

FIRST PRINT

**LEGAL PROFESSION (ADMISSION) AMENDMENT  
BILL 1994**

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 so as to specify and limit the matters to be taken into account when dealing with applications for admission as a legal practitioner or for registration as a student-at-law.

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

**Clause 2** provides for the commencement of the proposed Act.

**Clause 3** is a formal provision giving effect to the Schedule of amendments.

**Schedule 1 (1)** requires the admission of persons as legal practitioners if their applications for admission are approved by the Legal Practitioners Admission Board.

**Schedule 1 (2)** limits the matters that can be dealt with by certain rules of the Admission Board to the matters listed in the proposed substituted section 11.

**Schedule 1 (3)** is consequential on the items that follow.

**Schedule 1 (4)** substitutes section 11, which lists the matters that are to be taken into consideration by the Admission Board when dealing with an application for admission as a legal practitioner or registration as a student-at-law. It also provides for questions relating to a candidate's mental capacity to be dealt with by a panel of medical practitioners.

**Schedule 1 (5)** requires the Admission Board to approve an application for admission as a legal practitioner or registration as a student-at-law, if the Board is satisfied as to the listed matters.

**Schedule 1 (6)** provides that early consideration may be given to a person's candidature for admission as a legal practitioner, rather than merely to the person's fame and character.

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**Schedule 1 (7)** limits the matters that can be taken into consideration by the Supreme Court on an appeal from a refusal to approve an application for admission as a legal practitioner. It also provides for questions relating to a candidate's mental capacity to be dealt with by a panel of medical practitioners.

**Schedule 1 (8)** provides that the Supreme Court's powers regarding admission of legal practitioners are conferred and regulated by the Legal Profession Act 1987 only, and any inherent powers are revoked.

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**TABLE OF PROVISIONS**

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SCHEDULE 1—AMENDMENTS

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**LEGAL PROFESSION (ADMISSION) AMENDMENT  
BILL 1994**

NEW SOUTH WALES



No.      , 1994

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**A BILL FOR**

An Act to amend the Legal Profession Act 1987 in relation to the admission of persons as legal practitioners; and for related purposes.

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

**Short title**

1. This Act may be cited as the Legal Profession (Admission) Amendment Act 1994.

5 **Commencement**

2. This Act commences three months after the date of assent, unless sooner commenced by proclamation.

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

3. The Legal Profession Act 1987 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 4:

Omit the section, insert instead:

**Admission of legal practitioners**

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4. The Supreme Court must admit and enrol natural persons as legal practitioners, if their applications for admission as such are approved by the Admission Board.

(2) Section 6 (**Rules for registration and admission**):

At the end of section 6, insert:

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(2) The provisions of rules made under subsection (1) (a), (b) and (e) of this section are subject to sections 11 and 12, and must not contain requirements or discretions as to any matter not expressly the subject of or expressly provided for in section 11.

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(3) Heading to Division 3 of Part 2:

Omit "Character", insert instead "Consideration of candidature".



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SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 11:

Omit the section, insert instead:

**Matters to be taken into consideration**

11. (1) A candidate for admission as a legal practitioner, or registration as a student-at-law, is not entitled to admission or registration, unless the Admission Board is satisfied that: 5
- (a) the candidate has the requisite academic qualifications, as specified or referred to in the rules made under section 6; and 10
  - (b) the candidate has no prior criminal convictions such as would in the opinion of the Admission Board affect his or her practice as a legal practitioner; and 15
  - (c) the candidate suffers from no mental incapacity such as can be established by medical investigation and would in the opinion of the Admission Board affect his or her practice as a legal practitioner; and
  - (d) four competent persons, who have known the candidate for a period of not less than three years, have attested to their personal knowledge: 20
    - (i) that there is no matter of which they are aware which would affect the practice of the candidate as a legal practitioner; and 25
    - (ii) that the candidate is of good fame and character; and
  - (e) there is no finding by the Tribunal that the candidate should not practise as a legal practitioner.
- (2) Should any question arise for consideration under subsection (1) (c), a panel of three registered medical practitioners is to be appointed, by the New South Wales Medical Board on being requested in writing to do so by the candidate and the Admission Board jointly, to determine any relevant matter referred to it by the Admission Board. 30 35

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SCHEDULE 1—AMENDMENTS—*continued*

5 (3) The Admission Board is to have regard to the determination of the panel, except in so far as it contravenes the rules of natural justice (being rules for procedural fairness).

(4) The determination of the panel must be in writing, giving reasons for the determination, and a copy of it must be provided by the Admission Board to the candidate.

10 (5) The candidate has a right of access to material on which the panel makes a determination, and has a right to be heard by the panel before it makes a determination.

(5) Section 12 (**Consideration of candidature**):

Omit section 12 (1) and (2), insert instead:

15 (1) The Admission Board must approve an application for admission as a legal practitioner, or for registration as a student-at-law, if it is satisfied as to the relevant matters referred to in section 11 (1).

(2) The Admission Board must refuse to approve such an application if it is not satisfied as to those matters.

20 (6) Section 13 (**Early consideration of candidature**):

In section 13 (1), omit "good fame or character", insert instead "candidature".

(7) Section 14 (**Appeals**):

Omit section 14 (6), insert instead:

25 (6) On an appeal under this section, the Supreme Court may make an order or declaration appropriate in the circumstances, but any such order or declaration is to be made in accordance with the principles in, and is to be limited to the matters set out in, section 11 (1) (a)–(e).

30 (7) On an appeal under this section, if a question arises under section 11 (1) (c), a panel of three registered medical practitioners nominated by the New South Wales Medical Board is to be appointed by the Supreme Court to assess the matter arising under section 11 (1) (c).



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SCHEDULE 1—AMENDMENTS—*continued*

(8) The Supreme Court is to have regard to the determination of the panel, except in so far as it contravenes the rules of natural justice (being rules for procedural fairness).

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(9) The determination of the panel must be in writing, giving reasons for the determination.

(8) Section 17 (**Miscellaneous provisions respecting admission**):

After section 17 (3), insert:

(4) Any inherent power or jurisdiction of the Supreme Court to impose any test or criterion for admission otherwise than as set out in this Act is revoked.

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(5) The source of power of the Supreme Court to admit legal practitioners is limited to section 4 and Division 3.

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