

FIRST PRINT

**LEGAL PROFESSION (PRACTISING CERTIFICATES)
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 to make more detailed provision as regards the issue of and refusal to issue, and appeals relating to, practising certificates for barristers.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on assent.

Clause 3 gives effect to Schedule 1 which contains amendments to the Legal Profession Act 1987.

Clause 4 is a transitional provision which provides that amendments contained in Schedule 1 (2)–(4) apply to practising certificates issued before the date of assent to the proposed Act.

SCHEDULE 1—AMENDMENTS

Refusal of applications for practising certificates

Schedule 1 (1) inserts a new section 29A which provides that, on or after 1 July 1992, the Bar Council may refuse to issue a practising certificate to a barrister who, as a pupil, has not satisfactorily completed an approved full-time reading program applicable to the pupil or has not passed any examination set by the Bar Council as part of that program. "Pupil" is defined to mean a person so described in the rules of the Bar Association. The proposed section does not apply to specified categories of barristers including barristers who currently hold a statutory position under the Crown in an Australian jurisdiction and barristers who act as parliamentary counsel.

Schedule 1 (3) provides that the Bar Council may refuse to issue, or may cancel or suspend, a practising certificate applied for, or held by, a barrister (other than the

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Attorney General) in specified circumstances. These circumstances include failure to satisfy the Bar Council that the barrister intends to practise, or is practising, as a barrister during the currency of the certificate, failure to satisfactorily explain specified conduct to the Bar Council, failure to comply with a condition attached to a practising certificate and contravention of an order made by the Legal Profession Standards Board or the Legal Profession Disciplinary Tribunal.

Issue of practising certificates

Schedule 1 (2) substitutes section 32 so as to provide that a barrister is, subject to the Principal Act, entitled to a practising certificate. Practising certificates may be unconditional or subject to conditions. Conditions may be attached to a practising certificate by the Bar Council at, or at any time after, it is issued and may be varied or revoked at any time. Specified conditions that may be attached to the practising certificate of any barrister (other than a barrister holding a statutory position under the Crown in Australia or acting as parliamentary counsel) include a condition requiring the holder of a certificate to satisfactorily complete a reading program approved by the Bar Council or a condition requiring the holder of a certificate to read with a specified barrister or a barrister of a specified class for a specified period. Other kinds of conditions that may be attached to practising certificates include conditions requiring holders to complete courses of further legal education or limiting holders to practice as barristers holding statutory offices under the Crown or as parliamentary counsel. The Attorney General, if admitted as a barrister, is entitled to an unconditional practising certificate.

Appeals relating to practising certificates

Schedule 1 (4) makes provision that the applicant for, or holder of, a practising certificate may appeal to the Supreme Court if the Bar Council or the Law Society Council attaches a condition to, or varies a condition attached to, a practising certificate. The proposed provision does not affect existing rights of appeal against a refusal to issue a practising certificate, or a cancellation of a practising certificate, by the Bar Council or the Law Society Council. Lodgment of an appeal does not stay the effect of the attachment, or variation, of a condition to a practising certificate.

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TABLE OF PROVISIONS

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

SCHEDULE 1—AMENDMENTS

**LEGAL PROFESSION (PRACTISING CERTIFICATES)
AMENDMENT BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Legal Profession Act 1987 in relation to practising certificates for barristers.

Legal Profession (Practising Certificates) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Legal Profession (Practising Certificates) 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.

Transitional

4. The amendments made by Schedule 1 (2)–(4) extend to practising certificates issued before the date of assent to this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 29A:

After section 29, insert:

Refusal of application by barrister for practising certificate

29A. (1) The Bar Council may, on or after 1 July 1992, refuse to issue a practising certificate to a barrister who, as a pupil, has not completed to the satisfaction of the Council a full-time component of a reading program applicable to the pupil and determined or approved by the Council or who has not sat for and passed an examination set by the Council as part of that program.

(2) Subsection (1) does not apply to:

- (a) a barrister who is the holder of a statutory position under the Crown in right of New South Wales, any other State or Territory or the Commonwealth; or
- (b) a barrister who acts as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right); or

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SCHEDULE 1—AMENDMENTS—*continued*

(c) a barrister who is, or is a member of a class or of a description of barristers, specified by the Bar Council for the purposes of this subsection; or

(d) a barrister who is, or is a member of a class or of a description of barristers, prescribed by the regulations for the purposes of this subsection.

(3) Subsection (2) applies only while a barrister is a barrister to whom paragraph (a), (b), (c) or (d) of that subsection applies.

(4) In this section, “**pupil**” means a person who is a pupil in accordance with the rules of the Bar Association as in force from time to time.

(2) Section 32:

Omit the section, insert instead:

Issue of practising certificate to barrister

32. (1) A barrister is, subject to this Act, entitled to a practising certificate.

(2) A practising certificate may be unconditional or subject to conditions.

(3) The Bar Council may attach a condition to a practising certificate when it is issued or at any time after it is issued, and may at any time vary or revoke any such condition.

(4) Conditions of the following kinds can be attached to the practising certificate of any barrister:

(a) a condition requiring the holder to undertake and complete to the satisfaction of the Bar Council a reading program as determined or approved by the Council;

(b) a condition requiring the holder to sit for and pass any examination set by the Council as part of a reading program;

(c) a condition requiring the holder to read with a specified barrister or with a barrister of a specified class or description for a specified period and to comply with such requirements as will enable the

Legal Profession (Practising Certificates) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

barrister, at the end of the specified period, to certify to the Bar Council that the holder is fit to practise as a barrister without restriction.

(5) The only other conditions that can be attached to a practising certificate are conditions of the following kinds:

- (a) a condition requiring the holder to undertake and complete to the satisfaction of the Bar Council a course of further legal education;
- (b) a condition limiting the holder to practising as a barrister as the holder of a statutory office under the Crown (whether in right of New South Wales or in another right);
- (c) a condition limiting the holder to practising as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right).

(6) Conditions of a kind referred to in subsection (4) cannot be attached to a practising certificate of a barrister referred to in section 29A (2) (a) or (b).

(7) The Attorney General, if admitted as a barrister, is entitled to an unconditional practising certificate.

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

Omit section 35 (1)–(1C), insert instead:

(1) The Bar Council may refuse to issue, may cancel, or may by order suspend, a practising certificate applied for or held by a barrister (other than the Attorney General) who:

- (a) is unable to satisfy the Council that the barrister intends to practise as a barrister during the currency of the certificate; or
- (b) is not, in the opinion of the Council, practising as a barrister; or
- (c) being required by the Council to explain specified conduct by the barrister as a barrister fails, and continues to fail, to give an explanation satisfactory to the Council; or

Legal Profession (Practising Certificates) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (d) has, in the opinion of the Council, failed to comply with a condition attached to the certificate; or
 - (e) has contravened an order made in respect of the barrister by the Legal Profession Standards Board or the Tribunal; or
 - (f) has contravened a provision of this Act; or
 - (g) is in prison.
- (4) Section 37 (**Appeals relating to practising certificates**):
- (a) At the end of section 37 (1) (b), omit “or”.
 - (b) After section 37 (1) (b), insert:
 - (b1) attaches a condition to a practising certificate or varies a condition attached to a practising certificate; or
 - (c) In section 37 (2), after “suspension”, insert “, or the attaching or variation of a condition,”.
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SECOND PRINT

**LEGAL PROFESSION (PRACTISING CERTIFICATES)
AMENDMENT BILL 1992**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Legal Profession Act 1987 No. 109
4. Transitional
5. Review and expiry of certain provisions

SCHEDULE 1—AMENDMENTS

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1992

An Act to amend the Legal Profession Act 1987 in relation to practising certificates for barristers.

Legal Profession (Practising Certificates) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Legal Profession (Practising Certificates) 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.

Transitional

10 4. The amendments made by Schedule 1 (2)–(4) extend to practising certificates issued before the date of assent to this Act.

Review and expiry of certain provisions

15 5. (1) This section applies to the following provisions of the Legal Profession Act 1987, as amended by this Act, namely: section 32 (3) and (4) and section 35 (1) (c).

20 (2) The Law Reform Commission is to inquire into and report to the Minister on the policy objectives of the provisions to which this section applies and the impact of the enactment of those provisions on the legal profession. The Commission must deliver its report within 9 months after the date of assent to this Act and the Minister is to cause the Commission's report to be tabled in Parliament.

(3) The provisions to which this section applies are repealed at the end of the period of 12 months starting on the date of assent to this Act.

SCHEDULE 1—AMENDMENTS

25

(Sec. 3)

(1) Section 29A:

After section 29, insert:

Refusal of application by barrister for practising certificate

30

29A. (1) The Bar Council may, on or after 1 October 1992, refuse to issue a practising certificate to a barrister who, as a pupil, has not completed to the satisfaction of the Council a

Legal Profession (Practising Certificates) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- full-time component of a reading program applicable to the pupil and determined or approved by the Council or who has not sat for and passed an examination set by the Council as part of that program. 5
- (2) Subsection (1) does not apply to:
- (a) a barrister who is the holder of a statutory position under the Crown in right of New South Wales, any other State or Territory or the Commonwealth; or
- (b) a barrister who acts as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right); or 10
- (c) a barrister who is, or is a member of a class or of a description of barristers, specified by the Bar Council for the purposes of this subsection; or 15
- (d) a barrister who is, or is a member of a class or of a description of barristers, prescribed by the regulations for the purposes of this subsection.
- (3) Subsection (2) applies only while a barrister is a barrister to whom paragraph (a), (b), (c) or (d) of that subsection applies. 20
- (4) In this section, “pupil” means a person who is a pupil in accordance with the rules of the Bar Association as in force from time to time. 25
- (2) Section 32:
- Omit the section, insert instead:
- Issue of practising certificate to barrister**
32. (1) A barrister is, subject to this Act, entitled to a practising certificate. 30
- (2) A practising certificate may be unconditional or subject to conditions.
- (3) The Bar Council may attach a condition to a practising certificate when it is issued or at any time after it is issued, and may at any time vary or revoke any such condition. 35
- (4) Conditions of the following kinds can be attached to the practising certificate of any barrister:

Legal Profession (Practising Certificates) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- 5 (a) a condition requiring the holder to undertake and complete to the satisfaction of the Bar Council a reading program as determined or approved by the Council;
- (b) a condition requiring the holder to sit for and pass any examination set by the Council as part of a reading program;
- 10 (c) a condition requiring the holder to read with a specified barrister or with a barrister of a specified class or description for a specified period and to comply with such requirements as will enable the barrister, at the end of the specified period, to certify to the Bar Council that the holder is fit to practise as a barrister without restriction.
- 15 (5) The only other conditions that can be attached to a practising certificate are conditions of the following kinds:
- (a) a condition requiring the holder to undertake and complete to the satisfaction of the Bar Council a course of further legal education;
- 20 (b) a condition limiting the holder to practising as a barrister as the holder of a statutory office under the Crown (whether in right of New South Wales or in another right);
- 25 (c) a condition limiting the holder to practising as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right).
- 30 (6) Conditions of a kind referred to in subsection (4) cannot be attached to a practising certificate of a barrister referred to in section 29A (2) (a) or (b).
- (7) The Attorney General, if admitted as a barrister, is entitled to an unconditional practising certificate.
- 35 (3) **Section 35 (Refusal, suspension or cancellation of practising certificate):**
 Omit section 35 (1)–(1C), insert instead:
 (1) The Bar Council may refuse to issue, may cancel, or may by order suspend, a practising certificate applied for or held by a barrister (other than the Attorney General) who:

Legal Profession (Practising Certificates) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (a) is unable to satisfy the Council that the barrister intends to practise as a barrister during the currency of the certificate; or
 - (b) is not, in the opinion of the Council, practising as a barrister; or 5
 - (c) being required by the Council to explain specified conduct by the barrister as a barrister fails, and continues to fail, to give an explanation satisfactory to the Council; or 10
 - (d) has, in the opinion of the Council, failed to comply with a condition attached to the certificate; or
 - (e) has contravened an order made in respect of the barrister by the Legal Profession Standards Board or the Tribunal; or 15
 - (f) has contravened a provision of this Act; or
 - (g) is in prison.
- (4) Section 37 (**Appeals relating to practising certificates**):
- (a) At the end of section 37 (1) (b), omit “or”.
 - (b) After section 37 (1) (b), insert: 20
 - (b1) attaches a condition to a practising certificate or varies a condition attached to a practising certificate; or
 - (c) In section 37 (2), after “suspension”, insert “, or the attaching or variation of a condition,”.
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**LEGAL PROFESSION (PRACTISING CERTIFICATES)
AMENDMENT ACT 1992 No. 93**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Legal Profession Act 1987 No. 109
4. Transitional
5. Review and expiry of certain provisions

SCHEDULE 1—AMENDMENTS

**LEGAL PROFESSION (PRACTISING CERTIFICATES)
AMENDMENT ACT 1992 No. 93**

NEW SOUTH WALES



Act No. 93, 1992

An Act to amend the Legal Profession Act 1987 in relation to practising certificates for barristers. [Assented to 2 December 1992]

Legal Profession (Practising Certificates) Amendment Act 1992 No. 93

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Legal Profession (Practising Certificates) 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.

Transitional

4. The amendments made by Schedule 1 (2)–(4) extend to practising certificates issued before the date of assent to this Act.

Review and expiry of certain provisions

5. (1) This section applies to the following provisions of the Legal Profession Act 1987, as amended by this Act, namely: section 32 (3) and (4) and section 35 (1) (c).

(2) The Law Reform Commission is to inquire into and report to the Minister on the policy objectives of the provisions to which this section applies and the impact of the enactment of those provisions on the legal profession. The Commission must deliver its report within 9 months after the date of assent to this Act and the Minister is to cause the Commission's report to be tabled in Parliament.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 29A:

After section 29, insert:

Refusal of application by barrister for practising certificate

29A. (1) The Bar Council may, on or after 1 January 1993, refuse to issue a practising certificate to a barrister who, as a pupil, has not completed to the satisfaction of the Council a

SCHEDULE 1—AMENDMENTS—*continued*

full-time component of a reading program applicable to the pupil and determined or approved by the Council or who has not sat for and passed an examination set by the Council as part of that program.

(2) Subsection (1) does not apply to:

- (a) a barrister who is the holder of a statutory position under the Crown in right of New South Wales, any other State or Territory or the Commonwealth; or
- (b) a barrister who acts as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right); or
- (c) a barrister who is, or is a member of a class or of a description of barristers, specified by the Bar Council for the purposes of this subsection; or
- (d) a barrister who is, or is a member of a class or of a description of barristers, prescribed by the regulations for the purposes of this subsection.

(3) Subsection (2) applies only while a barrister is a barrister to whom paragraph (a), (b), (c) or (d) of that subsection applies.

(4) In this section, “pupil” means a person who is a pupil in accordance with the rules of the Bar Association as in force from time to time.

(2) Section 32:

Omit the section, insert instead:

Issue of practising certificate to barrister

32. (1) A barrister is, subject to this Act, entitled to a practising certificate.

(2) A practising certificate may be unconditional or subject to conditions.

(3) The Bar Council may attach a condition to a practising certificate when it is issued or at any time after it is issued, and may at any time vary or revoke any such condition.

(4) Conditions of the following kinds can be attached to the practising certificate of any barrister:

Legal Profession (Practising Certificates) Amendment Act 1992 No. 93

SCHEDULE 1—AMENDMENTS—*continued*

- (a) a condition requiring the holder to undertake and complete to the satisfaction of the Bar Council a reading program as determined or approved by the Council;
 - (b) a condition requiring the holder to sit for and pass any examination set by the Council as part of a reading program;
 - (c) a condition requiring the holder to read with a specified barrister or with a barrister of a specified class or description for a specified period and to comply with such requirements as will enable the barrister, at the end of the specified period, to certify to the Bar Council that the holder is fit to practise as a barrister without restriction.
- (5) The only other conditions that can be attached to a practising certificate are conditions of the following kinds:
- (a) a condition requiring the holder to undertake and complete to the satisfaction of the Bar Council a course of further legal education;
 - (b) a condition limiting the holder to practising as a barrister as the holder of a statutory office under the Crown (whether in right of New South Wales or in another right);
 - (c) a condition limiting the holder to practising as parliamentary counsel under a contract of service, or contract for services, with the Crown (whether in right of New South Wales or in another right).
- (6) Conditions of a kind referred to in subsection (4) cannot be attached to a practising certificate of a barrister referred to in section 29A (2) (a) or (b).
- (7) The Attorney General, if admitted as a barrister, is entitled to an unconditional practising certificate.
- (3) **Section 35 (Refusal, suspension or cancellation of practising certificate):**
- Omit section 35 (1)–(1C), insert instead:
- (1) The Bar Council may refuse to issue, may cancel, or may by order suspend, a practising certificate applied for or held by a barrister (other than the Attorney General) who:

Legal Profession (Practising Certificates) Amendment Act 1992 No. 93

SCHEDULE 1—AMENDMENTS—*continued*

- (a) is unable to satisfy the Council that the barrister intends to practise as a barrister during the currency of the certificate; or
 - (b) is not, in the opinion of the Council, practising as a barrister; or
 - (c) being required by the Council to explain specified conduct by the barrister as a barrister fails, and continues to fail, to give an explanation satisfactory to the Council; or
 - (d) has, in the opinion of the Council, failed to comply with a condition attached to the certificate; or
 - (e) has contravened an order made in respect of the barrister by the Legal Profession Standards Board or the Tribunal; or
 - (f) has contravened a provision of this Act; or
 - (g) is in prison.
- (4) Section 37 (Appeals relating to practising certificates):
- (a) At the end of section 37 (1) (b), omit “or”.
 - (b) After section 37 (1) (b), insert:
 - (b1) attaches a condition to a practising certificate or varies a condition attached to a practising certificate; or
 - (c) In section 37 (2), after “suspension”, insert “, or the attaching or variation of a condition,”.

[*Minister's second reading speech made in—
Legislative Assembly on 26 March 1992
Legislative Council on 19 November 1992*]