

**LEGAL PROFESSION (SOLICITOR CORPORATIONS)  
AMENDMENT ACT 1990 No. 6**

**NEW SOUTH WALES**

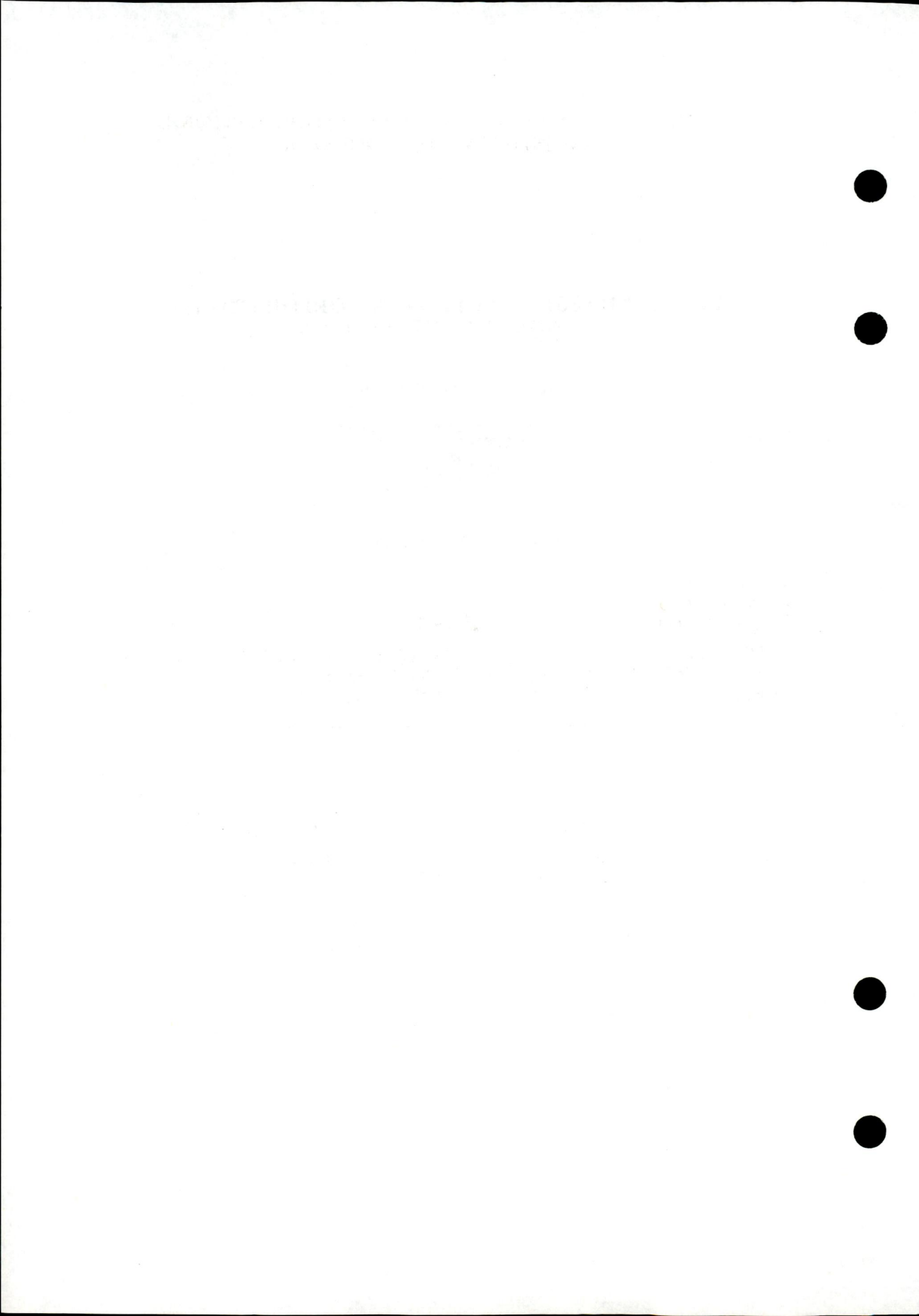


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**LEGAL PROFESSION (SOLICITOR CORPORATIONS)  
AMENDMENT ACT 1990 No. 6**

NEW SOUTH WALES



**Act No. 6, 1990**

An Act to amend the Legal Profession Act 1987 to provide for the formation and regulation of corporations that carry on business as solicitors. [Assented to 22 May 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Legal Profession (Solicitor Corporations) Amendment Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Legal Profession Act 1987 No. 109**

3. The Legal Profession Act 1987 is amended as set out in Schedules 1 and 2.

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**SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR CORPORATIONS**

(Sec. 3)

Part 10A:

After Part 10, insert:

**PART 10A - SOLICITOR CORPORATIONS**

**Division 1 - Formation of solicitor corporations**

**Definitions**

172A. (1) In this Division:

"**Companies Code**" means the Companies (New South Wales) Code, as in force on the commencement of this Part or (if the regulations under this Act so provide) as in force at a later specified time;

"**Companies Code regulations**" means regulations within the meaning of the Companies Code, as in force on the commencement of this Part or (if the regulations under this Act so provide) as in force at a later specified time;

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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"**solicitor corporation**" means a corporation formed under this Division, but does not include a foreign corporation recognised as a solicitor corporation under Division 2.

(2) Words and expressions in this Division have the same meanings as in the Companies Code (as applied under this Division), except in so far as the context or subject-matter otherwise indicates or requires.

**Formation of solicitor corporations**

172B. Subject to this Division, any one or more persons may, by subscribing their names to a memorandum of association and complying with the requirements as to registration under this Division, form a solicitor corporation.

**Law Society Council approval for incorporation**

172C. (1) A person who wishes to incorporate a solicitor corporation must apply to the Law Society Council for a certificate of approval of the proposed corporation.

(2) Any such application is to be made in the manner, and be accompanied by the documents, determined by the Law Society Council.

(3) The Law Society Council may issue or refuse to issue a certificate of approval.

(4) The Law Society Council is to refuse to issue a certificate of approval if the Council is of the opinion that:

- (a) the proposed corporation does not satisfy the requirements of this Act relating to solicitor corporations; or
- (b) the proposed name of the corporation is not appropriate, or its proposed memorandum and articles of association are not appropriate, for a corporation formed under this Act; or

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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- (c) the Council would not issue an unrestricted practising certificate to the proposed corporation if it were incorporated under this Act.

**Registration and incorporation**

172D. (1) A person who wishes to incorporate a solicitor corporation must lodge with the Corporate Affairs Commission:

- (a) a certificate of approval of the proposed corporation issued by the Law Society Council under section 172C; and
- (b) the memorandum and articles of association of the proposed corporation; and
- (c) any other documents required to be lodged by or under this Act,

and that Commission is, subject to this Act, to register the corporation by registering the memorandum and articles of association.

(2) On the registration of the memorandum, the Corporate Affairs Commission is to certify under its seal that the corporation is, on and from the date specified in the certificate, incorporated as a solicitor corporation under this Act.

(3) On and from the date of incorporation specified in the certificate of incorporation (but subject to this Act), the subscriber or subscribers to the memorandum, together with such other persons as from time to time become members of the solicitor corporation, are incorporated as a solicitor corporation under this Act by the name set out in the memorandum.

- (4) The solicitor corporation:
  - (a) is capable forthwith of performing all the functions of a body corporate; and

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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- (b) is capable of suing and being sued; and
- (c) has perpetual succession and a common seal; and
- (d) has power to acquire, hold and dispose of property.

(5) The member or members of the solicitor corporation have such liability as members of the corporation to contribute to the property of the corporation in a winding up of the corporation as is provided by or under this Act.

(6) The subscriber or subscribers to the memorandum are to be taken to have agreed to become a member or members of the solicitor corporation and, on the incorporation of the corporation, each subscriber becomes such a member and his or her name is to be entered in the register of members of the corporation.

(7) Each other person who agrees to become a member of the solicitor corporation and whose name is entered in the register of members of the corporation becomes a member of the corporation.

(8) A solicitor corporation is not to be registered under this section unless the name under which the corporation is proposed to be registered is reserved under section 40 of the Companies Code (as applied under this Division) in respect of the corporation.

**Formation as unlimited company**

172E. A solicitor corporation is to be formed on the principle of having no limit placed on the liability of its members (except as otherwise provided by or under this Act).

**Voting shareholders must be solicitors holding unrestricted practising certificate**

172F. (1) Only an approved solicitor may hold voting shares in a solicitor corporation.

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(2) For the purposes of this section, an **approved solicitor** is a solicitor holding a current unrestricted practising certificate, being:

- (a) a natural person; or
- (b) a solicitor corporation formed under this Division; or
- (c) a foreign corporation recognised as a solicitor corporation under Division 2.

**Non-voting shareholders must be certain approved persons**

172G. (1) Only an approved person may hold shares (other than voting shares) in a solicitor corporation.

(2) For the purposes of this section, an **approved person** is:

- (a) a solicitor (being a natural person) holding a current practising certificate; or
- (b) a solicitor corporation formed under this Division, or a foreign corporation recognised as a solicitor corporation under Division 2, holding a current unrestricted practising certificate; or
- (c) a relative of a solicitor, being a solicitor who holds a voting share in the solicitor corporation concerned or in a related corporation that is a solicitor or foreign corporation referred to in paragraph (b); or
- (d) a person, or a person of a class, for the time being approved by the Law Society Council by order in writing; or
- (e) a trustee of a trust if the only beneficiaries or potential beneficiaries are persons referred to in paragraphs (a) - (d).

(3) For the purposes of this section, the **relatives** of a solicitor include the following persons only:



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- (a) spouse (whether present or former) of the solicitor;
- (b) children or remoter issue of the solicitor;
- (c) parents or remoter lineal ancestors of the solicitor;
- (d) brothers and sisters (including half-brothers and half-sisters) of the solicitor;
- (e) nephews and nieces of the solicitor;
- (f) uncles and aunts of the solicitor;
- (g) grandnieces and grandnephews of the solicitor;
- (h) children or remoter issue, parents, brothers, sisters, nephews, nieces, uncles or aunts of the spouse (whether present or former) of the solicitor;
- (i) spouses of any of the persons mentioned in paragraphs (a) - (g).

(4) In this section:

"spouse" includes de facto partner within the meaning of the De Facto Relationships Act 1984.

**Limitation of liability for non-voting shareholders**

172H. (1) On the winding up of a solicitor corporation, no contribution is required from a non-voting member exceeding the amount (if any) unpaid on the shares in respect of which he or she is liable as a present or past member.

(2) In this section, "**non-voting member**" means a present or past member of a solicitor corporation who holds or, during any relevant period in the past, held shares in the solicitor corporation other than voting shares.

(3) This section has effect despite section 360 of the Companies Code (as applied under this Division).

**General provisions relating to shareholders**

172I. (1) A shareholder may not sell or otherwise dispose of shares in a solicitor corporation otherwise than

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to another person who is eligible under this Division to hold the shares.

(2) A shareholder who is not or who ceases to be eligible under this Division to hold shares in a solicitor corporation does not, thereafter, have any of the rights or benefits of a shareholder (except the right to transfer the shares to an eligible person or to participate in a winding up).

(3) If any such shares are not so transferred to an eligible person within 6 months after the shareholder ceased to be eligible to hold the shares, the Supreme Court may (on the application of the Law Society Council, the solicitor corporation or the shareholder) vest the shares in a person appointed by that Court on trust for sale to an eligible person.

(4) For the purposes of this Division, a reference to holding shares includes (except in section 172J) a reference to having a relevant interest in shares within the meaning of the Companies Code (as applied under this Division).

**Directors**

172J. (1) A solicitor corporation need not have more than one director.

(2) The director, or at least one of the directors, of a solicitor corporation must hold a current unrestricted practising certificate.

(3) The director, or each director, of a solicitor corporation must be a natural person who holds a voting share:

- (a) in the solicitor corporation; or
- (b) in another solicitor corporation which holds a voting share in the solicitor corporation; or
- (c) in another solicitor corporation which holds a voting share in another solicitor corporation which holds a voting share in the solicitor corporation.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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(4) In this section, a reference to another solicitor corporation includes a reference to a foreign corporation recognised as a solicitor corporation under Division 2.

**Application of Companies Code etc. to solicitor corporations**

172K. (1) Subject to this Act and the regulations, the Companies Code and the Companies Code regulations apply:

- (a) to a solicitor corporation as if it were a company duly incorporated under the Companies Code as an unlimited company having a share capital and an exempt proprietary company; and
- (b) to the members and officers (within the meaning of that Code) as if they were members and officers, respectively, of such a company.

(2) Part 80 of the Supreme Court Rules applies to a solicitor corporation and to its members and officers in the same way as the Companies Code and the Companies Code regulations apply under subsection (1).

(3) The regulations under this Act may provide that specified provisions of the Companies Code, the Companies Code regulations or Part 80 of the Supreme Court Rules do not apply to a solicitor corporation or apply to a solicitor corporation with specified modifications.

(4) Except as otherwise provided by the regulations under this Act, the Companies (Acquisition of Shares) (New South Wales) Code does not apply to the acquisition of shares in a solicitor corporation.

**Name of solicitor corporation**

172L. A solicitor corporation need not have any particular word or abbreviation as part of its name.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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**Law Society Council approval for alteration of memorandum and articles, change of name etc.**

172M. (1) The approval in writing of the Law Society Council is required before:

- (a) the memorandum or articles of association of a solicitor corporation are altered or added to; or
- (b) the name of a solicitor corporation is changed.

(2) An application to the Law Society Council for a certificate of approval under this section is to be made in the manner, and be accompanied by the documents, determined by that Council.

(3) The Law Society Council may issue or refuse to issue such a certificate.

(4) The Law Society Council is to refuse to issue such a certificate if the Council would have refused a certificate of approval for incorporation under section 172C if the corporation had been formed with the proposed alteration or addition to the memorandum or articles of association or with the proposed new name.

**Actions by sole voting shareholder or sole director**

172N. (1) In this section, "**relevant action**" means any act, matter or thing, or any resolution, required by law or by the memorandum or articles of association of a solicitor corporation to be made, performed or passed by or at a meeting of the corporation or the directors of the corporation.

(2) If there is only one voting shareholder of a solicitor corporation and a minute is signed by the shareholder stating that any relevant action has been done by or at a meeting of the corporation, that action is, for all purposes, to be taken to have been duly done by or at a meeting of the corporation.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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(3) If there is only one director of a solicitor corporation and a minute is signed by the director stating that any relevant action has been done by or at a meeting of the directors of the corporation, that action is, for all purposes, to be taken to have been duly done by or at a meeting of the directors of the corporation.

**Offers to public**

172O. (1) A solicitor corporation must not make an offer or invitation to the public to subscribe for or purchase shares in, or debentures of, the corporation.

(2) A solicitor corporation may, with the approval of the Law Society Council, make an offer or invitation to the public to deposit money with, or to accept deposits of money with, the corporation for fixed periods or at call (whether bearing or not bearing interest).

(3) In this section, "**debentures**" include prescribed interests within the meaning of the Companies Code (as applied under this Division).

**Additional grounds for winding up of solicitor corporation**

172P. (1) Without limiting the circumstances in which a solicitor corporation may be wound up, a solicitor corporation may be wound up under the Companies Code (as applied under this Division) if:

- (a) the corporation ceases to hold an unrestricted practising certificate; or
- (b) the corporation ceases to satisfy the requirements of this Act relating to a solicitor corporation; or
- (c) shares in the corporation have been vested by the Supreme Court in a person on trust for sale to an eligible person but no such sale has been effected within the time required by that Court.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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(2) An application to wind up a solicitor corporation on any such additional ground may only be made by the Law Society Council.

**Appeal against refusal of Council for incorporation, for alteration of memorandum or articles etc.**

172Q. (1) If the Law Society Council refuses to issue a certificate of approval of:

- (a) a proposed solicitor corporation; or
- (b) an alteration or addition to the memorandum or articles of association of a solicitor corporation; or
- (c) a change in the name of a solicitor corporation,

the applicant for the certificate may appeal to the Supreme Court.

(2) The Supreme Court may make such order in the matter as it thinks fit.

**Laws of State relating to companies**

172R. Nothing in this Act is to be taken as constituting a solicitor corporation as a company for the purposes of any law, or previous law, of the State relating to companies.

**This Act to prevail**

172S. The provisions of, or applied under, this Act prevail over any inconsistent provisions of the memorandum or articles of association of a solicitor corporation.

**Division 2 - Recognition of solicitor corporations**

**Definition of "foreign corporation"**

172T. In this Division:

**"foreign corporation"** means any body corporate other than a body incorporated under a law of New South Wales.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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**Recognition of foreign corporations**

172U. (1) The Law Society Council may, on application made by a foreign corporation, recognise the corporation as a solicitor corporation for the purposes of this Act if the Council is satisfied that:

- (a) the corporation substantially corresponds to a corporation of the kind that may be formed under Division 1; and
- (b) the corporation is entitled to practise as a solicitor in the place at which (in the opinion of the Council) it has its principal place of business; and
- (c) solicitor corporations formed under Division 1 are entitled to practise as solicitors in that place under similar terms to those under which they are entitled to practise under this Act; and
- (d) the Council would issue an unrestricted practising certificate to the corporation if it were recognised under this Division.

(2) An application under this section is required to be made in the manner, and be accompanied by the documents, determined by the Law Society Council.

(3) The Law Society Council may grant or refuse to grant an application under this section.

**Division 3 - General**

**Actions by solicitors under other Acts etc.**

172V. Where, by or under any other Act or law, any act, matter or thing is authorised or required to be done by a solicitor, the act, matter or thing may be done by a solicitor corporation, unless in the circumstances of the case it can only be done by a natural person.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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**Legal professional privilege**

172W. The law relating to legal professional privilege is not excluded or otherwise affected because the solicitor is a solicitor corporation.

**Professional misconduct etc.**

172X. An act or omission of a solicitor may constitute unsatisfactory professional conduct or professional misconduct even though it is only done or occurs while the solicitor is engaged in the business or affairs of a solicitor corporation.

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Definition of "solicitor":

At the end of the definition, insert ", and includes a solicitor corporation".

(b) After the definition of "solicitor", insert:

**"solicitor corporation"** means:

- (a) a corporation formed under Division 1 of Part 10A; or
- (b) a foreign corporation recognised as a solicitor corporation under Division 2 of Part 10A;

(2) Section 11 (**Admission of solicitors**):

(a) In section 11 (1), before "persons", insert "natural".

(b) In section 11 (3), after "solicitor", insert "admitted under this section".

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

After "solicitor" where firstly occurring, insert "(other than a solicitor corporation)".



SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

(4) Section 26 (**Practising as solicitor**):

From section 26 (2), omit "he or she", insert instead "the solicitor".

(5) Section 33 (**Issue of practising certificate to solicitor**):

(a) In section 33 (1), after "solicitor" where firstly occurring, insert "(other than a solicitor corporation)".

(b) In section 33 (2), after "solicitor", insert "(other than a solicitor corporation)".

(c) After section 33 (3), insert:

(4) The practising certificate issued to a solicitor corporation is not to be subject to any condition.

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

(a) From section 35 (2) (b), omit "he or she", insert instead "the solicitor".

(b) From section 35 (2) (c), omit "him or her", insert instead "the solicitor".

(c) From section 35 (2) (d), omit "his or her", insert instead "the solicitor's".

(d) In section 35 (3), after "solicitor" where firstly occurring, insert "(other than a solicitor corporation)".

(e) After section 35 (3), insert:

(3A) 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 corporation if:

(a) a receiver, receiver and manager, official manager or liquidator has been appointed in relation to the corporation; or

(b) the business or affairs of the corporation are being conducted in contravention of its memorandum or articles of association or of Part 10A or the Act under which it is constituted; or

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

- (c) the corporation ceases to satisfy the requirements of this Act for incorporation or recognition as a solicitor corporation; or
  - (d) the corporation ceases to be a solicitor corporation.
- (7) Section 36 (**Infirmity of solicitor**):
- In section 36 (1), after "solicitor" where firstly occurring, insert "(other than a solicitor corporation)".
- (8) Section 54 (**Functions of Law Society Council**):
- (a) From section 54 (1) (a) (ii), omit "his or her", insert instead "the solicitor's".
  - (b) At the end of the definition of "solicitor" in section 54 (2), insert:
    - ; and
    - (d) a solicitor corporation which has been dissolved or in respect of which a receiver, receiver and manager, official manager or liquidator has been appointed.
- (9) Section 55 (**Investigation of affairs of solicitor**):
- From the definition of "solicitor" in section 55 (11), omit paragraphs (c) and (d), insert instead:
- (c) in relation to anything done or omitted by a solicitor:
    - (i) in the case of a natural person - a deceased solicitor and a deceased former solicitor; or
    - (ii) in any other case - a solicitor corporation which has been dissolved or in respect of which a receiver, receiver and manager, official manager or liquidator has been appointed; and
  - (d) except in relation to anything done or omitted by a solicitor:

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

- (i) in the case of a natural person - the personal representative of a deceased solicitor or a deceased former solicitor; or
- (ii) in any other case - a receiver, receiver and manager, official manager or liquidator of a solicitor corporation or former solicitor corporation.

(10) Section 60 (**Definitions**):

In section 60 (2) (b), after "solicitor", insert ", or a director of or voting shareholder in the solicitor (being a solicitor corporation)".

(11) Section 80 (**Claims against the Fidelity Fund**):

Omit section 80 (4) (a) and (b), insert instead:

- (a) being a natural person, dies or has his or her name removed from the roll of solicitors; or
- (b) being a solicitor corporation, is dissolved or has a receiver, receiver and manager, official manager or liquidator appointed; or

(12) Section 81 (**Reimbursement of solicitors and others**):

In section 81 (2), after "solicitor" where lastly occurring in the definition of "solicitor", insert ", or the receiver, receiver and manager, official manager or liquidator of a solicitor corporation or former solicitor corporation".

(13) Section 89 (**Subrogation**):

Omit section 89 (1) (b), insert instead:

- (b) the person authorised to administer the estate of any such solicitor who is deceased or insolvent;
- (b1) the receiver, receiver and manager, official manager or liquidator of any such solicitor which is a solicitor corporation or former solicitor corporation; or

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

(14) Section 91 (**Definitions**):

From the definition of "solicitor", omit paragraphs (c) and (d), insert instead:

- (c) in relation to anything done or omitted by a solicitor:
  - (i) in the case of a natural person - a deceased solicitor and a deceased former solicitor; or
  - (ii) in any other case - a solicitor corporation which has been dissolved or in respect of which a receiver, receiver and manager, official manager or liquidator has been appointed; and
- (d) except in relation to anything done or omitted by a solicitor:
  - (i) in the case of a natural person - the personal representative of a deceased solicitor or a deceased former solicitor; or
  - (ii) in any other case - a receiver, receiver and manager, official manager or liquidator of a solicitor corporation or former solicitor corporation.

(15) Section 92 (**Supreme Court may appoint receiver**):

- (a) In section 92 (2) (b), after "solicitor" where secondly occurring, insert "(or, in the case of a solicitor corporation, a director of or voting shareholder in the corporation)".
- (b) From section 92 (2) (b) (vii), omit "certificate.", insert instead (as part of paragraph (b)):
  - certificate,
  - or because (in the case of a solicitor corporation) the corporation has been dissolved or a receiver, receiver and manager, official manager or liquidator has been appointed in relation to the corporation.

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

(16) Section 93 (**Court to be closed**):

After section 93 (1) (c), insert:

- (c1) a director of or voting shareholder in a solicitor corporation that is the respondent;

(17) Section 114B (**Appointment of manager**):

In section 114B (2), after "solicitor", insert "(other than a solicitor corporation)".

(18) Sections 115 (**Person acting as a barrister or solicitor**) and 116 (**Unlawful representations**):

From 115 (2) and 116 (3), omit "he or she" wherever occurring, insert instead "the person".

(19) Section 118 (**Offence by corporation or officers**):

After section 118 (2), insert:

(3) In this section, "**corporation**" does not include a solicitor corporation which holds an unrestricted practising certificate.

(20) Section 119 (**Receipts not to be shared by solicitor and unqualified person**):

After section 119 (2), insert:

(3) If a solicitor is a solicitor corporation, subsection (1) does not operate to limit any rights that a shareholder in the corporation has because of the shareholding (including rights to the payment of dividend, the return of capital and a distribution on winding up).

(21) Section 121 (**Employment of disqualified or convicted persons**):

From section 121 (1), omit "his or her", insert instead "the solicitor's".

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

(22) Section 123 (**Definitions**):

After the definition of "appropriate Council", insert:

**"associated solicitor corporation"**, in relation to a solicitor who is found guilty of unsatisfactory professional conduct or professional misconduct, means any solicitor corporation the affairs or business of which are under the direction or control of the solicitor (either alone or in association with any other solicitor who is also found guilty of unsatisfactory professional conduct or professional misconduct in relation to the same complaint);

(23) Section 125 (**Jurisdiction of Supreme Court not affected**):

In section 125, after "solicitors", insert "(other than solicitor corporations)".

(24) Section 130 (**Complaints**):

Omit section 130 (3), insert instead:

(3) A complainant who has suffered a loss as a consequence of the alleged unsatisfactory professional conduct or professional misconduct may, in the complaint, request the making of any one or more of the orders referred to in section 149 (3).

(25) Section 149 (**Determinations of the Board**):

- (a) In section 149 (2) (b) and (h), after "order that" wherever occurring, insert "(except in the case of a solicitor corporation)".
- (b) In section 149 (2) (c), after "solicitor's practice", insert ", or the practice of any associated solicitor corporation, ".
- (c) From section 149 (2) (d), omit "his or her practice", insert instead "the solicitor's practice, or the practice of any associated solicitor corporation,".
- (d) From section 149 (2) (e), omit "cease to employ in his or her practice", insert instead ", or any associated solicitor

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

corporation, cease to employ in the solicitor's practice or the solicitor corporation's practice".

- (e) From section 149 (2) (f), omit "employ in his or her practice", insert instead ", or any associated solicitor corporation, employ in the solicitor's practice or the solicitor corporation's practice".
- (f) From section 149 (2) (g), after "solicitor", insert ", or any associated solicitor corporation,".
- (g) After section 149 (3), insert:
  - (3A) In subsection (3), a reference to a legal practitioner includes a reference to an associated solicitor corporation.
- (h) In section 149 (6) (b), after "legal practitioner", insert ", or any associated solicitor corporation,".

(26) Section 163 (**Determinations of the Tribunal**):

- (a) After section 163 (1) (b), insert:
  - (b1) if the legal practitioner is a solicitor, order that the practising certificate of any associated solicitor corporation be cancelled or that a practising certificate not be issued to any associated solicitor corporation until the expiration of such period as it may specify in the order;
- (b) After section 163 (3), insert:
  - (3A) In subsection (3), a reference to a legal practitioner includes a reference to an associated solicitor corporation.
- (c) In section 163 (6) (b), after "legal practitioner", insert ", or any associated solicitor corporation,".

(27) Section 173 (**Definitions**):

- (a) From the definitions of "contentious business" and "non-contentious business", omit "his or her" wherever occurring, insert instead "the solicitor's".
- (b) From the definition of "solicitor", omit "and" from paragraph (c) and insert at the end of the definition:

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

; and

- (e) the receiver, receiver and manager, official manager or liquidator of a solicitor (being a solicitor corporation).

(28) Section 198 (**Delivery of signed bill of costs before action**):

After section 198 (7), insert:

(8) For the purposes of this section, a bill of costs is to be taken to have been signed by a solicitor (being a solicitor corporation) if:

- (a) it has the corporation's seal affixed to it; or
- (b) it is signed by a director of the corporation or by an officer or employee of the corporation who is a solicitor.

(29) Section 213 (**Proof of certain matters not required**):

In section 213 (a), after "Act", insert "(other than a solicitor corporation)".

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[*Minister's second reading speech made in -  
Legislative Assembly on 8 May 1990  
Legislative Council on 14 May 1990*]



FIRST PRINT

**LEGAL PROFESSION (SOLICITOR CORPORATIONS)  
AMENDMENT BILL 1990**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to amend the Legal Profession Act 1987 to provide for the formation and regulation of corporations that carry on business as solicitors.

At present solicitors may practise in their own name or in a partnership or other arrangement with other solicitors (but not by means of a company).

Under the Bill:

- (a) corporations specially formed for the purpose under the Legal Profession Act 1987 may carry on business as solicitors; and
- (b) corporations practising as solicitors outside New South Wales may be recognised in New South Wales.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act commences on a day or days appointed by proclamation.

**Clause 3** is a formal provision which gives effect to the Schedules of amendments to the Legal Profession Act 1987.

**SCHEDULE 1 - AMENDMENT CONCERNING FORMATION OR  
RECOGNITION OF SOLICITOR CORPORATIONS**

The Schedule inserts new Part 10A into the Principal Act.

**Division 1** provides for the formation of solicitor corporations and contains the following proposed sections:

*Legal Profession (Solicitor Corporations) Amendment 1990*

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**Proposed section 172A** contains definitions used in the Division. Generally words and expressions have the same meanings as in the Companies (New South Wales) Code (the "Code").

**Proposed section 172B** authorises the formation of solicitor corporations under the Legal Profession Act 1987, instead of under the Code. Any such corporation may be formed by a single person or by 2 or more persons.

**Proposed section 172C** deals with applications to the Law Society Council for approval of the incorporation of solicitor corporations, that approval being a prerequisite for incorporation.

**Proposed section 172D** provides for the registration and incorporation of solicitor corporations by the Corporate Affairs Commission. Apart from the requirement for Law Society Council approval, the procedure is similar to that applicable to companies registered and incorporated under the Code.

**Proposed section 172E** requires solicitor corporations to be companies with unlimited liability (subject to the proposed limitation of liability for members holding non-voting shares).

**Proposed section 172F** ensures that only individual solicitors, or solicitor corporations, who hold unrestricted practising certificates may hold voting shares in a solicitor corporation.

**Proposed section 172G** provides that non-voting shares may be held only by a solicitor, a solicitor corporation, a relative of the solicitor or certain other persons approved by the Law Society Council.

**Proposed section 172H** contains the limitation of liability for non-voting shareholders in the event of a winding up of the solicitor corporation.

**Proposed section 172I** contains general provisions relating to shareholders in solicitor corporations, including a provision which enables the Law Society Council to apply to the Supreme Court to ensure the sale of shares in a solicitor corporation that are no longer held by an eligible person.

**Proposed section 172J** requires the director or directors of a solicitor corporation to be individual solicitors holding a voting share in the corporation or in a related solicitor corporation (at least one director must hold an unrestricted practising certificate).

**Proposed section 172K** applies the Code (and certain other provisions relating to companies) to solicitor corporations. The provisions applied are those which apply to unlimited companies having a share capital and being exempt proprietary companies. The regulations may modify the application of the relevant provisions.

**Proposed section 172L** enables a solicitor corporation to remove the abbreviations "LTD", "PTY" etc. from its name.

**Proposed section 172M** requires the approval of the Law Society Council to any change in the memorandum or articles of association, or the name, of a solicitor corporation.

**Proposed section 172N** contains consequential provisions to deal with the fact that solicitor corporations (unlike corporations under the Code) might have only one voting shareholder or one director.

*Legal Profession (Solicitor Corporations) Amendment 1990*

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**Proposed section 172O** precludes solicitor corporations from making offers to the public for the purchase of shares, debentures or other interests. Invitations to deposit money with a solicitor corporation are to be subject to Law Society Council approval.

**Proposed section 172P** enables a solicitor corporation to be wound up on additional grounds to those available under the Code, for example, that the corporation has ceased to hold an unrestricted practising certificate or has ceased to satisfy the requirements of the Division.

**Proposed section 172Q** confers a right of appeal to the Supreme Court against decisions of the Law Society Council under the Division.

**Proposed section 172R** declares solicitor corporations not to be companies for the purposes of State laws relating to companies.

**Proposed section 172S** provides that the Principal Act prevails over inconsistent provisions of the memorandum or articles of association of a solicitor corporation.

**Division 2** provides for the recognition of solicitor corporations incorporated outside New South Wales and contains the following proposed sections:

**Proposed section 172T** defines a "foreign corporation" as one incorporated outside New South Wales.

**Proposed section 172U** enables the Law Society Council to recognise a foreign corporation as a solicitor corporation if it substantially corresponds to a solicitor corporation formed under Division 1, if it is entitled to practise as a solicitor at its principal place of business and if New South Wales solicitor corporations are authorised to practise at that place.

**Division 3** deals generally with New South Wales solicitor corporations and recognised foreign solicitor corporations and contains the following proposed sections:

**Proposed section 172V** enables solicitor corporations to act under other Acts or laws which refer to solicitors.

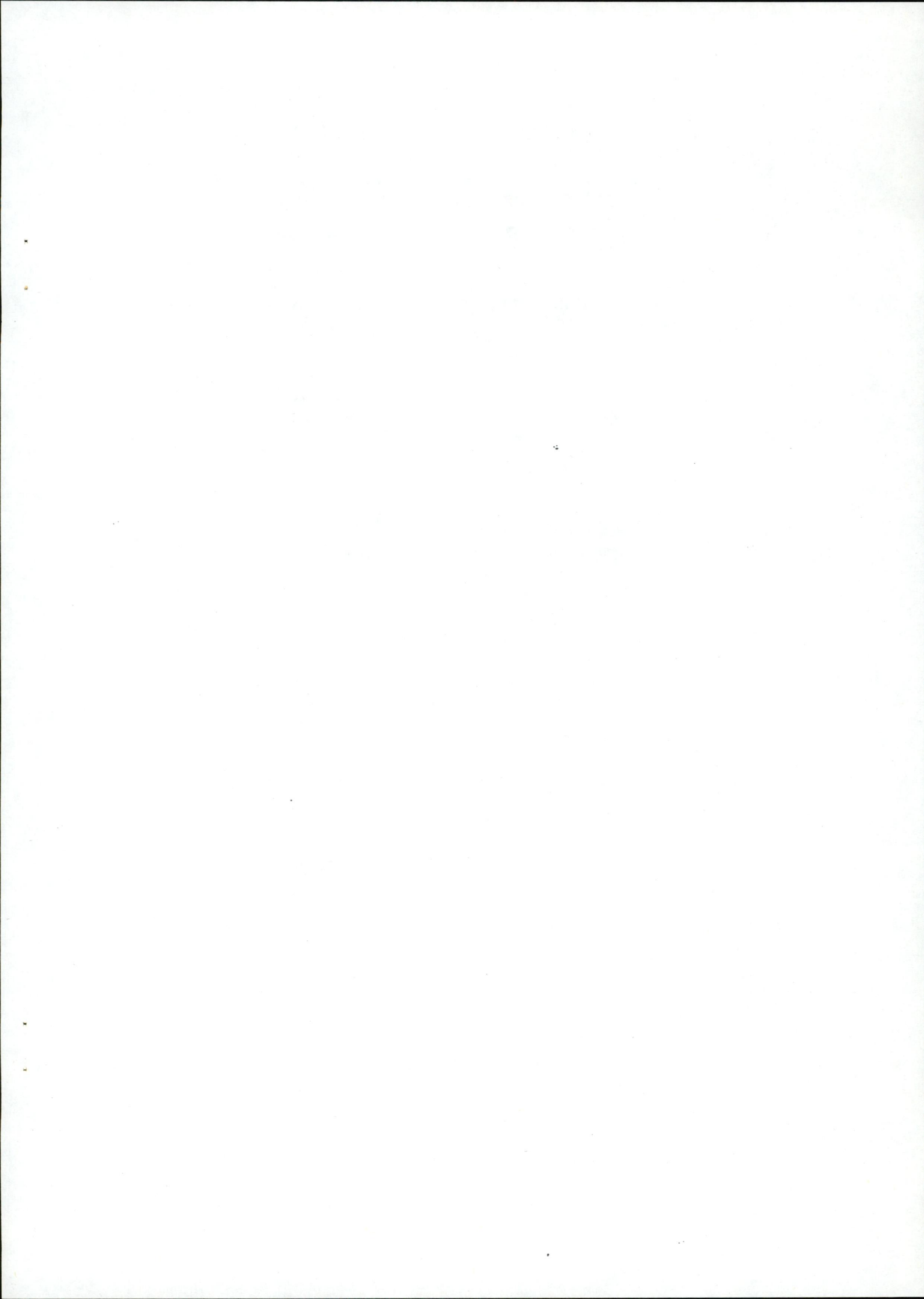
**Proposed section 172W** preserves the law relating to legal professional privilege where solicitor corporations act.

**Proposed section 172X** preserves the liability of individual solicitors for professional misconduct etc. where they act for solicitor corporations.

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS**

The Schedule contains the necessary consequential changes to the Legal Profession Act 1987 to enable that Act to apply to solicitor corporations formed or recognised in accordance with the proposed Act.

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FIRST PRINT

**LEGAL PROFESSION (SOLICITOR CORPORATIONS)  
AMENDMENT BILL 1990**

NEW SOUTH WALES

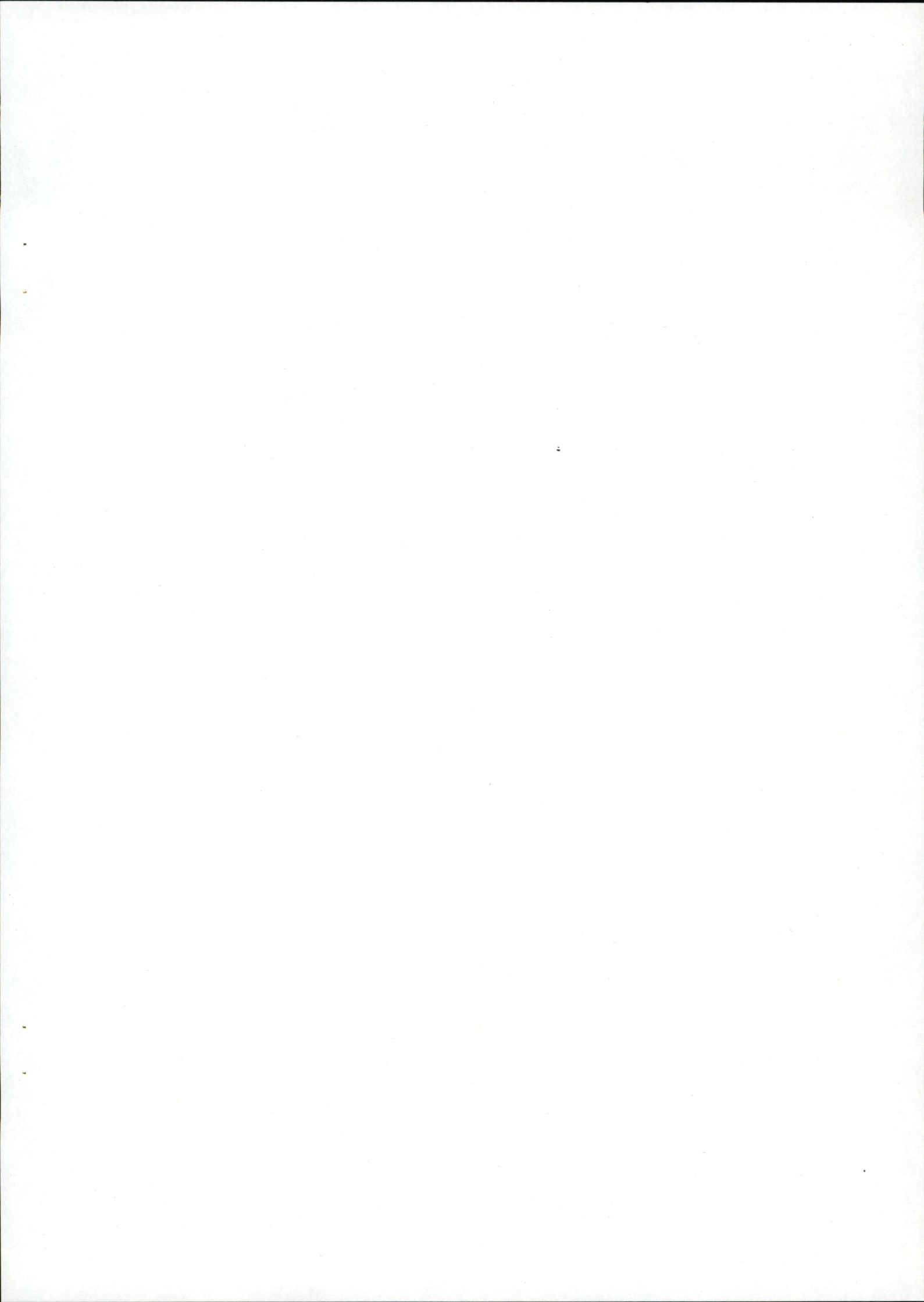


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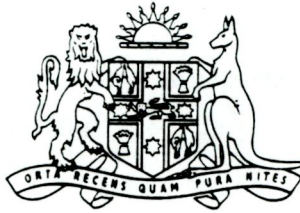
SCHEDULE 1 - AMENDMENT CONCERNING FORMATION OR  
RECOGNITION OF SOLICITOR CORPORATIONS  
SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS

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**LEGAL PROFESSION (SOLICITOR CORPORATIONS)  
AMENDMENT BILL 1990**

NEW SOUTH WALES



No. , 1990

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**A BILL FOR**

An Act to amend the Legal Profession Act 1987 to provide for the formation and regulation of corporations that carry on business as solicitors.

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Legal Profession (Solicitor Corporations) Amendment Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Legal Profession Act 1987 No. 109**

3. The Legal Profession Act 1987 is amended as set out in Schedules 1 and 2.

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**SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR CORPORATIONS**

(Sec. 3)

**Part 10A:**

After Part 10, insert:

**PART 10A - SOLICITOR CORPORATIONS**

**Division 1 - Formation of solicitor corporations**

**Definitions**

172A. (1) In this Division:

"**Companies Code**" means the Companies (New South Wales) Code, as in force on the commencement of this Part or (if the regulations under this Act so provide) as in force at a later specified time;

"**Companies Code regulations**" means regulations within the meaning of the Companies Code, as in force on the commencement of this Part or (if the regulations under this Act so provide) as in force at a later specified time;



SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
CORPORATIONS - *continued*

"**solicitor corporation**" means a corporation formed under this Division, but does not include a foreign corporation recognised as a solicitor corporation under Division 2.

(2) Words and expressions in this Division have the same meanings as in the Companies Code (as applied under this Division), except in so far as the context or subject-matter otherwise indicates or requires.

**Formation of solicitor corporations**

172B. Subject to this Division, any one or more persons may, by subscribing their names to a memorandum of association and complying with the requirements as to registration under this Division, form a solicitor corporation.

**Law Society Council approval for incorporation**

172C. (1) A person who wishes to incorporate a solicitor corporation must apply to the Law Society Council for a certificate of approval of the proposed corporation.

(2) Any such application is to be made in the manner, and be accompanied by the documents, determined by the Law Society Council.

(3) The Law Society Council may issue or refuse to issue a certificate of approval.

(4) The Law Society Council is to refuse to issue a certificate of approval if the Council is of the opinion that:

- (a) the proposed corporation does not satisfy the requirements of this Act relating to solicitor corporations; or
- (b) the proposed name of the corporation is not appropriate, or its proposed memorandum and articles of association are not appropriate, for a corporation formed under this Act; or

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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- (c) the Council would not issue an unrestricted practising certificate to the proposed corporation if it were incorporated under this Act.

**Registration and incorporation**

172D. (1) A person who wishes to incorporate a solicitor corporation must lodge with the Corporate Affairs Commission:

- (a) a certificate of approval of the proposed corporation issued by the Law Society Council under section 172C; and
- (b) the memorandum and articles of association of the proposed corporation; and
- (c) any other documents required to be lodged by or under this Act,

and that Commission is, subject to this Act, to register the corporation by registering the memorandum and articles of association.

(2) On the registration of the memorandum, the Corporate Affairs Commission is to certify under its seal that the corporation is, on and from the date specified in the certificate, incorporated as a solicitor corporation under this Act.

(3) On and from the date of incorporation specified in the certificate of incorporation (but subject to this Act), the subscriber or subscribers to the memorandum, together with such other persons as from time to time become members of the solicitor corporation, are incorporated as a solicitor corporation under this Act by the name set out in the memorandum.

- (4) The solicitor corporation:
  - (a) is capable forthwith of performing all the functions of a body corporate; and

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
CORPORATIONS - *continued*

- (b) is capable of suing and being sued; and
- (c) has perpetual succession and a common seal; and
- (d) has power to acquire, hold and dispose of property.

(5) The member or members of the solicitor corporation have such liability as members of the corporation to contribute to the property of the corporation in a winding up of the corporation as is provided by or under this Act.

(6) The subscriber or subscribers to the memorandum are to be taken to have agreed to become a member or members of the solicitor corporation and, on the incorporation of the corporation, each subscriber becomes such a member and his or her name is to be entered in the register of members of the corporation.

(7) Each other person who agrees to become a member of the solicitor corporation and whose name is entered in the register of members of the corporation becomes a member of the corporation.

(8) A solicitor corporation is not to be registered under this section unless the name under which the corporation is proposed to be registered is reserved under section 40 of the Companies Code (as applied under this Division) in respect of the corporation.

**Formation as unlimited company**

172E. A solicitor corporation is to be formed on the principle of having no limit placed on the liability of its members (except as otherwise provided by or under this Act).

**Voting shareholders must be solicitors holding unrestricted practising certificate**

172F. (1) Only an approved solicitor may hold voting shares in a solicitor corporation.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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(2) For the purposes of this section, an **approved solicitor** is a solicitor holding a current unrestricted practising certificate, being:

- (a) a natural person; or
- (b) a solicitor corporation formed under this Division; or
- (c) a foreign corporation recognised as a solicitor corporation under Division 2.

**Non-voting shareholders must be certain approved persons**

172G. (1) Only an approved person may hold shares (other than voting shares) in a solicitor corporation.

(2) For the purposes of this section, an **approved person** is:

- (a) a solicitor (being a natural person) holding a current practising certificate; or
- (b) a solicitor corporation formed under this Division, or a foreign corporation recognised as a solicitor corporation under Division 2, holding a current unrestricted practising certificate; or
- (c) a relative of a solicitor, being a solicitor who holds a voting share in the solicitor corporation concerned or in a related corporation that is a solicitor or foreign corporation referred to in paragraph (b); or
- (d) a person, or a person of a class, for the time being approved by the Law Society Council by order in writing; or
- (e) a trustee of a trust if the only beneficiaries or potential beneficiaries are persons referred to in paragraphs (a) - (d).

(3) For the purposes of this section, the **relatives** of a solicitor include the following persons only:

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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- (a) spouse (whether present or former) of the solicitor;
- (b) children or remoter issue of the solicitor;
- (c) parents or remoter lineal ancestors of the solicitor;
- (d) brothers and sisters (including half-brothers and half-sisters) of the solicitor;
- (e) nephews and nieces of the solicitor;
- (f) uncles and aunts of the solicitor;
- (g) grandnieces and grandnephews of the solicitor;
- (h) children or remoter issue, parents, brothers, sisters, nephews, nieces, uncles or aunts of the spouse (whether present or former) of the solicitor;
- (i) spouses of any of the persons mentioned in paragraphs (a) - (g).

(4) In this section:

"spouse" includes de facto partner within the meaning of the De Facto Relationships Act 1984.

**Limitation of liability for non-voting shareholders**

172H. (1) On the winding up of a solicitor corporation, no contribution is required from a non-voting member exceeding the amount (if any) unpaid on the shares in respect of which he or she is liable as a present or past member.

(2) In this section, "non-voting member" means a present or past member of a solicitor corporation who holds or, during any relevant period in the past, held shares in the solicitor corporation other than voting shares.

(3) This section has effect despite section 360 of the Companies Code (as applied under this Division).

**General provisions relating to shareholders**

172I. (1) A shareholder may not sell or otherwise dispose of shares in a solicitor corporation otherwise than

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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to another person who is eligible under this Division to hold the shares.

(2) A shareholder who is not or who ceases to be eligible under this Division to hold shares in a solicitor corporation does not, thereafter, have any of the rights or benefits of a shareholder (except the right to transfer the shares to an eligible person or to participate in a winding up).

(3) If any such shares are not so transferred to an eligible person within 6 months after the shareholder ceased to be eligible to hold the shares, the Supreme Court may (on the application of the Law Society Council, the solicitor corporation or the shareholder) vest the shares in a person appointed by that Court on trust for sale to an eligible person.

(4) For the purposes of this Division, a reference to holding shares includes (except in section 172J) a reference to having a relevant interest in shares within the meaning of the Companies Code (as applied under this Division).

**Directors**

172J. (1) A solicitor corporation need not have more than one director.

(2) The director, or at least one of the directors, of a solicitor corporation must hold a current unrestricted practising certificate.

(3) The director, or each director, of a solicitor corporation must be a natural person who holds a voting share:

- (a) in the solicitor corporation; or
- (b) in another solicitor corporation which holds a voting share in the solicitor corporation; or
- (c) in another solicitor corporation which holds a voting share in another solicitor corporation which holds a voting share in the solicitor corporation.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
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(4) In this section, a reference to another solicitor corporation includes a reference to a foreign corporation recognised as a solicitor corporation under Division 2.

**Application of Companies Code etc. to solicitor corporations**

172K. (1) Subject to this Act and the regulations, the Companies Code and the Companies Code regulations apply:

- (a) to a solicitor corporation as if it were a company duly incorporated under the Companies Code as an unlimited company having a share capital and an exempt proprietary company; and
- (b) to the members and officers (within the meaning of that Code) as if they were members and officers, respectively, of such a company.

(2) Part 80 of the Supreme Court Rules applies to a solicitor corporation and to its members and officers in the same way as the Companies Code and the Companies Code regulations apply under subsection (1).

(3) The regulations under this Act may provide that specified provisions of the Companies Code, the Companies Code regulations or Part 80 of the Supreme Court Rules do not apply to a solicitor corporation or apply to a solicitor corporation with specified modifications.

(4) Except as otherwise provided by the regulations under this Act, the Companies (Acquisition of Shares) (New South Wales) Code does not apply to the acquisition of shares in a solicitor corporation.

**Name of solicitor corporation**

172L. A solicitor corporation need not have any particular word or abbreviation as part of its name.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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**Law Society Council approval for alteration of memorandum and articles, change of name etc.**

172M. (1) The approval in writing of the Law Society Council is required before:

- (a) the memorandum or articles of association of a solicitor corporation are altered or added to; or
- (b) the name of a solicitor corporation is changed.

(2) An application to the Law Society Council for a certificate of approval under this section is to be made in the manner, and be accompanied by the documents, determined by that Council.

(3) The Law Society Council may issue or refuse to issue such a certificate.

(4) The Law Society Council is to refuse to issue such a certificate if the Council would have refused a certificate of approval for incorporation under section 172C if the corporation had been formed with the proposed alteration or addition to the memorandum or articles of association or with the proposed new name.

**Actions by sole voting shareholder or sole director**

172N. (1) In this section, "**relevant action**" means any act, matter or thing, or any resolution, required by law or by the memorandum or articles of association of a solicitor corporation to be made, performed or passed by or at a meeting of the corporation or the directors of the corporation.

(2) If there is only one voting shareholder of a solicitor corporation and a minute is signed by the shareholder stating that any relevant action has been done by or at a meeting of the corporation, that action is, for all purposes, to be taken to have been duly done by or at a meeting of the corporation.



SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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(3) If there is only one director of a solicitor corporation and a minute is signed by the director stating that any relevant action has been done by or at a meeting of the directors of the corporation, that action is, for all purposes, to be taken to have been duly done by or at a meeting of the directors of the corporation.

**Offers to public**

172O. (1) A solicitor corporation must not make an offer or invitation to the public to subscribe for or purchase shares in, or debentures of, the corporation.

(2) A solicitor corporation may, with the approval of the Law Society Council, make an offer or invitation to the public to deposit money with, or to accept deposits of money with, the corporation for fixed periods or at call (whether bearing or not bearing interest).

(3) In this section, "debentures" include prescribed interests within the meaning of the Companies Code (as applied under this Division).

**Additional grounds for winding up of solicitor corporation**

172P. (1) Without limiting the circumstances in which a solicitor corporation may be wound up, a solicitor corporation may be wound up under the Companies Code (as applied under this Division) if:

- (a) the corporation ceases to hold an unrestricted practising certificate; or
- (b) the corporation ceases to satisfy the requirements of this Act relating to a solicitor corporation; or
- (c) shares in the corporation have been vested by the Supreme Court in a person on trust for sale to an eligible person but no such sale has been effected within the time required by that Court.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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(2) An application to wind up a solicitor corporation on any such additional ground may only be made by the Law Society Council.

**Appeal against refusal of Council for incorporation, for alteration of memorandum or articles etc.**

172Q. (1) If the Law Society Council refuses to issue a certificate of approval of:

- (a) a proposed solicitor corporation; or
- (b) an alteration or addition to the memorandum or articles of association of a solicitor corporation; or
- (c) a change in the name of a solicitor corporation,

the applicant for the certificate may appeal to the Supreme Court.

(2) The Supreme Court may make such order in the matter as it thinks fit.

**Laws of State relating to companies**

172R. Nothing in this Act is to be taken as constituting a solicitor corporation as a company for the purposes of any law, or previous law, of the State relating to companies.

**This Act to prevail**

172S. The provisions of, or applied under, this Act prevail over any inconsistent provisions of the memorandum or articles of association of a solicitor corporation.

**Division 2 - Recognition of solicitor corporations**

**Definition of "foreign corporation"**

172T. In this Division:

"foreign corporation" means any body corporate other than a body incorporated under a law of New South Wales.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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**Recognition of foreign corporations**

172U. (1) The Law Society Council may, on application made by a foreign corporation, recognise the corporation as a solicitor corporation for the purposes of this Act if the Council is satisfied that:

- (a) the corporation substantially corresponds to a corporation of the kind that may be formed under Division 1; and
- (b) the corporation is entitled to practise as a solicitor in the place at which (in the opinion of the Council) it has its principal place of business; and
- (c) solicitor corporations formed under Division 1 are entitled to practise as solicitors in that place under similar terms to those under which they are entitled to practise under this Act; and
- (d) the Council would issue an unrestricted practising certificate to the corporation if it were recognised under this Division.

(2) An application under this section is required to be made in the manner, and be accompanied by the documents, determined by the Law Society Council.

(3) The Law Society Council may grant or refuse to grant an application under this section.

**Division 3 - General**

**Actions by solicitors under other Acts etc.**

172V. Where, by or under any other Act or law, any act, matter or thing is authorised or required to be done by a solicitor, the act, matter or thing may be done by a solicitor corporation, unless in the circumstances of the case it can only be done by a natural person.

SCHEDULE 1 - AMENDMENT CONCERNING FORMATION  
OR RECOGNITION OF SOLICITOR  
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**Legal professional privilege**

172W. The law relating to legal professional privilege is not excluded or otherwise affected because the solicitor is a solicitor corporation.

**Professional misconduct etc.**

172X. An act or omission of a solicitor may constitute unsatisfactory professional conduct or professional misconduct even though it is only done or occurs while the solicitor is engaged in the business or affairs of a solicitor corporation.

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS

(Sec. 3)

- (1) Section 3 (**Definitions**):
  - (a) Definition of "solicitor":

At the end of the definition, insert ", and includes a solicitor corporation".
  - (b) After the definition of "solicitor", insert:

"solicitor corporation" means:

    - (a) a corporation formed under Division 1 of Part 10A; or
    - (b) a foreign corporation recognised as a solicitor corporation under Division 2 of Part 10A;
- (2) Section 11 (**Admission of solicitors**):
  - (a) In section 11 (1), before "persons", insert "natural".
  - (b) In section 11 (3), after "solicitor", insert "admitted under this section".
- (3) Section 18 (**Right of audience**):

After "solicitor" where firstly occurring, insert "(other than a solicitor corporation)".

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

(4) Section 26 (**Practising as solicitor**):

From section 26 (2), omit "he or she", insert instead "the solicitor".

(5) Section 33 (**Issue of practising certificate to solicitor**):

(a) In section 33 (1), after "solicitor" where firstly occurring, insert "(other than a solicitor corporation)".

(b) In section 33 (2), after "solicitor", insert "(other than a solicitor corporation)".

(c) After section 33 (3), insert:

(4) The practising certificate issued to a solicitor corporation is not to be subject to any condition.

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

(a) From section 35 (2) (b), omit "he or she", insert instead "the solicitor".

(b) From section 35 (2) (c), omit "him or her", insert instead "the solicitor".

(c) From section 35 (2) (d), omit "his or her", insert instead "the solicitor's".

(d) In section 35 (3), after "solicitor" where firstly occurring, insert "(other than a solicitor corporation)".

(e) After section 35 (3), insert:

(3A) 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 corporation if:

(a) a receiver, receiver and manager, official manager or liquidator has been appointed in relation to the corporation; or

(b) the business or affairs of the corporation are being conducted in contravention of its memorandum or articles of association or of Part 10A or the Act under which it is constituted; or

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

- (c) the corporation ceases to satisfy the requirements of this Act for incorporation or recognition as a solicitor corporation; or
  - (d) the corporation ceases to be a solicitor corporation.
- (7) Section 36 (**Infirmity of solicitor**):

In section 36 (1), after "solicitor" where firstly occurring, insert "(other than a solicitor corporation)".
- (8) Section 54 (**Functions of Law Society Council**):
  - (a) From section 54 (1) (a) (ii), omit "his or her", insert instead "the solicitor's".
  - (b) At the end of the definition of "solicitor" in section 54 (2), insert:
    - ; and
    - (d) a solicitor corporation which has been dissolved or in respect of which a receiver, receiver and manager, official manager or liquidator has been appointed.
- (9) Section 55 (**Investigation of affairs of solicitor**):

From the definition of "solicitor" in section 55 (11), omit paragraphs (c) and (d), insert instead:

  - (c) in relation to anything done or omitted by a solicitor:
    - (i) in the case of a natural person - a deceased solicitor and a deceased former solicitor; or
    - (ii) in any other case - a solicitor corporation which has been dissolved or in respect of which a receiver, receiver and manager, official manager or liquidator has been appointed; and
  - (d) except in relation to anything done or omitted by a solicitor:

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

- (i) in the case of a natural person - the personal representative of a deceased solicitor or a deceased former solicitor; or
  - (ii) in any other case - a receiver, receiver and manager, official manager or liquidator of a solicitor corporation or former solicitor corporation.
  
- (10) Section 60 (**Definitions**):

In section 60 (2) (b), after "solicitor", insert ", or a director of or voting shareholder in the solicitor (being a solicitor corporation)".
  
- (11) Section 80 (**Claims against the Fidelity Fund**):

Omit section 80 (4) (a) and (b), insert instead:

  - (a) being a natural person, dies or has his or her name removed from the roll of solicitors; or
  - (b) being a solicitor corporation, is dissolved or has a receiver, receiver and manager, official manager or liquidator appointed; or
  
- (12) Section 81 (**Reimbursement of solicitors and others**):

In section 81 (2), after "solicitor" where lastly occurring in the definition of "solicitor", insert ", or the receiver, receiver and manager, official manager or liquidator of a solicitor corporation or former solicitor corporation".
  
- (13) Section 89 (**Subrogation**):

Omit section 89 (1) (b), insert instead:

  - (b) the person authorised to administer the estate of any such solicitor who is deceased or insolvent;
  - (b1) the receiver, receiver and manager, official manager or liquidator of any such solicitor which is a solicitor corporation or former solicitor corporation; or

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

(14) Section 91 (**Definitions**):

From the definition of "solicitor", omit paragraphs (c) and (d), insert instead:

- (c) in relation to anything done or omitted by a solicitor:
  - (i) in the case of a natural person - a deceased solicitor and a deceased former solicitor; or
  - (ii) in any other case - a solicitor corporation which has been dissolved or in respect of which a receiver, receiver and manager, official manager or liquidator has been appointed; and
- (d) except in relation to anything done or omitted by a solicitor:
  - (i) in the case of a natural person - the personal representative of a deceased solicitor or a deceased former solicitor; or
  - (ii) in any other case - a receiver, receiver and manager, official manager or liquidator of a solicitor corporation or former solicitor corporation.

(15) Section 92 (**Supreme Court may appoint receiver**):

- (a) In section 92 (2) (b), after "solicitor" where secondly occurring, insert "(or, in the case of a solicitor corporation, a director of or voting shareholder in the corporation)".
- (b) From section 92 (2) (b) (vii), omit "certificate.", insert instead (as part of paragraph (b)):  
certificate,  
or because (in the case of a solicitor corporation) the corporation has been dissolved or a receiver, receiver and manager, official manager or liquidator has been appointed in relation to the corporation.



SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

- (16) Section 93 (**Court to be closed**):  
After section 93 (1) (c), insert:  
(c1) a director of or voting shareholder in a solicitor corporation that is the respondent;
- (17) Section 114B (**Appointment of manager**):  
In section 114B (2), after "solicitor", insert "(other than a solicitor corporation)".
- (18) Sections 115 (**Person acting as a barrister or solicitor**) and 116 (**Unlawful representations**):  
From 115 (2) and 116 (3), omit "he or she" wherever occurring, insert instead "the person".
- (19) Section 118 (**Offence by corporation or officers**):  
After section 118 (2), insert:  
(3) In this section, "**corporation**" does not include a solicitor corporation which holds an unrestricted practising certificate.
- (20) Section 119 (**Receipts not to be shared by solicitor and unqualified person**):  
After section 119 (2), insert:  
(3) If a solicitor is a solicitor corporation, subsection (1) does not operate to limit any rights that a shareholder in the corporation has because of the shareholding (including rights to the payment of dividend, the return of capital and a distribution on winding up).
- (21) Section 121 (**Employment of disqualified or convicted persons**):  
From section 121 (1), omit "his or her", insert instead "the solicitor's".

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

(22) Section 123 (**Definitions**):

After the definition of "appropriate Council", insert:

"**associated solicitor corporation**", in relation to a solicitor who is found guilty of unsatisfactory professional conduct or professional misconduct, means any solicitor corporation the affairs or business of which are under the direction or control of the solicitor (either alone or in association with any other solicitor who is also found guilty of unsatisfactory professional conduct or professional misconduct in relation to the same complaint);

(23) Section 125 (**Jurisdiction of Supreme Court not affected**):

In section 125, after "solicitors", insert "(other than solicitor corporations)".

(24) Section 130 (**Complaints**):

Omit section 130 (3), insert instead:

(3) A complainant who has suffered a loss as a consequence of the alleged unsatisfactory professional conduct or professional misconduct may, in the complaint, request the making of any one or more of the orders referred to in section 149 (3).

(25) Section 149 (**Determinations of the Board**):

- (a) In section 149 (2) (b) and (h), after "order that" wherever occurring, insert "(except in the case of a solicitor corporation)".
- (b) In section 149 (2) (c), after "solicitor's practice", insert ", or the practice of any associated solicitor corporation, ".
- (c) From section 149 (2) (d), omit "his or her practice", insert instead "the solicitor's practice, or the practice of any associated solicitor corporation,".
- (d) From section 149 (2) (e), omit "cease to employ in his or her practice", insert instead ", or any associated solicitor

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

corporation, cease to employ in the solicitor's practice or the solicitor corporation's practice".

- (e) From section 149 (2) (f), omit "employ in his or her practice", insert instead ", or any associated solicitor corporation, employ in the solicitor's practice or the solicitor corporation's practice".
  - (f) From section 149 (2) (g), after "solicitor", insert ", or any associated solicitor corporation,".
  - (g) After section 149 (3), insert:
    - (3A) In subsection (3), a reference to a legal practitioner includes a reference to an associated solicitor corporation.
  - (h) In section 149 (6) (b), after "legal practitioner", insert ", or any associated solicitor corporation,".
- (26) Section 163 (**Determinations of the Tribunal**):
- (a) After section 163 (1) (b), insert:
    - (b1) if the legal practitioner is a solicitor, order that the practising certificate of any associated solicitor corporation be cancelled or that a practising certificate not be issued to any associated solicitor corporation until the expiration of such period as it may specify in the order;
  - (b) After section 163 (3), insert:
    - (3A) In subsection (3), a reference to a legal practitioner includes a reference to an associated solicitor corporation.
  - (c) In section 163 (6) (b), after "legal practitioner", insert ", or any associated solicitor corporation,".
- (27) Section 173 (**Definitions**):
- (a) From the definitions of "contentious business" and "non-contentious business", omit "his or her" wherever occurring, insert instead "the solicitor's".
  - (b) From the definition of "solicitor", omit "and" from paragraph (c) and insert at the end of the definition:

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS - *continued*

; and

- (e) the receiver, receiver and manager, official manager or liquidator of a solicitor (being a solicitor corporation).

(28) Section 198 (**Delivery of signed bill of costs before action**):

After section 198 (7), insert:

(8) For the purposes of this section, a bill of costs is to be taken to have been signed by a solicitor (being a solicitor corporation) if:

- (a) it has the corporation's seal affixed to it; or
- (b) it is signed by a director of the corporation or by an officer or employee of the corporation who is a solicitor.

(29) Section 213 (**Proof of certain matters not required**):

In section 213 (a), after "Act", insert "(other than a solicitor corporation)".

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