

FIRST PRINT

LEGAL PROFESSION (AMENDMENT) BILL 1992

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 as a consequence of the decision of the New South Wales Court of Appeal in *Knaggs v. The Solicitors' Statutory Committee & Anor (No. 2)* delivered on 26 August 1992.

In *Knaggs' Case*, the Court of Appeal found that an order of the Solicitors' Statutory Committee under the former Legal Practitioners Act 1898 was a nullity because the Committee, in contravention of that Act, was constituted by a different membership at the time of pronouncement of its determination from its membership at the time of making its determination. (The Legal Practitioners Act 1898 was repealed by the Legal Profession Act 1987 on 1 January 1988).

The proposed Act:

- (a) validates determinations and orders of the Solicitors' Statutory Committee given under the former Act in the circumstances described above (except for the determination and order the subject of *Knaggs' Case*); and
- (b) amends the Legal Profession Act 1987 so as:
 - (i) to enable the Legal Profession Standards Board and the Legal Profession Disciplinary Tribunal to be differently constituted at the time of pronouncement of a determination from the way it was constituted at the time of making the determination; and
 - (ii) to validate determinations and orders that would, by application of the decision in *Knaggs' Case*, be invalidated.

The proposed Act does not change the requirements of the Legal Profession Act 1987 that govern the constitution of such a body between the time at which it commences a review or hearing and the time at which its determination following the review or hearing is made.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Legal Profession (Amendment) 1992

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Legal Profession Act 1987.

Schedule 1 amends the Legal Profession Act 1987 to achieve the object described above.

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LEGAL PROFESSION (AMENDMENT) BILL 1992

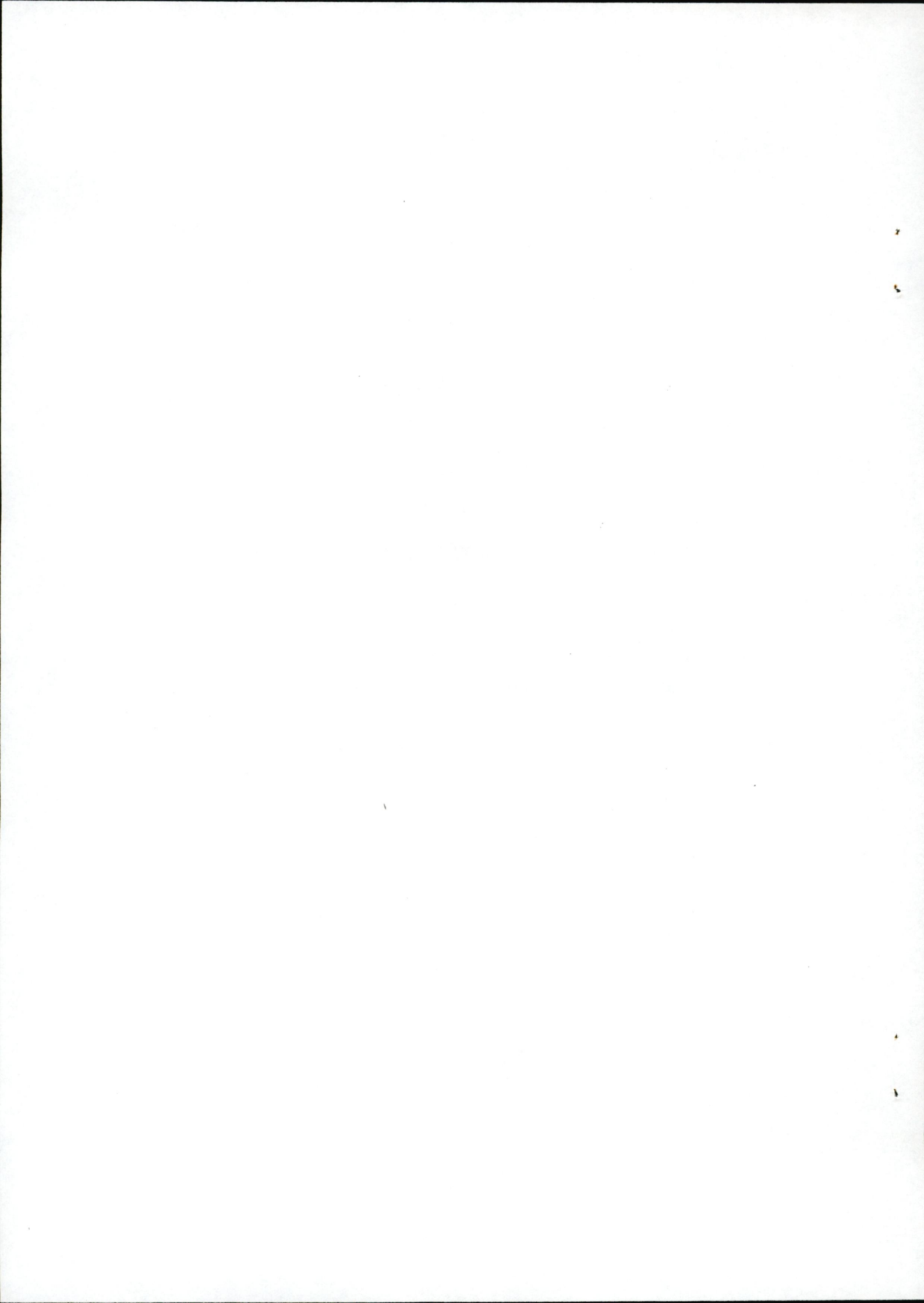
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Legal Profession Act 1987 No. 109

SCHEDULE 1—AMENDMENTS



LEGAL PROFESSION (AMENDMENT) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Legal Profession Act 1987 with respect to the pronouncement of determinations of certain bodies constituted under that Act; to validate certain matters; and for other purposes.

Legal Profession (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Legal Profession (Amendment) Act 1992.

5 Commencement

2. This Act commences on the date of assent.

Amendment of Legal Profession Act 1987 No. 109

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

SCHEDULE 1—AMENDMENTS

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(Sec. 3)

(1) Section 143 (**Hearings**):

After section 143 (6), insert:

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(7) A determination of the Board is not invalid only because the constitution of the Board at the time of the pronouncement of the determination is different from the constitution of the Board at the time of making the determination.

(2) Section 157 (**Hearings**):

After section 157 (5), insert:

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(6) A determination of the Tribunal is not invalid only because the constitution of the Tribunal at the time of the pronouncement of the determination is different from the constitution of the Tribunal at the time of making the determination.

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(3) Schedule 8 (**Savings, transitional and other provisions**):

(a) After clause 19A, insert:

Certain determinations of the Solicitors' Statutory Committee

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19B. (1) A determination or order under the repealed Act of the Solicitors' Statutory Committee is not invalid, and is taken never to have been invalid, only because the constitution of the Committee at the time of the

Legal Profession (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

pronouncement of the determination or order was different from the constitution of the Committee at the time of the making of the determination or order.

(2) This clause does not apply to a determination or order the subject of the decision of the Court of Appeal in *Knaggs v. The Solicitors' Statutory Committee & Anor. (No. 2)*.

(b) After Part 3, insert:

**Part 4—Provisions consequent on the enactment of
the Legal Profession (Amendment) Act 1992**

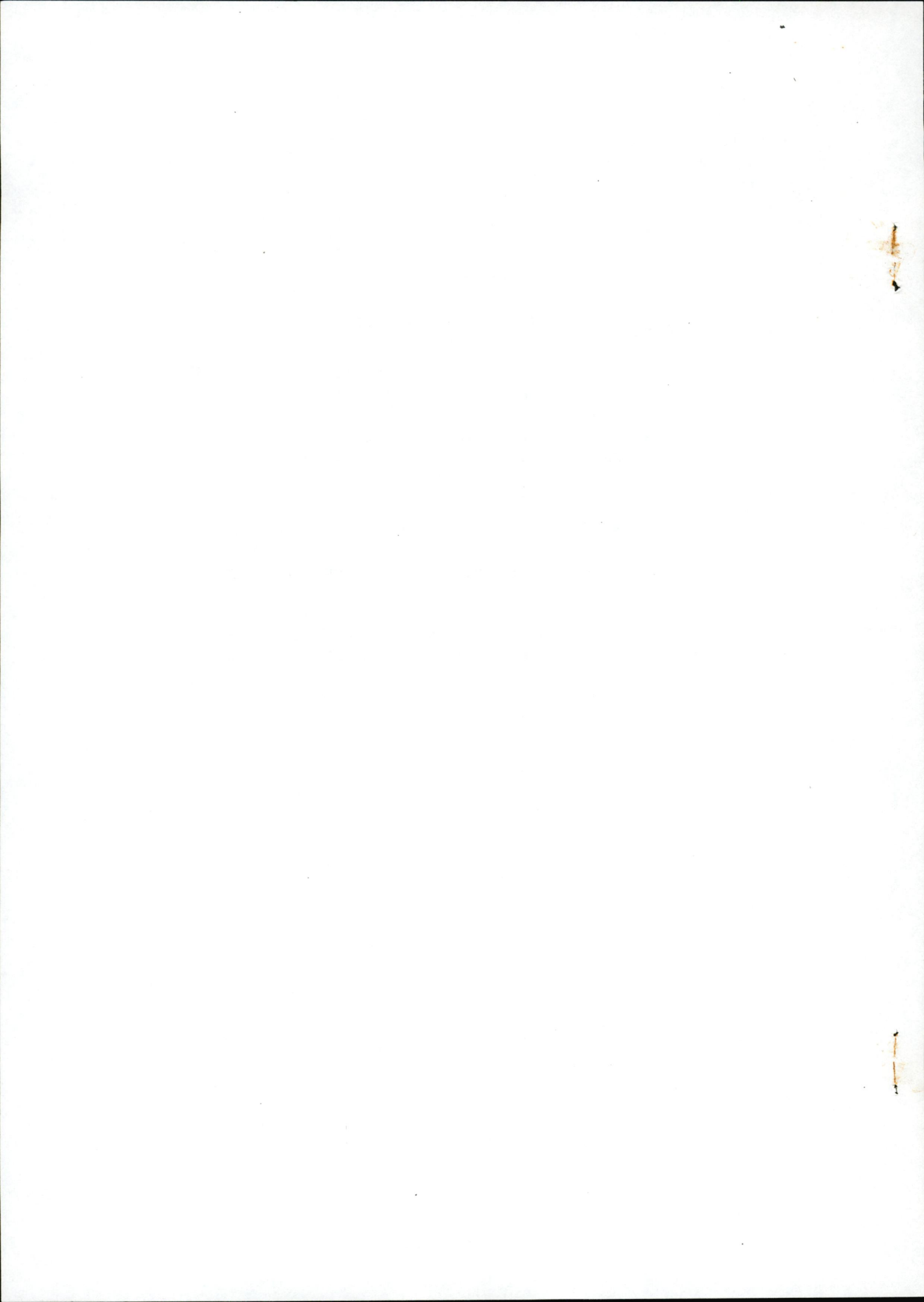
Validation of certain determinations and orders

29. A determination or order of the Legal Profession Standards Board or the Legal Profession Disciplinary Tribunal that would have been valid if this Act, as amended by the Legal Profession (Amendment) Act 1992, had been in force at the time the determination or order was made is validated.

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LEGAL PROFESSION (AMENDMENT) BILL 1992

LEGISLATIVE COUNCIL

(PRESIDENT CALLS NOTICE OF MOTION IN NAME OF MINISTER)

ATTORNEY TO SAY:

MR PRESIDENT,

I MOVE THAT LEAVE BE GIVEN TO BRING IN A BILL FOR AN
ACT TO AMEND THE LEGAL PROFESSION ACT 1987.

(PRESIDENT PUTS QUESTION THAT LEAVE BE GIVEN - NO
DEBATE ALLOWED)

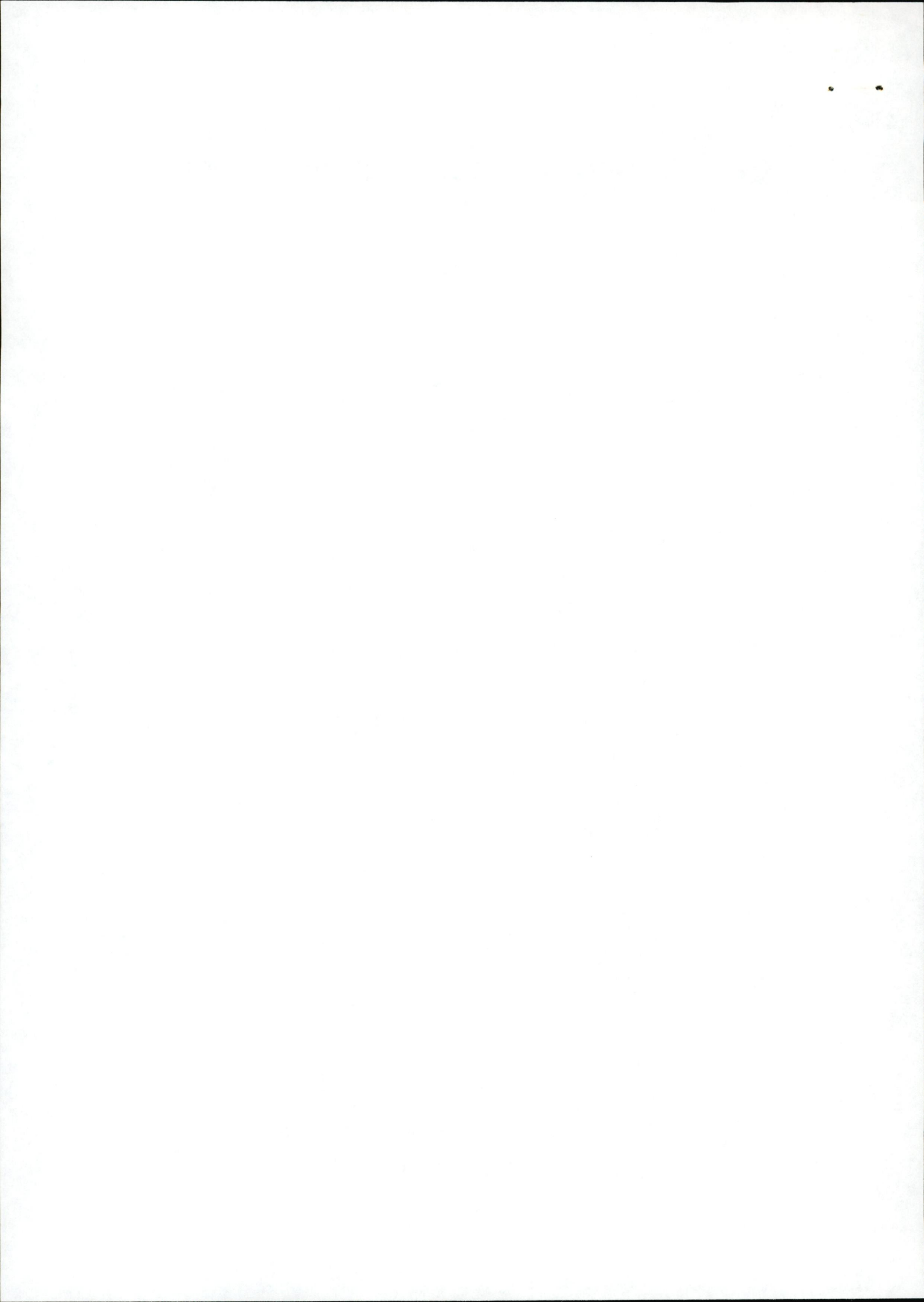
(WHEN AGREED TO)

ATTORNEY TO SAY:

MR PRESIDENT,

I BRING UP THE BILL.

(ATTORNEY HANDS TWO COPIES OF THE BILL TO CLERK
WHO READS IT A FIRST TIME)



ATTORNEY TO SAY:

MR PRESIDENT,

I MOVE THAT THIS BILL BE READ A SECOND TIME.

MR PRESIDENT,

THE PURPOSE OF THE LEGAL PROFESSION (AMENDMENT) BILL 1992 IS TO VALIDATE DECISIONS OF LEGAL PROFESSION DISCIPLINARY BODIES, IN LIGHT OF THE DECISION OF THE COURT OF APPEAL IN KNAGGS V SOLICITORS STATUTORY COMMITTEE AND ANOR.

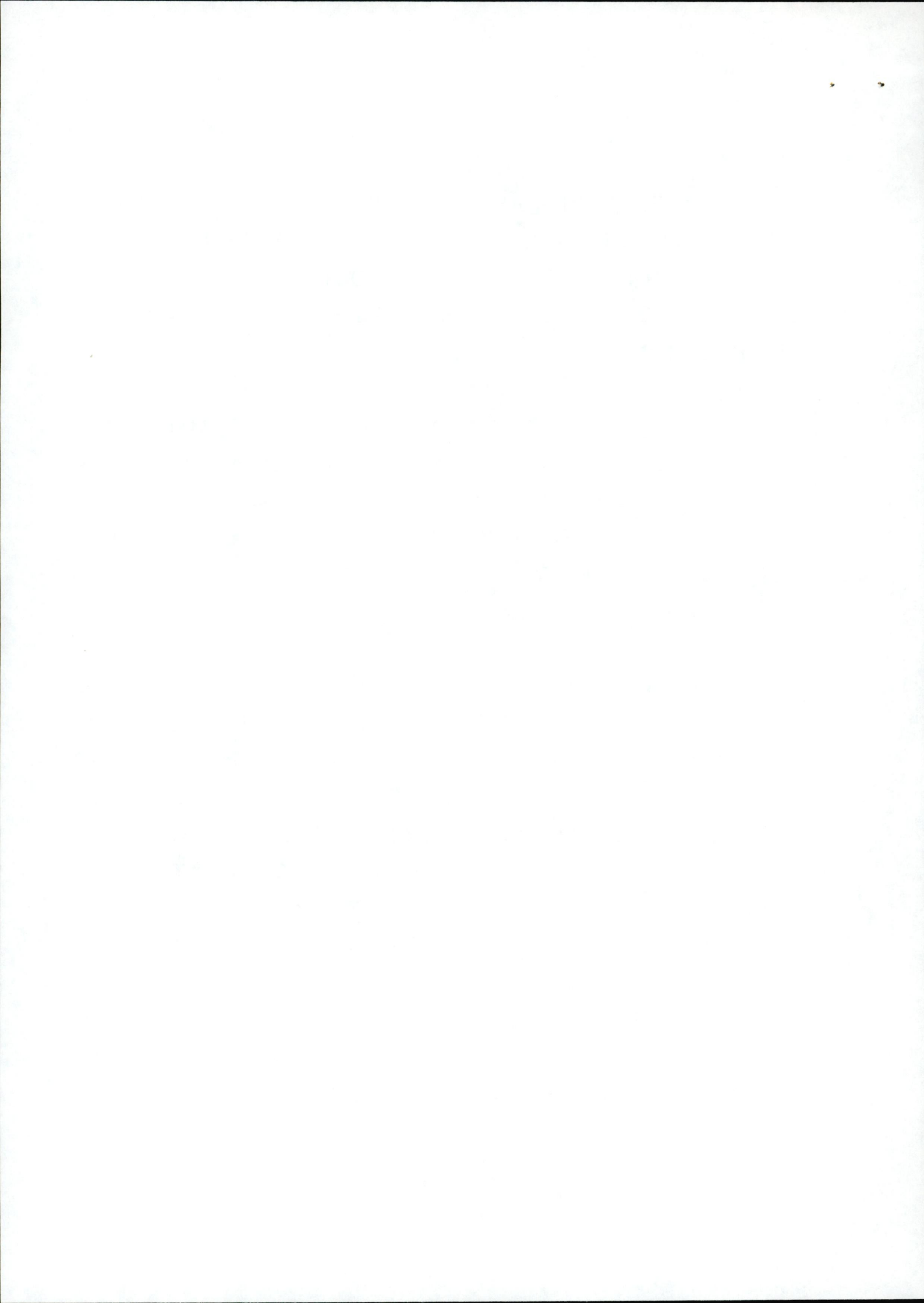
THE DECISION IN THAT CASE WAS HANDED DOWN ON 26 AUGUST THIS YEAR AND CONCERNED DISCIPLINARY PROCEEDINGS BROUGHT UNDER THE LEGAL PRACTITIONERS ACT 1898.

PURSUANT TO SECTION 75 OF THAT ACT THE SOLICITORS STATUTORY COMMITTEE WAS CONSTITUTED FOR THE PURPOSES OF HEARING CHARGES OF PROFESSIONAL MISCONDUCT AGAINST SOLICITORS. IN KNAGGS CASE THE COMMITTEE WAS CONSTITUTED BY FOUR MEMBERS WHO PARTICIPATED IN MEETINGS AND PREPARED STATEMENTS AND AN ORDER IN RELATION TO THE PARTICULAR MATTER. HOWEVER, THE ORDER WAS SUBSEQUENTLY MADE PUBLIC BY A COMMITTEE CONSTITUTED BY DIFFERENT MEMBERS TO THOSE WHO HAD INITIALLY HEARD THE MATTER.

IN CONSIDERING KNAGGS CASE THE COURT OF APPEAL HELD THAT INFERIOR STATUTORY COURTS AND TRIBUNALS OF LIMITED JURISDICTION ARE REQUIRED TO CONFORM STRICTLY TO PROCEDURES ESTABLISHED BY THEIR ENABLING LEGISLATION.

THEREFORE, WHERE THE MEMBERSHIP OF A COMMITTEE IS VARIED BEFORE ITS FUNCTIONS RELATING TO A PARTICULAR CASE ARE COMPLETED, AND THE ENABLING LEGISLATION DOES NOT EXPRESSLY ALLOW FOR SUCH A VARIATION, ORDERS MADE BY THE COMMITTEE MAY BE INVALID. THIS WAS HELD BY THE COURT OF APPEAL IN KNAGGS CASE.

I AM ADVISED THAT A LARGE NUMBER OF ORDERS HAVE BEEN MADE BY THE STATUTORY COMMITTEE UNDER THE 1898 ACT AND BY THE PROFESSIONAL STANDARDS BOARD AND THE DISCIPLINARY TRIBUNAL UNDER THE CURRENT ACT, WHERE THE COMMITTEE OR TRIBUNAL PRONOUNCING THE ORDER IS CONSTITUTED DIFFERENTLY TO THAT WHICH DETERMINED THE ORDER. IT MAY BE THAT THE ORDER CAN BE RULED INVALID BY APPLICATION OF THE PRINCIPLE IN KNAGGS CASE. IT IS THEREFORE NECESSARY TO PASS LEGISLATION TO VALIDATE THESE DECISIONS AND TO PREVENT LITIGATION AIMED AT HAVING THESE DETERMINATIONS DECLARED INVALID.



ADDITIONALLY, TO AVOID THIS SITUATION ARISING IN FUTURE, IT IS PROPOSED TO AMEND THE LEGAL PROFESSION ACT 1987 TO PROVIDE THAT DETERMINATIONS OF THE TRIBUNAL OR BOARD ARE NOT INVALID SIMPLY BECAUSE THE CONSTITUTION OF THE TRIBUNAL OR BOARD AT THE TIME OF PRONOUNCEMENT OF THE DETERMINATION IS DIFFERENT FROM THE CONSTITUTION OF THE BODY WHICH MADE THE ACTUAL THE DETERMINATION.

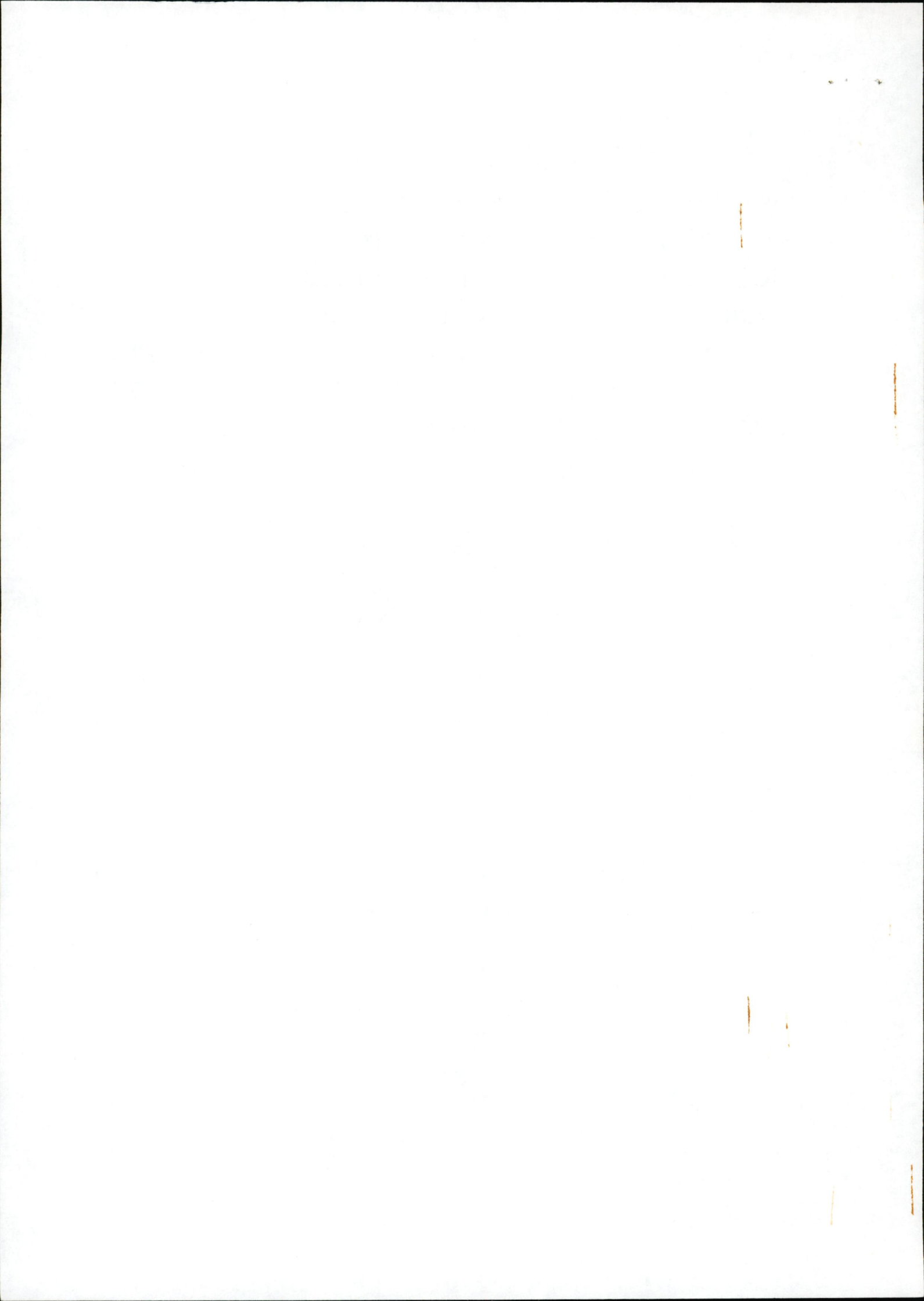
I COMMEND THE BILL TO THE HOUSE.

(OPPOSITION MOVES THE DEBATE BE ADJOURNED)
(WHEN AGREED TO).

ATTORNEY TO SAY:

MR PRESIDENT,

I ASK THAT YOU FIX THE RESUMPTION OF THIS DEBATE AS AN ORDER OF THE DAY FOR A FUTURE DAY.



LEGAL PROFESSION (AMENDMENT) ACT 1992 No. 78

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Legal Profession Act 1987 No. 109

SCHEDULE 1—AMENDMENTS

LEGAL PROFESSION (AMENDMENT) ACT 1992 No. 78

NEW SOUTH WALES



Act No. 78, 1992

An Act to amend the Legal Profession Act 1987 with respect to the pronouncement of determinations of certain bodies constituted under that Act; to validate certain matters; and for other purposes. [Assented to 23 November 1992]

Legal Profession (Amendment) Act 1992 No. 78

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Legal Profession (Amendment) Act 1992.

Commencement

2. This Act commences on the date of assent.

Amendment of Legal Profession Act 1987 No. 109

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 143 (**Hearings**):

After section 143 (6), insert:

(7) A determination of the Board is not invalid only because the constitution of the Board at the time of the pronouncement of the determination is different from the constitution of the Board at the time of making the determination.

(2) Section 157 (**Hearings**):

After section 157 (5), insert:

(6) A determination of the Tribunal is not invalid only because the constitution of the Tribunal at the time of the pronouncement of the determination is different from the constitution of the Tribunal at the time of making the determination.

(3) Schedule 8 (**Savings, transitional and other provisions**):

(a) After clause 19A, insert:

Certain determinations of the Solicitors' Statutory Committee

19B. (1) A determination or order under the repealed Act of the Solicitors' Statutory Committee is not invalid, and is taken never to have been invalid, only because the constitution of the Committee at the time of the

Legal Profession (Amendment) Act 1992 No. 78

SCHEDULE 1—AMENDMENTS—*continued*

pronouncement of the determination or order was different from the constitution of the Committee at the time of the making of the determination or order.

(2) This clause does not apply to a determination or order the subject of the decision of the Court of Appeal in *Knaggs v. The Solicitors' Statutory Committee & Anor. (No. 2)*.

(b) After Part 3, insert:

**Part 4—Provisions consequent on the enactment of
the Legal Profession (Amendment) Act 1992**

Validation of certain determinations and orders

29. A determination or order of the Legal Profession Standards Board or the Legal Profession Disciplinary Tribunal that would have been valid if this Act, as amended by the Legal Profession (Amendment) Act 1992, had been in force at the time the determination or order was made is validated.

[*Minister's second reading speech made in—
Legislative Assembly on 15 October 1992
Legislative Council on 17 November 1992*]