, which may include a condition requiring money to be brought into court before the bill is taxed.

(2) Such an order shall not be made—

(a) if a verdict has been obtained or judgment has been entered or signed in any proceedings for the recovery of the costs; or

(b) if 12 months have passed since the bill of costs was given,

15 unless the Supreme Court considers that it is appropriate, in the circumstances of the case, for the bill to be taxed.

(3) If the applicant for taxation of a bill of costs is a person who is not liable to pay those costs but has an interest in the property out of which those costs are payable, the Supreme Court may take into consideration the nature and extent of that interest in deciding whether or not to make such an order.

Stay of action pending taxation of bills of costs

201. (1) If an application for taxation of a bill of costs is made by a person who is liable to pay those costs and is made within one month after the bill has been given, proceedings for the recovery of those costs shall not be commenced or maintained until after the bill has been taxed.

(2) If the Supreme Court makes an order referring a bill of costs for taxation, it may make a further order prohibiting the commencement or maintenance of proceedings for the recovery of those costs until after the bill has been taxed.

Delivery of bills of costs to third parties

202. On the application of—

(a) a person who has applied for taxation of a bill of costs; or

(b) a person who is entitled to make such an application, the Supreme Court may make an order requiring the solicitor to give to the person a copy of the bill.

Taxation of bills of costs

5 **203. (1)** A bill of costs shall be taxed in accordance with the rules of the Supreme Court.

(2) Subject to the conditions of any order under section 200, a bill of costs shall be taxed without money being brought into court.

10 **(3)** The costs of taxing a bill of costs, together with the costs of any proceedings on an application for taxation of the bill, shall, unless the Supreme Court otherwise orders, be paid—

(a) except as provided by paragraph (b)—by the applicant; or

(b) if the bill, when taxed, is reduced by one-sixth or more—by the solicitor.

15 **(4)** If the applicant for taxation of a bill of costs is a person who is not liable to pay those costs but has an interest in the property out of which those costs are payable—

20 (a) any costs payable by a solicitor under this section shall, if the Supreme Court so orders, be payable to the trustee of that property instead of to the applicant; and

(b) the trustee of that property shall indemnify the applicant for any costs payable by the applicant under this section.

Disbursement of money brought into court

25 **204.** After a bill of costs has been taxed, any money brought into court shall be disbursed in accordance with such order as the Supreme Court may make in that regard.

No retaxation except under special circumstances

30 **205. (1)** An order for the taxation of a bill of costs that has already been taxed shall not be made unless the Supreme Court considers that it is appropriate, in the circumstances of the case, for the bill to be retaxed.

(2) Subsection (1) does not affect the jurisdiction of the Supreme Court with respect to the review of the taxation of bills of costs.

Effect of taxing officer's certificate

206. (1) The certificate of a taxing officer as to the amount to be paid in respect of a bill of costs is, subject to any retaxation of the bill and subject to any review of the taxation of the bill by the Supreme Court, final and
5 conclusive.

(2) Payment of the amount certified by a taxing officer as being the amount to be paid in respect of a bill of costs shall be enforced in accordance with the rules of the Supreme Court.

(3) The Supreme Court may order judgment to be entered for any such
10 amount together with the costs of the proceedings for obtaining the order.

DIVISION 6—Miscellaneous**Security for costs**

207. A solicitor may take from a client security for the costs of any business to be transacted by the solicitor.

15 Supreme Court may order delivery up of documents etc.

208. (1) On the application of a solicitor's client, the Supreme Court may order the solicitor—

- (a) to give to the client a bill of costs in respect of any business transacted by the solicitor; and
- 20 (b) to give to the client, on payment of those costs, such of the client's documents as are held by the solicitor in relation to that business.

(2) Subsection (1) does not affect the provisions of Division 5 with respect to the taxation of bills of costs.

Remuneration of a solicitor who is a mortgagee

25 209. (1) If a mortgage is made to a solicitor, the solicitor is entitled to recover from the mortgagor in respect of all business transacted by the solicitor in—

- (a) negotiating the loan secured by the mortgage;
- 30 (b) deducing and investigating the title to the property charged by the mortgage; and
- (c) preparing and completing the mortgage,

Legal Profession 1987

such costs as the solicitor would have been entitled to receive had the mortgage been made to a person who was not a solicitor and had such a person retained the solicitor to transact that business.

(2) If a mortgage is made to, or becomes vested in, a solicitor, and any business is transacted by the solicitor in relation to—

- (a) the mortgage;
- (b) the loan secured by the mortgage; or
- (c) the property charged by the mortgage,

the solicitor is entitled to recover from the person on whose behalf the business is transacted, and to charge against that property, such costs as the solicitor would have been entitled to receive had the mortgage been made to, or remained vested in, a person who was not a solicitor and had such a person retained the solicitor to transact that business.

(3) In this section—

“mortgage” includes any charge on property for securing money or money’s worth.

PART 12

MISCELLANEOUS

Contempt of the Supreme Court

20 **210.** The imposition of a penalty for a contravention of a provision of this Act does not affect the power of the Supreme Court to punish a contempt of the Court.

Protection from liability

211. No liability is incurred by—

- 25 (a) the Bar Association or the Bar Council, or their committees;
- (b) the Law Society or the Law Society Council, or their committees, including a Management Committee to which a function is delegated under section 74;
- 30 (c) an investigator, or an investigator’s assistant, appointed under section 55; or

(d) the company referred to in Division 2 of Part 3 or its directors, or an employee or agent of any of them for anything done or suffered in good faith in the exercise, or purported exercise, of a function under this Act.

5 Offences

212. Proceedings for an offence under this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Proof of certain matters not required

10 213. In any legal proceedings, no proof is required (unless evidence to the contrary is given) of—

- (a) the constitution of any body, incorporated or unincorporated, on which functions are conferred or imposed by or under this Act;
- (b) any resolution of such a body;
- 15 (c) the appointment of, or the holding of office by, a member of such a body; or
- (d) the presence or nature of a quorum at a meeting of such a body.

Repeals

20 214. Each Act specified in Schedule 1 is, to the extent indicated in the Schedule, repealed.

Savings and transitional provisions

215. Schedule 8 has effect.

Regulations

25 216. (1) The Governor may, on the recommendation of the Attorney General, make regulations not inconsistent with this Act for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Before recommending the making of a regulation, the Attorney General shall, unless the circumstances are exceptional, give the Bar Council, the Law Society Council and the Advisory Council an opportunity to express, within a time specified by the Attorney General, their views on the proposed regulation.

(3) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) practising certificates, including the provision of information by an applicant for a practising certificate;
- 10 (b) imposing by the regulations conditions to which a practising certificate is to be subject, including conditions requiring a solicitor to undertake and complete a prescribed course of further legal education;
- 15 (c) the establishment and administration of courses of further legal education;
- (d) the practice, conduct and discipline of legal practitioners;
- (e) matters of which the Bar Council is to be notified by a barrister or of which the Law Society Council is to be notified by a solicitor;
- 20 (f) the accounts to be kept by a solicitor in the course of practising as a solicitor, the operation of a trust account kept under Part 6 and the authorisation of a person to operate on such a trust account;
- (g) the deposit with the Law Society of money in a trust account;
- (h) information to be provided to the Law Society Council by a solicitor or former solicitor in relation to indemnity insurance;
- 25 (i) the fees payable to the Admission Boards in relation to registration, admission, examination and certificates;
- (j) the functions and fees of an investigator appointed under section 55 and the duties of the solicitor whose affairs are being investigated; and
- 30 (k) advertising by solicitors.

(4) A regulation for or with respect to any matter may make provision for or with respect to the matter by the application, adoption or incorporation, with or without modification, of a publication of the Bar Council or the Law Society Council.

Legal Profession 1987

(5) A regulation may impose a penalty not exceeding \$1,000 for a breach of the regulation.

(6) A provision of a regulation may—

5 (a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

10

SCHEDULE 1

(Sec. 214)

REPEALS

Legal Practitioners Act 1898 No. 22—the whole Act

15 Decimal Currency Act 1965 No. 33—so much of the Second Schedule as relates to Act No. 22, 1898

Supreme Court Act 1970 No. 52—so much of the Second Schedule as amends Act No. 22, 1898

Supreme Court (Amendment) Act 1972 No. 41—so much of the Second Schedule as relates to Act No. 22, 1898

20 Legal Practitioners (Amendment) Act 1980 No. 12—the whole Act

Legal Practitioners (Further Amendment) Act 1980 No. 86—the whole Act

Legal Practitioners (Solicitors' Remuneration) Amendment Act 1984 No. 52—the whole Act

25 Legal Practitioners (Commercial Arbitration) Amendment Act 1984 No. 164—the whole Act

Legal Practitioners (Amendment) Act 1987—the whole Act

SCHEDULE 2

(Secs. 6, 13)

THE ADMISSION BOARDS

General procedure

- 5 1. The procedure for the calling of meetings of an Admission Board and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Board.

Quorum

- 10 2. (1) The quorum for a meeting of an Admission Board is 4 members including the member presiding at the meeting.

(2) The quorum for a joint sitting of the Admission Boards is 8 members including the member presiding at the meeting.

Presiding member

- 15 3. (1) At a meeting of an Admission Board—
(a) the member Judge who has been nominated by the Chief Justice for the purpose shall preside; or
(b) in his or her absence, a member elected by those present at the meeting shall preside.

- 20 (2) The member presiding at a meeting of an Admission Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of an Admission Board at which a quorum is present shall be the decision of the Board.

Minutes

- 25 5. An Admission Board shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

Joint meetings

- 30 6. (1) A joint meeting of both Admission Boards under section 20 shall be presided over by the person who would ordinarily preside at a meeting of the Admission Board with which the application to be considered at the joint meeting was lodged.

(2) Except as provided by subclause (1), this Schedule applies in relation to a joint meeting of both Admission Boards in the same way as it applies to a meeting of one of them.

First meeting

- 35 7. The Attorney General shall call the first meeting of each Admission Board in such manner as the Attorney General thinks fit.
-

SCHEDULE 3

(Sec. 58)

THE LEGAL PROFESSION ADVISORY COUNCIL

PART 1

5

PRELIMINARY

Interpretation

1. In this Schedule—

“Chairperson” means the person appointed under section 58 to preside at meetings of the Advisory Council.

10

PART 2

MEMBERS OF THE ADVISORY COUNCIL

Age of members

2. A person of or above the age of 70 years is not eligible to be appointed as a member of the Advisory Council or to act in the office of a member of the Advisory Council.

15 **Chairperson of the Advisory Council**

3. The Chairperson of the Advisory Council may be referred to as the Chairman or Chairwoman, as the case requires.

Reserve members

20 4. (1) The Attorney General may, for each appointed member of the Advisory Council, appoint one or more reserve members to act in the office of the appointed member during the illness or absence of the appointed member, and the reserve member, while so acting, shall have and may exercise all the functions of the appointed member and shall be deemed to be a member of the Advisory Council.

25 (2) A person, in order to be appointed as a reserve member of the Advisory Council, must be qualified for appointment in the same way as the appointed member for whom he or she is a reserve member.

(3) The Attorney General may remove any person from any office to which the person was appointed under this clause.

30 (4) A person while acting in the office of a member of the Advisory Council is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member of the Advisory Council shall be deemed to be an absence from office of the member.

Terms of office

35 5. Subject to this Schedule, a member of the Advisory Council shall hold office for such period, not exceeding 7 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

*Legal Profession 1987*SCHEDULE 3—*continued*THE LEGAL PROFESSION ADVISORY COUNCIL—*continued***Remuneration**

6. A member of the Advisory Council is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the member.

5 Filling of vacancy in office of a member

7. If the office of any member of the Advisory Council becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

8. (1) A member of the Advisory Council shall be deemed to have vacated office if
10 the member—

(a) dies;

15 (b) absents himself or herself from 4 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Attorney General (which leave the Attorney General is hereby authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Attorney General for being absent from those meetings;

20 (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

25 (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;

(f) resigns the office by instrument in writing addressed to the Attorney General;

30 (g) reaches the age of 70 years; or

(h) is removed from office by the Attorney General under subclause (2).

(2) The Attorney General may remove a member of the Advisory Council from office for incapacity, incompetence or misbehaviour.

35 (3) The Chairperson of the Advisory Council shall be deemed to have vacated office as Chairperson if the person—

(a) resigns the office by instrument in writing addressed to the Attorney General; or

*Legal Profession 1987*SCHEDULE 3—*continued*THE LEGAL PROFESSION ADVISORY COUNCIL—*continued*

(b) ceases to be a member of the Advisory Council.

Effect of certain other Acts

9. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Advisory Council and a member of the Advisory Council is not, as
5 a member, subject to that Act.

(2) If by or under any other Act provision is made—

(a) requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office; or

10 (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Advisory Council or from accepting and retaining any remuneration payable to the person under this Act as a member of the Advisory Council.

Liability of members etc.

15 10. No matter or thing done by the Advisory Council, and no matter or thing done by any member of the Advisory Council or by any person acting under the direction of the Advisory Council, shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of the Advisory Council or a person so acting personally to any action, liability, claim or demand.

20

PART 3

PROCEDURE OF THE ADVISORY COUNCIL

General procedure

11. The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the
25 Advisory Council.

Quorum

12. The quorum for a meeting of the Advisory Council is 5 members including the member presiding at the meeting.

Presiding member

30 13. (1) The Chairperson of the Advisory Council or, in the absence of the Chairperson, another member of the Advisory Council elected by the members present shall preside at a meeting of the Advisory Council.

(2) The person presiding at a meeting of the Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

*Legal Profession 1987*SCHEDULE 3—*continued*THE LEGAL PROFESSION ADVISORY COUNCIL—*continued***Voting**

14. A decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present shall be the decision of the Advisory Council.

Minutes

- 5 15. The Advisory Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Advisory Council.

First meeting

16. The Attorney General shall call the first meeting of the Advisory Council in such manner as the Attorney General thinks fit.

10

SCHEDULE 4

(Sec. 126)

THE PROFESSIONAL CONDUCT REVIEW PANEL

PART 1

PRELIMINARY

15 **Interpretation**

1. Expressions used in this Schedule have the same meanings as they have in Part 10.

PART 2

MEMBERS OF THE PANEL

Eligibility for membership of the Panel

- 20 2. (1) A person of or above the age of 70 years is not eligible to be appointed as a member of the Panel or to act in the office of a member of the Panel.

(2) A barrister or solicitor is not eligible to be appointed as a member of the Panel or to act in the office of a member of the Panel—

- (a) if he or she is a member of the Bar Council or the Law Society Council; or
25 (b) if he or she is a barrister or solicitor of less than 5 years' standing.

Chairperson of the Panel

3. The Chairperson of the Panel may be referred to as the Chairman or Chairwoman, as the case requires.

*Legal Profession 1987*SCHEDULE 4—*continued*THE PROFESSIONAL CONDUCT REVIEW PANEL—*continued***Acting members and acting Chairperson**

4. (1) The Attorney General may, from time to time, appoint a qualified person to act in the office of a member of the Panel during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member of the Panel.

(2) The Attorney General may, from time to time, appoint a lay member to act in the office of Chairperson of the Panel during the illness or absence of the Chairperson, and the member, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Attorney General may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member of the Panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member of the Panel or the Chairperson of the Panel shall be deemed to be an absence from office of the member or Chairperson, as the case may be.

Terms of office

5. Subject to this Schedule, a member of the Panel shall hold office for such period, not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

6. A member of the Panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the member.

Filling of vacancy in office of member

7. If the office of any member of the Panel becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

8. (1) A member of the Panel shall be deemed to have vacated office if the member—

- (a) dies;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

*Legal Profession 1987*SCHEDULE 4—*continued*THE PROFESSIONAL CONDUCT REVIEW PANEL—*continued*

- (c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- 5 (d) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (e) resigns the office by instrument in writing addressed to the Attorney General;
- 10 (f) reaches the age of 70 years; or
- (g) is removed from the office by the Attorney General under subclause (2).
- (2) The Attorney General may remove a member of the Panel from office for incapacity, incompetence or misbehaviour.
- (3) The Chairperson of the Panel shall be deemed to have vacated office as
15 Chairperson if the person—
- (a) resigns the office by instrument in writing addressed to the Attorney General; or
- (b) ceases to be a member of the Panel.

Effect of certain other Acts

9. (1) If by or under any other Act provision is made—
- 20 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,
- that provision shall not operate to disqualify the person from holding that office and
25 also the office of a member of the Panel or from accepting and retaining any remuneration payable to the person under this Act as a member of the Panel.
- (2) The office of a member of the Panel shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

PART 3

30 PROCEDURE OF THE PANEL

General procedure

10. The procedure for the calling of meetings of the Panel and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Chairperson.

*Legal Profession 1987*SCHEDULE 4—*continued*THE PROFESSIONAL CONDUCT REVIEW PANEL—*continued***Quorum**

11. For the purpose of conducting a review, all 3 members of the Panel who constitute the Panel for the purposes of the review must be present at any meeting of the Panel.

Voting

5 12. (1) The member of the Panel presiding at a meeting of the Panel shall have a deliberative vote only.

(2) A decision supported by a majority of the votes cast at a meeting of the Panel at which a quorum is present shall be the decision of the Panel.

Minutes

10 13. The member of the Panel presiding at a meeting of the Panel shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Panel.

First meetings

14. The member of the Panel presiding at a meeting of the Panel shall call the first meeting of the Panel in such manner as that member thinks fit.

15

SCHEDULE 5

(Sec. 127)

THE PROFESSIONAL STANDARDS BOARD

Interpretation

1. Expressions used in this Schedule have the same meanings as they have in Part 10.

20 **Eligibility for membership of the Board**

2. (1) A person of or above the age of 70 years is not eligible to be appointed as a member of the Board or to act in the office of a member of the Board.

(2) A barrister or solicitor is not eligible to be appointed as a member of the Board or to act in the office of a member of the Board—

25 (a) if he or she is a member of the Bar Council or the Law Society Council; or

(b) if he or she is a barrister or solicitor of less than 5 years' standing.

Chairperson of the Board

3. The Chairperson of the Board may be referred to as the Chairman or Chairwoman, as the case requires.

*Legal Profession 1987*SCHEDULE 5—*continued*THE PROFESSIONAL STANDARDS BOARD—*continued***Acting members and acting Chairperson**

4. (1) The Attorney General may, from time to time, appoint a qualified person to act in the office of a member of the Board during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member of the Board.

(2) The Attorney General may, from time to time, appoint one of the barrister members or one of the solicitor members to act in the office of Chairperson of the Board during the illness or absence of the Chairperson, and the member, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Attorney General may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member of the Board or the Chairperson of the Board shall be deemed to be an absence from office of the member or Chairperson, as the case may be.

Terms of office

5. Subject to this Schedule, a member of the Board shall hold office for such period, not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

6. A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the member.

Filling of vacancy in office of member

7. If the office of any member of the Board becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

8. (1) A member of the Board shall be deemed to have vacated office if the member—

(a) dies;

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

*Legal Profession 1987*SCHEDULE 5—*continued*THE PROFESSIONAL STANDARDS BOARD—*continued*

- (c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- 5 (d) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (e) resigns the office by instrument in writing addressed to the Attorney General;
- 10 (f) reaches the age of 70 years; or
- (g) is removed from the office by the Attorney General under subclause (2).

(2) The Attorney General may remove a member of the Board from office for incapacity, incompetence or misbehaviour.

(3) The Chairperson of the Board shall be deemed to have vacated office as
15 Chairperson if the person—

- (a) resigns the office by instrument in writing addressed to the Attorney General; or
- (b) ceases to be a member of the Board.

Effect of certain other Acts

9. (1) If by or under any other Act provision is made—
- 20 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

25 that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to the person under this Act as a member of the Board.

(2) The office of a member of the Board shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

SCHEDULE 6

(Sec. 128)

THE DISCIPLINARY TRIBUNAL

Interpretation

- 5 1. Expressions used in this Schedule have the same meanings as they have in Part 10.

Eligibility for membership of the Tribunal

2. (1) A person of or above the age of 70 years is not eligible to be appointed as a member of the Tribunal or to act in the office of a member of the Tribunal.
- 10 (2) A barrister or solicitor is not eligible to be appointed as a member of the Tribunal or to act in the office of a member of the Tribunal—
- (a) if he or she is a member of the Bar Council or the Law Society Council; or
- (b) if he or she is a barrister or solicitor of less than 5 years' standing.

Acting members

- 15 3. (1) The President of the Tribunal may, from time to time, appoint a Judge of the Supreme Court to act in the office of a judicial member of the Tribunal during the illness or absence of the member, and the Judge, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a judicial member of the Tribunal.
- 20 (2) The President of the Tribunal may remove any Judge from any office to which the Judge was appointed under subclause (1).
- (3) The Attorney General may, from time to time, appoint a qualified person to act in the office of a member of the Tribunal (other than a judicial member) during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member of the Tribunal.
- 25 (4) The Attorney General may remove any person from any office to which the person was appointed under subclause (3).
- (5) A person while acting in the office of a member of the Tribunal (other than a judicial member) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.
- 30 (6) For the purposes of this clause, a vacancy in the office of a member of the Tribunal shall be deemed to be an absence from office of the member.

Terms of office

- 35 4. Subject to this Schedule, a member of the Tribunal shall hold office for such period, not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

*Legal Profession 1987*SCHEDULE 6—*continued*THE DISCIPLINARY TRIBUNAL—*continued***Remuneration**

5. A member of the Tribunal (other than a judicial member) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the member.

5 Filling of vacancy in office of member

6. If the office of any member of the Tribunal becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

10 7. (1) A member of the Tribunal shall be deemed to have vacated office if the member—

- (a) dies;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- 15 (c) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- 20 (d) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (e) resigns the office by instrument in writing addressed to the Attorney General;
- (f) reaches the age of 70 years; or
- 25 (g) is removed from the office by the Attorney General under subclause (2).

(2) The Attorney General may remove a member of the Tribunal (other than a judicial member) from office for incapacity, incompetence or misbehaviour.

Effect of certain other Acts

8. (1) If by or under any other Act provision is made—
- 30 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

35 that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Tribunal or from accepting and retaining any remuneration payable to the person under this Act as a member of the Tribunal.

*Legal Profession 1987*SCHEDULE 6—*continued*THE DISCIPLINARY TRIBUNAL—*continued*

(2) The office of a member of the Tribunal shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

SCHEDULE 7

(Sec. 175)

5 THE LEGAL FEES AND COSTS BOARD

PART 1

PRELIMINARY

Interpretation

1. Expressions used in this Schedule have the same meanings as they have in Part 11.

10 PART 2

MEMBERS OF THE BOARD

Age of members

2. A person of or above the age of 70 years is not eligible to be appointed as a member of the Board or to act in the office of a member of the Board.

15 **Acting members**

3. (1) The Governor may, from time to time, appoint a person to act in the office of a member of the Board during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member of the Board.

20 (2) The Governor shall not under subclause (1) appoint a person to act in the office of the Chairperson unless the person is a judicial member of the Industrial Commission.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

25 (4) A person while acting in the office of a member of the Board (other than the Chairperson) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member of the Board shall be deemed to be an absence from office of the member.

*Legal Profession 1987*SCHEDULE 7—*continued*THE LEGAL FEES AND COSTS BOARD—*continued***Terms of office**

4. Subject to this Schedule, a member of the Board shall hold office for such period, not exceeding 7 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

5 Remuneration

5. A member of the Board (other than the Chairperson) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Attorney General may from time to time determine in respect of the member.

Filling of vacancy in office of member

10 6. If the office of any member of the Board becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

7. (1) A member of the Board shall be deemed to have vacated office if the member—

- (a) dies;
- 15 (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Attorney General or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Attorney General for being absent from those meetings;
- 20 (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- 25 (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- 30 (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) being the Chairperson, ceases to be a judicial member of the Industrial Commission;
- (g) resigns the office by instrument in writing addressed to the Attorney General;
- (h) reaches the age of 70 years; or
- 35 (i) is removed from office by the Governor under subclause (2).

*Legal Profession 1987*SCHEDULE 7—*continued*THE LEGAL FEES AND COSTS BOARD—*continued*

(2) The Governor may remove a member of the Board from office for incapacity, incompetence or misbehaviour.

Effect of certain other Acts

5 8. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member of the Board and a member of the Board is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

10 (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to the person under this Act as a member.

15 **Liability of members etc.**

9. No matter or thing done by the Board, any member of the Board or any person acting under the direction of the Board shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member of the Board or a person so acting personally to any action, liability, claim or demand.

20

PART 3

PROCEDURE OF THE BOARD

General procedure

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Board.

25 **Quorum**

11. The quorum for a meeting of the Board is 3 members, of whom one must be the Chairperson.

Presiding member

12. (1) The Chairperson shall preside at a meeting of the Board.

30 (2) At any meeting of the Board, the Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

*Legal Profession 1987*SCHEDULE 7—*continued*THE LEGAL FEES AND COSTS BOARD—*continued***Voting**

13. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present shall be the decision of the Board.

SCHEDULE 8

(Sec. 215)

5

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

10 “repealed Act” means the Legal Practitioners Act 1898, as in force immediately before the appointed day.

Definition of “legal practitioner”

2. Notwithstanding the definition of “legal practitioner” in section 3 (1), a reference in this Act to a legal practitioner shall, until the date notified under section 25, be read as including a person enrolled in the Supreme Court as a barrister.

15

Students-at-law

3. (1) A person who, immediately before the appointed day, was a student-at-law under the repealed Act becomes on that day a student-at-law registered under this Act.

20 (2) If, immediately before the appointed day, an application duly made under the repealed Act for admission as a student-at-law had not been finally dealt with, it shall be dealt with as an application duly made under this Act for registration as a student-at-law.

(3) A person who, immediately before the appointed day, was a student clerk under the repealed Act becomes on that day a student-at-law registered under this Act.

25 (4) If, immediately before the appointed day, an application duly made under the repealed Act for admission as a student clerk had not been finally dealt with, it shall be dealt with as an application duly made under this Act for registration as a student-at-law.

Application by barrister for practising certificate

30 4. (1) In this clause—

“application” means an application to the Bar Council for a practising certificate;

*Legal Profession 1987*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

“notified date” means the date notified under section 25;

“practising certificate” means a practising certificate issued by the Bar Council.

(2) An application may be made to the Bar Council not earlier than 4 months, and not later than 2 months, before the notified date.

5 (3) Subclause (2) does not prevent the Bar Council from accepting a later application made before the notified date.

(4) If an application is made as provided by subclause (2) but is not determined before the notified date, the applicant shall, unless the Supreme Court otherwise orders, be deemed to be the holder of a practising certificate during the period that begins on the
10 notified date and ends when the application is approved or refused.

Application made under repealed Act for renewal of solicitor’s practising certificate

5. If, during the year commencing on 1 July that last preceded the appointed day, a solicitor holding a practising certificate under the repealed Act duly applied for its renewal, the provisions of Part 3 and section 76 of this Act have effect in relation to the
15 application as if—

(a) those provisions had been in force when the application was made;

(b) the practising certificate held by the applicant when applying for its renewal had been a current practising certificate referred to in section 28 of this Act;

20 (c) the application had been an application for a new practising certificate made under section 28 of this Act; and

(d) the fee, contributions and declaration required by the repealed Act to accompany the application were those required to accompany an application under section 28 of this Act.

Continuation of Legal Fees and Costs Board

25 6. (1) The Legal Fees and Costs Board constituted by this Act is a continuation of, and the same legal entity as, the Legal Fees and Costs Board constituted by the repealed Act.

(2) The instrument of appointment of a member of the Legal Fees and Costs Board holding office immediately before the appointed day has effect as if it operated in relation
30 to the member on the appointed day.

(3) Subclause (2) does not operate to extend the term of office of a member beyond the date on which it would have expired if the repealed Act had continued in force.

Continuation of determination made by Legal Fees and Costs Board

35 7. (1) A determination made, or deemed to have been made, by the Legal Fees and Costs Board under section 20J (1) or (2) of the repealed Act and in force immediately before the appointed day has effect on and from that day as if it had been made under section 179 or 180 of this Act, as the case requires.

*Legal Profession 1987*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) If, immediately before the appointed day, the report of a determination under section 20J of the repealed Act had not been—

- (a) made under section 20O of that Act; or
- 5 (b) published in the Gazette, or laid before each House of Parliament, under section 20P of that Act,

the report may be made, published or laid in accordance with the corresponding provision of this Act.

(3) Anything done under the repealed Act in respect of a report has effect as if it had been done under this Act.

- 10 (4) On and from the appointed day, a reference (however expressed) in any other Act, in any instrument made under any other Act or in any other document to—

- (a) a general order made under Part XXIV of the Conveyancing Act 1919; or
- (b) a determination under section 20J of the repealed Act,

15 shall be read as a reference to a determination made under Division 3 of Part 11 of this Act.

Solicitors' remuneration

20 8. (1) An agreement made, or deemed to have been made, in accordance with Division 4 of Part IVA of the repealed Act and still in force immediately before the appointed day has effect on and after that day as if it had been made under Division 4 of Part 11 of this Act.

(2) If a bill of costs had been delivered, sent or left before the appointed day under Part V of the repealed Act, that Part continues to apply to and in relation to the bill on and after that day as it would have done if the repealed Act had continued in force.

Charging orders

25 9. A charging order made under section 39A of the repealed Act and in force immediately before the appointed day has the same effect on and after that day as it would have had if the repealed Act had continued in force.

Control of employment of certain persons

30 10. (1) If, immediately before the appointed day, an order made under section 40K of the repealed Act prohibiting employment of a named person without permission is in force, it continues to have effect on and after the appointed day as if it were an order made under section 120 of this Act with respect to the clerk.

35 (2) If permission or leave given under section 40G, 40J or 40K of the repealed Act to employ or remunerate a named person is in force immediately before the appointed day, it continues to have effect on and after that day as if it were leave given under section 121 of this Act to employ or pay the person.

*Legal Profession 1987*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(3) Permission or leave continued by subclause (2) that was limited as to time expires at the same time as it would have expired if the repealed Act had continued in force.

Inspectors and investigators

11. (1) If, immediately before the appointed day—

- 5 (a) an inspector appointed under section 42 of the repealed Act to carry out an examination of accounts under that section; or
- (b) a person appointed under section 82A of the repealed Act to carry out an investigation under that section,

10 had not submitted a report on the examination or investigation, the section under which the appointment was made continues to apply to the inspector or investigator, the examination or investigation, and the respective reports.

15 (2) For the purposes of subclause (1), a reference in section 42 or 82A of the repealed Act to the Statutory Committee shall be read as a reference to the Professional Conduct Review Panel, the Professional Standards Board and the Disciplinary Tribunal, whichever is appropriate.

(3) Section 83A of the repealed Act applies to any matter or thing done or suffered for the purposes of giving effect to this clause.

Committee of Management

20 12. (1) The members of the Committee of Management holding office under section 51 of the repealed Act immediately before the appointed day take office on that day as the members of a Management Committee holding office under section 74 of this Act.

25 (2) A delegation of power to the Committee of Management under section 51 of the repealed Act that is still effective immediately before the appointed day has effect on and from that day as if it were a delegation to a Management Committee under section 74 of this Act.

Prescribed corporations

30 13. Until corporations are prescribed by regulation for the purposes of paragraph (a) of the definition of "solicitor" in section 76 (5), the corporations prescribed for those purposes are those that, immediately before the appointed day, were prescribed for the purposes of section 52 of the repealed Act.

Money and trust accounts

14. (1) Money and trust accounts to which, immediately before the appointed day, Part VII of the repealed Act applied are, on and from the appointed day, money and trust accounts to which Part 6 of this Act applies.

35 (2) Without affecting the generality of subsection (1)—

- (a) money deposited with the Law Society under section 42A of the repealed Act is money deposited with the Law Society under section 64 of this Act;

*Legal Profession 1987*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (b) money invested by the Law Society under section 42B of the repealed Act is money invested by the Law Society under section 65 of this Act; and
- (c) the Statutory Interest Account to be maintained under section 67 of this Act is a continuation of, and the same account as, the Statutory Interest Account being maintained immediately before the appointed day under section 44A of the repealed Act.
- 5
- (3) The reference in section 56 of this Act to a report includes a reference to a report referred to in section 43A of the repealed Act, whether made before the appointed day or on or after that day in accordance with clause 11 of this Schedule.
- 10 (4) Section 68 of this Act has effect in relation to money held by the Treasurer immediately before the appointed day under section 43B of the repealed Act as if the money so held had been paid to the Treasurer under section 68 of this Act.

Levies

15. Section 78 of this Act has effect in relation to a levy that—
- 15 (a) was made under section 53 of the repealed Act; and
- (b) was unpaid immediately before the appointed day,
- as if it had been made under section 77 of this Act.

Claims against the Fidelity Fund

- 20 16. (1) A claim under Division 1 of Part VIII of the repealed Act that, immediately before the appointed day, had not been determined under that Part has effect, and shall be dealt with, as a claim against the Fidelity Fund.
- (2) Subclause (1) does not operate to revive a claim under Division 1 of Part VIII of the repealed Act that was determined or barred before the appointed day.

Receivers

- 25 17. (1) If, immediately before the appointed day, a receivership under Division 2 of Part VIII of the repealed Act had not concluded, that Division continues, until the conclusion of the receivership, to apply to and in relation to the receiver and the receivership as it would have done if the repealed Act had continued in force.
- (2) An application under section 92 for appointment of a receiver may be based—
- 30 (a) on an opinion of the Law Society Council referred to in section 92 (1) (a) that is formed on grounds that arose before the appointed day; or
- (b) on an action of the Law Society Council referred to in section 92 (1) (b) that was taken before the appointed day or is taken on or after the appointed day on grounds that arose before the appointed day.

*Legal Profession 1987*SCHEDULE 8—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Statutory Committee**

18. On and after the appointed day—

(a) The Solicitors' Statutory Committee as constituted under Part X of the repealed Act immediately before the appointed day continues in existence; and

5 (b) Part X of the repealed Act continues in force,

in relation to, and for the purpose only of completing, business of the Statutory Committee that had been commenced, but not completed, before that day.

General saving

10 19. (1) This clause does not have effect to the extent that other provision is made by this Schedule.

(2) If anything of a kind required or permitted to be done under this Act was done under the repealed Act and still had effect immediately before the appointed day, it continues in effect on and after that day as if—

(a) this Act had been in force when it was done; and

15 (b) it had been done under this Act.

(3) If subclause (2) applies in relation to the execution, lodgment, issue or publication of a written instrument, any reference in the instrument to a provision of the repealed Act shall, for the purposes of that subclause, be read as a reference to the corresponding provision of this Act.

20 Savings effected by Interpretation Act 1897

20. Except to the extent of any inconsistency, this Schedule does not affect the operation of section 8 of the Interpretation Act 1897.

Regulations

25 21. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

30 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

35 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

Legal Profession 1987

SCHEDULE 8—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

