



# Legal Profession Amendment Bill 1996 (No 2)

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to make a number of miscellaneous amendments to the provisions of the *Legal Profession Act 1987* that deal with the following:

- complaints against legal practitioners,
- the fixing of legal fees and other costs,
- the procedure for assessment of legal fees and costs,
- the Solicitors' Fidelity Fund,
- the Solicitors' Mutual Indemnity Fund,
- the admission of legal practitioners,
- various other matters.

The Bill also abolishes the common law offence of being a common barrator (barratry) and makes minor amendments to the *Defamation Act 1974*.

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### **Amendments relating to complaints against legal practitioners**

The Bill amends the provisions of the Legal Profession Act 1987 that deal with the investigation of complaints against legal practitioners, so as to do the following:

- (a) to clarify that those provisions do not apply to federal judicial officers,
- (b) to allow the Legal Services Commissioner to summarily dismiss a complaint against a legal practitioner on the grounds that the complaint is misconceived or lacking in substance,
- (c) to provide for the mediation of -any complaint against a legal practitioner in which the complainant seeks redress or remedy,
- (d) to simplify the procedure for the investigation of complaints made against both a solicitor and a barrister in respect of the same or related facts,
- (e) to compel legal practitioners to assist in the investigation of complaints against other legal practitioners,
- (f) to provide for the allegations raised in a complaint against a legal practitioner to be particularised when referred to the Legal Services Tribunal and to allow the Tribunal to vary those allegations where it is reasonable to do so,
- (g) to protect from liability certain people involved in the investigation of complaints against legal practitioners and to provide for the giving of evidence by those people.

### **Amendments relating to costs**

The Bill also amends the provisions of the Act that deal with the fixing and assessment of legal fees and other costs, so as to do the following:

- (a) to limit the application of provisions relating to costs in matters transferred under cross-vesting legislation,
- (b) to provide for certain costs associated with enforcing certain judgments, and with the administration of estates, to be fixed by the regulations made under the Act,
- (c) to remove the obligation on the proper officer of the Supreme Court to advise parties to a costs assessment about mediation services,
- (d) to provide for the referral of a matter to a costs assessor to be revoked,
- (e) to require certain persons to produce documents and provide particulars for the purposes of a costs assessment,

Explanatory note

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- (f) to modify the matters required, or permitted, to be taken into account in the assessment of costs,
- (g) to provide for the enforcement of costs assessment orders and for the recovery of the costs of a costs assessor,
- (h) to modify the procedure for a merits appeal against a decision of a costs assessor,
- (i) to enable a costs assessor to refer to the Legal Services Commissioner any failure by a legal practitioner to comply with the provisions of the Act relating to costs and costs assessment,
- (j) to protect costs assessors from liability for matters or things done or omitted in the course of their duties under the Act.

### **Other amendments**

The Bill also amends other provisions of the Act, dealing with legal practice and other matters, so as to do the following:

- (a) to limit the exposure of the Solicitors' Fidelity Fund in relation to claims arising from transactions occurring outside Australia and claims where the claimant shares some responsibility for their own loss,
- (b) to require a claimant from the Solicitors' Fidelity Fund to mitigate their loss,
- (c) to allow for contributions to the Solicitors' Mutual Indemnity Fund to be paid by instalment, directly to the company administering the Fund,
- (d) to clarify the operation of provisions of the Act dealing with money received by a solicitor on behalf of another person,
- (e) to enable permanent building societies and credit unions (as well as banks) to hold a solicitor's trust account funds and certain other money under the Act,
- (f) to clarify the criteria for admission as a legal practitioner,
- (g) to provide for disputed or contested applications for admission as a legal practitioner to be heard by the Supreme Court,
- (h) to provide for the costs of the Legal Profession Advisory Council and the costs assessors' rules committee to be paid from the Statutory Interest Account established under the Act,
- (i) to provide for certain other costs, currently met from the Solicitors' Fidelity Fund, to also be paid from the Statutory Interest Account,
- (j) to make other changes of a minor, consequential or ancillary nature and to make amendments by way of statute law revision,
- (k) to make consequential savings and transitional provisions.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** gives effect to the amendments to the *Legal Profession Act 1987* set out in Schedules 1–5.

**Clause 4** gives effect to the amendments to the Acts set out in Schedule 6.

## Schedules

### **Schedule 1      Amendments relating to complaints and discipline**

#### **Handling of complaints against legal practitioners**

Part 10 of the *Legal Profession Act 1987* provides a scheme for the making of complaints against legal practitioners, for the investigation of those complaints and for the taking of any necessary disciplinary action.

**Application to federal judicial officers.** Section 128 (Application of Part) is amended to make it clear that Part 10 does not apply to the conduct of a legal practitioner who is a federal judicial officer. (See Schedule 1 [1]) State judicial officers are already excluded from the operation of the Part.

**Dismissal of certain complaints.** Section 141 (Summary dismissal of complaints) is amended so as to empower the Legal Services Commissioner to summarily dismiss a complaint (that is, to dismiss the complaint without referring it to the appropriate professional Council for investigation) if the complaint is misconceived or lacking in substance. (See Schedule 1 [2])

#### **Mediation of complaints**

Division 4 of Part 10 of the *Legal Profession Act 1987* presently provides for the mediation of consumer disputes (defined as disputes between a client and a legal practitioner in which the client seeks redress or remedy by making a complaint under Part 10)

**Rights of persons who are not clients.** At present, the Act allows any person to make a complaint about the conduct of a legal practitioner, and in some cases complaints by non-clients will involve a claim for compensation that might be suitable for mediation. Section 143, which sets out what disputes are suitable for mediation, is amended so that mediation will be available in respect of any complaint in which the complainant seeks redress or remedy. (See Schedule 1 [3])

### **Complaints concerning both a barrister and a solicitor**

Sometimes, the same set of circumstances may give rise to a complaint against both a solicitor and barrister. At present, such complaints are investigated separately by the Law Society Council and the Bar Council. They are heard separately by the Legal Services Tribunal, with differently constituted membership.

**Consultation and cooperation.** Section 148, which provides for the investigation of complaints by Councils, is amended so as to allow the two Councils to consult and cooperate in relation to such complaints. (See Schedule 1 [4])

**Composition of Legal Services Tribunal.** Section 163 (Composition of Tribunal) is amended so as to provide that such complaints will be heard by a Tribunal composed of one of its solicitor members, one of its barrister members and one of its lay members. (See Schedule 1 [11])

**Joinder of informations.** Section 167 (Institution of proceedings and hearings) empowers the Tribunal to order the joinder of any 2 informations against the same or different legal practitioners. That section is amended so as to create a discretion for the Tribunal to order a joint hearing where one or more complaints have been referred against a solicitor and a barrister and all complaints arise from the same or closely related facts. (See Schedule 1 [[13])

### **Duties of legal practitioners in investigations**

**Obligation to assist and cooperate.** At present, legal practitioners can be required to provide assistance to and cooperate with the Legal Services Commissioner and the Councils for the purposes of the investigation of a complaint. That obligation only applies to the legal practitioner the subject of the complaint. Section 152, which sets out the powers of the Councils and the Commissioner when investigating a complaint, is amended so as to confer power to require any legal practitioner to assist in, and cooperate with, an investigation. (See Schedule 1 [5])

**Consequences of misleading or obstructing investigation.** Section 152 is also amended so as to provide that a legal practitioner who wilfully misleads or obstructs an investigation is capable of being found to have engaged in professional misconduct. (Schedule 1 [6])

## **Dealing with allegations raised in information to Tribunal**

At present, proceedings may be instituted in the Legal Services Tribunal with respect to a complaint against a legal practitioner by an information laid by the appropriate Council or by the Legal Services Commissioner. There is some concern that this requires the whole of the complaint to be referred, and does not allow the omission of matters from the complaint, or the inclusion of any relevant matters that come to the attention of a Council or the Commissioner. The proposed amendments clarify this matter.

**Complaints may be particularised.** Section 167 (Institution of proceedings and hearings) is amended so that the Tribunal is required to conduct a hearing into each allegation raised in the information laid by a Council or the Commissioner (rather than into the complaint itself). (See Schedule 1 [12]. Schedule 1 [9] and [10] are consequential on that amendment.)

**Review of such decisions.** Section 158 (Application for review) is amended so as to provide a complainant with a right to have a decision to omit matters from a complaint reviewed. (See Schedule 1 [7]. Schedule 1 [8] is consequential on that amendment.)

**Variation of Complaint by Tribunal.** A new section is inserted so as to empower the Legal Services Tribunal to vary an information having regard to developments in the course of the hearing or to any other matter. (See Schedule 1 [14])

## **Protection from liability and competence of certain witnesses**

**Immunity of consultants.** At present, section 171Q provides protection from liability for acts done in good faith for the purposes of the administration of Part 10 (Complaints and discipline). That section is amended so as to extend the protection to certain consultants engaged by the Commissioner and to certain other persons. (See Schedule 1 [15])

**Admissibility of evidence.** At present, section 171R provides that a person who is afforded protection from liability by section 171Q is neither competent nor compellable, in any legal proceedings, to give evidence or produce documents in respect of the matter in which the person was involved in the administration of Part 10. That section specifically precludes the admission of such evidence in proceedings before the Tribunal. The section is amended so as to ensure that evidence collected in the course of an investigation can be adduced in proceedings, including proceedings before the Tribunal. (See Schedule 1 [16])

## **Schedule 2 Amendments relating to legal fees and other costs**

### **Application of Part 11**

Part 11 of the *Legal Profession Act 1987* deals with legal fees and other costs. The Part creates obligations to disclose certain matters relating to costs, deals with costs agreements and provides for the assessment of costs.

**Cross-vested matters.** A new section is inserted to allow for the regulations to make provision for the application of the fees and costs regime in Part 11 to cross-vested matters, that is, to matters initiated in one jurisdiction and transferred to the Supreme Court of New South Wales under the cross-vesting legislation. (See Schedule 2 [1])

### **Costs fixed by regulations**

Section 196 empowers the Governor to make regulations fixing certain costs. The amounts fixed for matters that are not legal services may be taken into account by a costs assessor in assessing costs.

**Fixing of certain costs.** Section 196 is amended so as to confer power to fix all costs payable for enforcement of a judgment and to allow for the fixing of costs in relation to probate and the administration of estates. (See Schedule 2 [2]) A consequential amendment is made to section 208O, which provides that when costs are fixed by the regulations any assessment of costs has to be made in accordance with the regulations. (See Schedule 2 [18])

### **Costs assessments**

Division 6 of Part 11 of the *Legal Profession Act 1987* provides for the assessment of costs.

**Mediation of applications for costs assessment.** At present, section 205 imposes a duty on the proper officer of the Supreme Court, when receiving an application for costs assessment, to have regard to whether the parties have attempted mediation. That section is repealed. (See Schedule 2 [4]) Instead, section 203 is amended so as to require an applicant to state in an application for assessment that there is no reasonable prospect of settlement of the complaint by mediation. (See Schedule 2 [3])

**Referral of matters to costs assessors.** Section 206 provides that the proper officer of the Supreme Court is to refer an application for assessment of costs to a costs assessor. That section is amended so as to empower the proper officer to recall an application for costs assessment from a costs assessor to whom it has been referred. This can only be done if the proper officer is satisfied that it would be inappropriate for the costs assessor to continue to deal with the application. (See Schedule 2 [5])

**Power to obtain documents or further particulars.** Section 207 provides for the issue of a notice to produce documents or provide certain particulars in respect of the matter. That section is amended so that such a notice can be given to any person (that is, the power to require production of documents or the giving of further particulars will no longer be limited to legal practitioners or clients concerned with the application). (See Schedule 2 [6])

**Consequences of failure to comply.** At present, section 207 (5) (b) provides that a failure to comply with such a notice is to be dealt with in accordance with the rules of the Supreme Court. That provision is omitted. Instead, the costs assessor may decline to deal with the application if such a notice has not been complied with. (See Schedule 2 [7])

**Procedure for assessments.** Section 208F, which deals with the assessment of costs ordered by a court or tribunal, is amended so as to require a costs assessor, when considering an application relating to a bill of costs, to have regard to the operation of the rules of the court or tribunal making the order for costs. (See Schedule 2 [8])

**Recovery of costs of costs assessments.** Section 208F provides that the costs assessed are to include the costs of the assessment. The section provides that the costs of a costs assessor are to be paid to the proper officer of the Supreme Court. Section 208F is amended so that the costs of the parties to an assessment are included in those costs of assessment that are recoverable. (See Schedule 2 [9])

**Effect of costs agreements.** At present, section 208H provides that a costs assessor is not to have regard to a costs agreement in assessing party/party costs. That section is amended so as to make it clear that a costs assessor is not prohibited from having access to a costs agreement, only from allowing it to influence an assessment. (See Schedule 2 [11])

**Certificates of determination.** Section 208J provides for the issue of a certificate of determination, setting out the determination of a costs assessor. That section is amended to make it clear that the costs incurred by a costs assessor are not included in a Certificate of determination (See Schedule 2 [14]) and that no further action is required for the enforcement of the amount of costs (See Schedule 2 [13]). Also, the section is amended to provide for the issue of more than one certificate in relation to a costs assessment. This would permit a certificate to be issued in respect of that part of the costs that are agreed to, allowing the costs assessor to continue the assessment in respect of the disputed costs only. A further certificate could be issued in respect of such costs. (See Schedule 2 [12])

**Enforcement of costs of costs assessments.** A new section is inserted, giving the proper officer of the Supreme Court the power to take action to enforce an assessment order in relation to the costs of the assessment. This is done by way of the issue of a certificate by the costs assessor, in a similar manner to that provided for in section 208J. (See Schedule 2 [15]. Schedule 2 [10] inserts a note to that effect.) Such a certificate can only be issued where a party is otherwise liable to pay the costs of a costs assessor.

**Determinations on appeal.** Section 208L provides for appeals to the Supreme Court against decisions of costs assessors as to a matter of law. The Court is empowered to remit a decision on the question to the costs assessor and to order the costs assessor to re-determine the application. Fresh evidence may be heard on that re-determination. Section 208M provides for appeals on the merits of the case, but only by leave of the Supreme Court. Such appeals are by way of a re-hearing, and the Supreme Court is not empowered to remit the decision to the costs assessor. The procedure for merits appeals is amended so as to allow the appeal court or tribunal to make a determination that, in the opinion of the court or tribunal, should have been made by the costs assessor. (See Schedule 2 [16])

**Parties to appeal against costs assessment.** A further amendment clarifies that a costs assessor is not automatically a party to any appeal against a decision or determination made as part of his or her assessment. (See Schedule 2 [17])

**Notice of appeals.** Provision is made for the proper officer of the Supreme Court to be notified of all appeals against decisions or determinations of a costs assessor. (See Schedule 2 [17])

**Conduct of legal practitioners in costs assessments.** The costs assessment scheme set out in Part 11 of the Act may lead to a matter being referred to the Legal Services Commissioner. At present, a costs assessor may refer to the Commissioner any grossly excessive amounts of costs or any deliberate misrepresentations as to costs.

Section 208Q (Referral of misconduct to Commissioner) is amended so as to empower a costs assessor to refer to the Commissioner any failure by a legal practitioner to comply with a notice issued under section 207 or with any other provision of Part 11. (See Schedule 2 [19]) Failure by a legal practitioner to comply with a notice under section 207 is, by virtue of section 207 (6), professional misconduct.

**Liability of costs assessors.** A new section is inserted to provide for costs assessors to be protected from liability for acts done in good faith for the purposes of carrying out duties under Part 11 (Legal fees and other costs). (See Schedule 2 [20])

### **Schedule 3 Amendments relating to Solicitors' Fidelity Fund**

The Solicitors' Fidelity Fund is constituted under Part 7 of the *Legal Profession Act 1987*. It is made up of contributions and levies from practising solicitors, and also from interest received on solicitors' trust accounts. The Fund is used to provide compensation for persons who suffer a pecuniary loss as a result of certain dishonest conduct of a solicitor.

**Refunds to retiring practitioners.** Section 76 (Contributions) is amended to provide for a partial refund of Fidelity Fund contributions to solicitors who retire during the relevant practising certificate year. (See Schedule 3 [1])

**Disallowance of claims against the Fidelity Fund.** Section 80 sets out what happens when a claim is made against the Fidelity Fund. That section is amended (see Schedule 3 [2]) so as to allow the Law Society Council a discretion to wholly or partly disallow a claim against the Fidelity Fund where:

- the claim relates to money or valuable property received by or entrusted to a solicitor outside Australia or is otherwise unconnected with practice as a New South Wales solicitor in Australia, or
- the claimant knowingly assisted in or contributed to the loss, or
- the claimant's own negligence contributed to the loss, or
- the claimant knew or must have known that the conduct of the transaction with the solicitor was illegal, or
- proper and usual records were not brought into existence (or were destroyed).

**Mitigation of loss.** Section 80A (Reduction of claim) is inserted. That section has the effect of requiring a claimant to take action to mitigate their loss. (See Schedule 3 [3]) A right to appeal is provided against the operation of that requirement. (See Schedule 3 [4])

### **Schedule 4 Amendments relating to legal practice**

**Contributions to Solicitors' Mutual Indemnity Fund.** At present, the Law Society is prevented from issuing a practising certificate to an insurable solicitor unless the solicitor's application for the practising certificate is accompanied by an application for an approved policy of indemnity insurance and by the premium payable under the policy. That is, the premiums are payable only in a lump sum, and are payable only to the Law Society Council. Section 41 is amended so as to remove the obligation that a

practising certificate be accompanied by an insurance policy and the insurance premium. (See Schedule 4 [1] and [2]) Instead, before issuing a practising certificate, the Law Society Council will have to be satisfied that the company administering the Solicitors' Mutual Indemnity Fund has received the contribution payable by the solicitor.

**Payment of insurance premiums from the Indemnity Fund.** Section 44 (Payments from the Indemnity Fund) is amended to make clear that the payment of premiums for insurance may be made out of the Indemnity Fund. (See Schedule 4 [3])

**Payment of contributions.** Section 45 (Contributions) is amended so as to provide for the payment of contributions directly to the company administering the Solicitors' Mutual Indemnity Fund. Those contributions may be paid by instalments. (See Schedule 4 [4])

**Failure to pay contributions.** Section 47 is amended so as to make it clear that the failure to pay an instalment of a contribution will lead to the suspension of the solicitor's practising certificate. (See Schedule 4 [5]) This gives rise to the possibility of the appointment of a receiver. (See Schedule 4 [7])

**Money received by solicitors.** At present, section 61 (2) requires money received by a solicitor on behalf of another person to be disbursed as directed by the person on whose behalf it is held. Section 61 is replaced with a plainer provision. (See Schedule 4 [6]) The substituted section 61 clarifies the operation of the present provision of the Act dealing with the handling of money received by a solicitor on behalf of another person. In particular, the amendment imports from the regulations a provision about "money in transit". The object of the substitution of section 61 is to clarify the distinction between trust money, controlled money and money in transit.

**Operation of irrevocable authority.** The obligation that money be disbursed as directed is retained in the substituted section 61. However, in some cases a client might instruct a solicitor to pay money to a third party in circumstances where, at law, an irrevocable authority arises. The solicitor is under an obligation to that third party. If the client were to withdraw the instructions, the solicitor may find a conflict between the obligation of the solicitor under the Act (to disburse the money as directed by the client) and the duty owed by the solicitor at common law (to comply with an irrevocable authority to pay the money to a third party). The substituted section clarifies that the statutory rule does not operate to affect any irrevocable authority at common law.

## Schedule 5 Miscellaneous amendments

### Financial organisations

At present, the *Legal Profession Act 1987* discriminates between financial organisations, in favour of banks. For instance, section 61 presently requires all money received by a solicitor on behalf of another person to be paid to the credit of a general trust account at a bank in New South Wales (unless the person on whose behalf the money is received otherwise directs). The proposed amendments made to section 61 of the Act by Schedule 4 [6] (among other things) allow such trust accounts to be kept with a bank, building society or credit union. The Act is amended in various other ways to remove similar discrimination.

**Deposits.** Section 64 (Deposit of trust funds with Law Society) is amended to allow money deposited with the Law Society to be kept with a building society or credit union, as well as a bank. (See Schedule 5 [15]) Similarly, section 67, which sets up the Statutory Interest Account, is amended so as to allow that account to be kept with a building society or credit union. (See Schedule 5 [17])

**Consequential amendments.** Certain other provisions are amended so as to allow money to be deposited in building societies or credit unions as well as banks, and to make consequential amendments. (See Schedule 5 [2], [12], [13], [16], [20], [21], [23]–[27]) The definition of *bank* is omitted, as that term is defined in the *Interpretation Act 1987*. (See Schedule 5 [1])

### Admission of legal practitioners

At present, the Supreme Court is empowered to admit as a legal practitioner any person approved by the Legal Practitioners Admission Board as a suitable candidate for admission. That is, in addition to holding appropriate legal qualifications, a person must be suitable for admission (whether or not the person is of good fame and character is a relevant aspect of the person's suitability).

**Consideration of suitability of character.** The Admission Board is empowered to consider, and make declarations regarding, the character of an applicant, but is not specifically empowered to make declarations as to the suitability for admission of an applicant. Division 3 of Part 2 of the Act (Suitability of candidate for admission) is amended so as to ensure that the requirement as to suitability for admission is reflected in the Admission Board's early consideration of an applicant, and that an applicant has a right to appeal against a declaration that the applicant is not a suitable candidate for admission (on grounds other than the person's fame and character). (See Schedule 5 [3]–[6])

Explanatory note

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**Early consideration of character.** Section 13, which provides for early consideration of character, is amended so as to clarify that a person does not ever have to be a student-at-law in order to obtain an early consideration as to their suitability for admission. (See Schedule 5 [7])

**Referral of applications for admission to Supreme Court.** A new provision is inserted so that the Admission Board is empowered to refer any application for admission (in particular, any disputed or doubtful application) for determination by the Supreme Court. (See Schedule 5 [S]) An appeal lies to the Court of Appeal from any judgment or order of the Supreme Court (see section 101 of the *Supreme Court Act 1970*).

**Effect of referral.** Some consequential amendments are made to support that right of referral. Section 15 is amended to provide that the declaration by the Supreme Court has a binding effect. (See Schedule 5 [9]) Section 16 is amended to provide for the representation of a Council (that is, the Bar Council or the Law Society Council) at an inquiry held into an application for admission by the Supreme Court, and for the representation of an applicant at such an inquiry. (See Schedule 5 [10] and [11])

### **Payments from the Statutory Interest Account**

At present the Law Society is required to maintain an account with the name "Statutory Interest Account".

**Costs of Legal Profession Advisory Council.** A new section is inserted so as to provide for the costs incurred in respect of the Legal Profession Advisory Council to be paid from the Statutory Interest Account. (See Schedule 5 [14])

**Costs of costs assessors' rules committee.** Similarly, section 208R is amended so as to permit costs of the costs assessors' rules committee to be paid from the Statutory Interest Account. (See Schedule 5 [34])

**Costs of inspections and investigations.** Provision is made for the costs of inspections or investigations under section 55 to be paid from the Statutory Interest Account rather than from the Fidelity Fund. (See Schedule 5 [22])

**Expenses of management.** Section 114F (Manager may be reimbursed for damages) and section 114G (Payment of expenses of management) are also amended to provide for the expenses of the management of a solicitor's practice to be paid from the Statutory Interest Account rather than from the Fidelity Fund. (See Schedule 5 [28] and [29]) Section 114K is amended consequentially. (See Schedule 1 [30])

A consequential amendment is made to the provision setting up the Statutory Interest Account to reflect those changes. (See Schedule 5 [18])

## Other amendments

**Protection from liability.** Section 211 confers immunity from liability on certain people and bodies. That immunity relates to any thing done or suffered in good faith in the exercise, or purported exercise, of a function under the *Legal Profession Act 1987*. That section is amended to extend that immunity to include immunity from any liability arising from an omission. (See Schedule 5 [35])

**Saving of complaints against legal practitioners.** As a consequence of the enactment of the *Legal Profession Act 1987*, the *Legal Profession Transitional Regulation 1987* made specific provision for complaints relating to the professional misconduct of solicitors which occurred before 1 January 1988. Barristers were not subject to the analogous provisions of the *Legal Practitioners Act 1898* and no specific transitional provisions were made in respect of the professional misconduct of barristers occurring before 1 January 1988. The relevant savings provision is amended so as to clarify that the new provisions dealing with complaints against legal practitioners (substituted by the *Legal Profession Reform Act 1993*) apply to the conduct of barristers occurring before 1 January 1988. (See Schedule 5 [37])

**Statute law revision.** References to the Corporate Affairs Commission are updated to references to the Department of Fair Trading. (See Schedule 5 [31]-[33])

**Savings provisions.** Certain savings and transitional provisions, consequent on the enactment of the proposed Act, are inserted in Schedule 8 to the *Legal Profession Act 1987*. (See Schedule 5 [36] and [38])

## Schedule 6 Amendment of other Acts

### Amendment of Defamation Act 1974

Section 17J of the *Defamation Act 1974* provides a defence of absolute privilege in respect of the publication to or by the Professional Councils (the Bar Council and the Law Society Council) for the purpose of the making or referral of a complaint, or the investigation, hearing or review of a complaint under Part 10 of the *Legal Profession Act 1987*. The proposed amendments extend that privilege to a publication to or by the Bar Association and the Law Society or its members or to or by the staff of the Bar Association, the Law Society, the Bar Council or the Law Society Council or the staff of members of those bodies.

### **Amendment of Maintenance and Champerty Abolition Act 1993**

The proposed amendments to the *Maintenance and Champerty Abolition Act 1993* abolish the common law crime of barratry (or being a common barrator), which involves habitually moving, exciting or maintaining suits or quarrels, whether at law or not. Barratry is closely related to the common law crimes and torts of maintenance and champerty, which were abolished in 1993.