

TASMANIA

**LEGAL PROFESSION AMENDMENT BILL
2004**

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LEGAL PROFESSION AMENDMENT BILL 2004

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

An Act to amend the *Legal Profession Act 1993*

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

Short title

1. This Act may be cited as the *Legal Profession
Amendment Act 2004*.

Commencement

2. The provisions of this Act commence on a day or days to
be proclaimed.

Principal Act

3. In this Act, the *Legal Profession Act 1993** is referred to
as the Principal Act.

*No. 90 of 1993

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “Board” and substituting the following definition:

“Board” means the Legal Profession Board established by section 17;

- (b) by inserting the following definitions after the definition of “company”:

“compensation order” means an order referred to in section 93O;

“complaint” means a complaint under this Act and includes a complaint relating to a consumer dispute;

- (c) by inserting the following definitions after the definition of “conditions”:

“conduct”, in relation to a practitioner, means conduct of the practitioner whether consisting of an act or omission;

“consumer dispute” means a dispute between a person and a practitioner about the conduct of the practitioner, in connection with the provision of legal services, to the extent that the dispute does not involve an issue of unsatisfactory professional conduct or professional misconduct;

- (d) by inserting the following definitions after the definition of “Council”:

“document” means any record of information, and includes –

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph –

and a reference in this Act to a document (as so defined) includes a reference to –

- (e) any part of the document; and
- (f) any copy, reproduction or duplicate of the document or of any part of the document; and
- (g) any part of such a copy, reproduction or duplicate;

“employee”, in relation to the Board, means a person appointed under section 17G;

“executive officer” means the executive officer of the Board appointed under section 17G;

- (e) by omitting the definition of “Legal Ombudsman”;
- (f) by inserting the following definitions after the definition of “practising certificate”:

“practitioner” means a person who –

- (a) is a barrister or legal practitioner; or
- (b) holds a certificate issued under section 41(2); or
- (c) was a barrister or legal practitioner on the date on which any matter which is the subject of a complaint occurred; or
- (d) was a barrister or solicitor, or barrister and solicitor, of any State on the date on which any matter which is the subject of a complaint occurred;

“professional misconduct” includes –

- (a) unsatisfactory professional conduct of a practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of

- competence and diligence;
and
- (b) conduct of a practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice;
- (g) by omitting “Council” from paragraph (a) of the definition of “regulatory authority” and substituting “Board”;
- (h) by omitting “section 17” from the definition of “Rules of Practice” and substituting “section 17H”;
- (i) by inserting the following definition after the definition of “State”:
- “State authority”** has the same meaning as in section 3 of the *State Service Act 2000*;
- (j) by omitting “under section 66” from the definition of “Tribunal” and substituting “by section 89”;
- (k) by omitting “section 101.” from the definition of “trust financial institution account” and substituting “section 101.”;
- (l) by inserting the following definition after the definition of “trust financial institution account”:

“unsatisfactory professional conduct” includes conduct of a practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a reasonable member of the public is entitled to expect of a reasonably competent practitioner.

Section 6 amended (Functions and powers of Society)

5. Section 6(1)(a) of the Principal Act is amended by omitting “regulation,”.

Section 10 repealed

6. Section 10 of the Principal Act is repealed.

Section 12 amended (Power of Council to make by-laws)

7. Section 12(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “regulation,”;
- (b) by omitting paragraphs (n) and (na).

Section 16 amended (Society entitled to appear in certain proceedings)

8. Section 16 of the Principal Act is amended by omitting subsection (2).

Section 17 substituted

9. Section 17 of the Principal Act is repealed and the following Part is substituted:

PART 3A – LEGAL PROFESSION BOARD***Division 1 – The Board*****Establishment of Legal Profession Board**

17. (1) The Legal Profession Board is established.

(2) The Board –

- (a) is a body corporate with perpetual succession; and
- (b) may sue and be sued in its corporate name.

Membership of Board

17A. (1) The Board consists of –

- (a) four persons who are barristers or legal practitioners holding practising certificates and who are nominated by the Minister from among the names provided, recommended or accepted under subsection (4); and

- (b) two persons who are not barristers or legal practitioners nominated by the Minister.

(2) The members are appointed by the Governor.

(3) The Board is to elect one of its members referred to in subsection (1)(a) to be chairperson of the Board and that person holds office as chairperson for such term and on such conditions as are determined by the Board.

(4) For the purpose of making nominations under subsection (1)(a), the Minister is to –

- (a) request any body that purports to represent the professional interests of barristers or legal practitioners to provide the Minister with a list of names; and
- (b) accept a recommendation from any body that purports to represent the professional interests of barristers or legal practitioners or from any barrister or legal practitioner holding a practising certificate; and
- (c) accept an expression of interest from any barrister or legal practitioner holding a practising certificate.

(5) Schedule 1 has effect with respect to membership of the Board.

(6) Schedule 2 has effect with respect to meetings of the Board.

Division 2 – Functions and powers of Board**Functions of Board**

17B. The Board has the following functions:

- (a) to issue practising certificates;
- (b) to monitor the standard and provision of legal professional services;
- (c) to develop and promulgate Rules of Practice;
- (d) to receive, investigate and determine complaints against practitioners and, as necessary, refer complaints to the Tribunal or Supreme Court for hearing and determination;
- (e) to monitor legal practitioners' and firms' trust financial institution accounts;
- (f) to advise the profession on appropriate standards of conduct;
- (g) to monitor and identify trends and issues that emerge within the legal profession;
- (h) to carry out legal education functions including –
 - (i) the provision of input into the standards of education for barristers and legal practitioners; and
 - (ii) the conduct of such examinations as it considers necessary; and

- (iii) the determination of the subjects which candidates for admission under Part 5 must pass; and
- (iv) the approval of courses of practical instruction on the duties of a legal practitioner; and
- (v) the approval of courses of continuing legal education;
- (i) to advise the Minister on any matters relating to this Act;
- (j) such other functions as may be imposed by this or any other Act.

Powers of Board

17C. The Board has the power to do all things necessary or convenient to be done in connection with the performance of its functions.

Delegation by Board

17D. The Board may delegate any of its functions or powers under this or any other Act other than this power of delegation and the making of a determination under Part 8.

Contracts

17E. The Board may enter into a contract with any person for the performance or exercise by that person of any of the Board's functions or powers under this Act or any other Act.

Committees

17F. (1) The Board may establish such committees as it considers necessary for the purpose of assisting it in the performance of any of its functions or the exercise of any of its powers or advising it on any matter relating to this Act.

(2) A committee comprises such persons as the Board appoints.

(3) A member of the Board may be a member of a committee.

(4) Subject to subsection (5), a member of a committee may be paid such remuneration and allowances as the Board may from time to time determine and any such remuneration and allowances are to be paid by the Board.

(5) A member of a committee who is a State Service officer or State Service employee is not entitled to remuneration under subsection (4) except with the approval of the Minister administering the *State Service Act 2000*.

(6) The Board may give written directions to a committee and the committee must comply with those directions.

(7) A committee is to keep accurate minutes of its proceedings.

(8) Except as otherwise provided in this Act, a committee may regulate its own proceedings.

Employees

17G. (1) The Board is to appoint a suitably qualified person as the executive officer of the Board and may appoint such other persons as it considers necessary.

(2) The executive officer is to act as secretary to the Board.

(3) The *State Service Act 2000* does not apply to employees of the Board.

Division 3 – Rules of Board**Rules of Practice**

17H. (1) The Board may make rules to be known as Rules of Practice for regulating any of the following matters:

- (a) the professional practice, conduct and discipline of barristers and legal practitioners, and foreign lawyers practising in Tasmania;
- (b) the practice of foreign law in this State;
- (c) the approval to practise as a combined firm and foreign law firm, or legal practitioner corporation and foreign law firm, and conditions of such an approval;
- (d) the establishment by firms or legal practitioner corporations of accounts at authorised deposit-taking institutions for money of clients;
- (e) the supervision of legal practitioners' and firms' trust financial institution

accounts, including the keeping, inspection and audit of records relating to money received, held or paid on behalf of clients;

- (f) the recovery of fees by barristers and legal practitioners.

(2) Any rules made under subsection (1) may empower the Board –

- (a) to grant exemptions, either conditionally or unconditionally, from the requirement to comply with any of those rules; and
- (b) to do all things necessary to ascertain whether the rules are being complied with.

(3) The Board is to develop the Rules of Practice in consultation with the Society, the Tasmanian Bar Association, the Tasmanian Independent Bar and any other body purporting to represent the interests of barristers or legal practitioners that the Board considers appropriate.

(4) Any rules made under subsection (1) may be made subject to conditions, or be made so as to apply differently according to factors, limitations or restrictions, as are specified in the rules.

General rules

17I. (1) The Board may make rules for the purposes of exercising its powers and performing its functions under this Act.

(2) Without limiting subsection (1), rules made under subsection (1) may be made for any or all of the following purposes related to legal education:

- (a) prescribing examinations for the purposes of Part 5;
- (b) providing for the form of articles of clerkship and the filing and execution of those articles;
- (c) providing for such matters relating to the admission and enrolment of legal practitioners and barristers as may be necessary;
- (d) providing for the manner in which a person may satisfy the Board as to the fulfilment of requirements relating to admission as a legal practitioner or barrister.

(3) Rules made under subsection (1) may be made subject to conditions, or be made so as to apply differently according to factors, limitations or restrictions, as are specified in the rules.

Division 4 – Finance and reports

Funds of Board

17J. (1) The Board is authorised to keep such authorised deposit-taking institution accounts as it considers necessary.

(2) The funds of the Board are to be paid to the credit of such of its authorised deposit-taking institution accounts as it determines and are to consist of money received by the Board from any source.

(3) The funds of the Board are to be applied –

- (a) for the purposes of this Act, which include the administration and enforcement of regulations or rules made under this Act; and
- (b) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Board in the performance of its functions or the exercise of its powers; and
- (c) where considered necessary by the Board, in payment to any person in connection with any of the functions under this Act; and
- (d) in the payment of any remuneration payable by the Board.

(4) The Board may invest any money that it is holding in any manner in which a trustee is authorised by law to invest funds.

Accounts

17K. The Board is to keep proper accounts and records of its financial affairs and, not later than 15 August after the end of each financial year, prepare a statement of accounts in a form approved by the Auditor-General exhibiting a true and correct view of the financial position and transactions of the Board for that financial year.

Audit

17L. The accounts of the Board are subject to the *Financial Management and Audit Act 1990*.

Annual report

17M. (1) The Board is to, on or before 31 August after the end of each financial year, prepare and present to the Minister a report on its operations for that financial year.

(2) The report is to contain –

- (a) an audited statement of accounts prepared for that financial year under section 17K; and
- (b) a statement regarding the number and nature of complaints received and matters subject to investigation or hearing; and
- (c) information as to the handling of complaints including information relating to the number of complaints dismissed and the number of uncompleted matters outstanding at the end of the financial year; and
- (d) the outcome of disciplinary action taken during the year to which the report relates; and
- (e) the report of the Tribunal as provided in accordance with section 93C; and
- (f) any other matters the Board thinks are relevant; and

- (g) such other information as the Minister may require.

(3) The Minister is to cause a copy of the Board's report to be laid before each House of Parliament by not later than 31 October after the end of the financial year to which it relates.

Division 5 – Miscellaneous

Confidentiality

17N. (1) Subject to this section, a member of the Board, a member of a committee of the Board or a person employed or engaged on work related to the affairs of the Board must not divulge information that comes to his or her knowledge by virtue of that office or position except –

- (a) in the course of and for a purpose related to carrying out the duties of that office or position; or
- (b) as may be authorised by or under this Act or any other Act; or
- (c) in evidence before a court in which proceedings arising from matters subject to a report of the Board have been brought.

Penalty: Fine not exceeding 100 penalty units.

(2) Notwithstanding subsection (1), a person referred to in that subsection may divulge information referred to in that subsection to –

- (a) the Board; and
- (b) the Minister; and

- (c) a member of a law enforcement or prosecution authority of a State, or of the Commonwealth, relating to a matter referred to the authority by the Minister or reported to the authority by the Board to which the information is relevant; and
- (d) a regulatory authority of a participating State who has requested the information in connection with actual or possible disciplinary action against a practitioner; and
- (e) a person to whom the Board has delegated its power to investigate pursuant to this Act.

Protection from liability

170. (1) An action does not lie against a member or employee of the Board or against a member of a committee of the Board for any act or omission by the member or employee, or by the Board or a committee, in good faith and in the exercise or purported exercise of powers, or in the performance or purported performance of functions, under this Act.

(2) A person who makes a complaint under Part 8 in good faith does not incur any personal liability in respect of any loss, damage or injury suffered by another person as a result of the making of the complaint.

Part 4 repealed

10. Part 4 of the Principal Act is repealed.

Section 27 amended (Admission of other persons)

11. Section 27(1)(b)(ii) of the Principal Act is amended by omitting “or has demonstrated competence as a solicitor or as a barrister and solicitor in that other jurisdiction”.

Section 28 amended (Admission of barristers)

12. Section 28(1)(b)(ii) of the Principal Act is amended by omitting “or has demonstrated competence as a barrister in that other jurisdiction”.

Section 30 amended (Publication of notice for admission)

13. Section 30 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 22” and substituting “section 17I”;
- (b) by omitting from subsection (3) “Society” and substituting “Board”;
- (c) by omitting from subsection (4)(b) “Society” and substituting “Board”.

Section 32 amended (Objection to admission)

14. Section 32(1) of the Principal Act is amended by inserting “Board, the” after “The”.

Section 51 amended (Practising certificates)

15. Section 51 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “a barrister or” after “Part 5 as”;
- (b) by omitting from subsection (1) “Society” and substituting “Board”;
- (c) by omitting from subsection (1) “barrister and solicitor or as a barrister” and substituting “barrister or as a barrister and solicitor”;
- (d) by omitting from subsection (2)(b) “fee.” and substituting “fee; and”;
- (e) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (c) accompanied by such information as the Board requires.
- (f) by omitting from subsection (3) “Society” and substituting “Board, subject to subsection (3B),”;
- (g) by omitting from subsection (3) “including compliance with indemnity rules made under section 124”;
- (h) by inserting the following subsections after subsection (3):

(3A) Without limiting subsection (3), the Board may impose one or more of the following conditions on the practising certificate of a barrister or legal practitioner:

- (a) a condition requiring the holder to comply with indemnity rules made under section 124;
- (b) a condition requiring the holder to undertake and complete one or

more courses of continuing legal education;

- (c) a condition requiring the holder to undertake additional academic or training courses.

(3B) The Board may refuse to issue a practising certificate to a person in any year if that person has failed to comply with a condition imposed under subsection (3A) on the practising certificate in the immediately preceding year.

- (i) by inserting in subsection (4) “barrister or” after “A”;
- (j) by omitting from subsection (4) “Society” and substituting “Board”;
- (k) by omitting from subsection (7) “Society” and substituting “Board”;
- (l) by omitting from subsection (7A) “Society” and substituting “Board”;
- (m) by inserting in subsection (7A) “barrister or” after “if a”;
- (n) by inserting in subsection (7A)(a) “barrister or” after “the”;
- (o) by omitting subsection (8).

Section 51A amended (Appeals against cancellation or suspension)

16. Section 51A(1) of the Principal Act is amended by inserting “barrister or” after “A”.

Section 51C inserted

17. After section 51B of the Principal Act, the following section is inserted in Part 7:

Register of practising certificates

51C. (1) The Board is to keep a register of practising certificates in any form the Board considers appropriate.

(2) A member of the public may inspect the register of practising certificates kept under this section on the payment of such fee (if any) as the Board determines.

(3) The Board may publish a list of all current practising certificates in any manner or form the Board determines.

(4) The Board must not make available to the public or publish in any form the private address of a barrister or legal practitioner without the barrister's or legal practitioner's written consent.

Section 52 amended (Effect of not practising)

18. Section 52 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) "or taken to hold a practising certificate under section 51(8)";
- (b) by omitting from subsection (3) "Society" and substituting "Board";
- (c) by omitting from subsection (4) "Society" and substituting "Board".

Section 53 amended (Offence to practise without certificate)

19. Section 53 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “barrister or” after “A”;
- (b) by omitting from subsection (1) “Council” and substituting “Board”;
- (c) by inserting in subsection (1) “barrister or” after “as a”;
- (d) by inserting the following subsection after subsection (1):

(1A) A barrister or legal practitioner who is employed to practise as a barrister or legal practitioner –

- (a) in a State Service Agency; or
- (b) by a State authority; or
- (c) in the Australian Securities Investment Commission; or
- (d) in a State or Commonwealth instrumentality; or
- (e) in a municipal corporation; or
- (f) in a Commonwealth or State statutory office –

must hold a practising certificate for the purposes of this Act and for the purposes of that employment.

Penalty: Fine not exceeding 50 penalty units.

- (e) by inserting in subsection (2) “barrister or” after “as a”.

Section 55 amended (Foreign lawyers)

20. Section 55 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board”;
- (b) by omitting from subsection (2) “Council” and substituting “Board”.

Section 55A amended (Interstate legal practitioners entitled to practise in State)

21. Section 55A(4) of the Principal Act is amended by omitting “constitutes professional misconduct or unprofessional conduct” and substituting “is capable of constituting unsatisfactory professional conduct or professional misconduct”.

Section 55D amended (Indemnity insurance if no State office)

22. Section 55D(2) of the Principal Act is amended by omitting “constitutes professional misconduct or unprofessional conduct” and substituting “is capable of constituting unsatisfactory professional conduct or professional misconduct”.

Section 55F repealed

23. Section 55F of the Principal Act is repealed.

Section 55J amended (Local legal practitioners subject to interstate regulatory authorities)

24. Section 55J(2) of the Principal Act is amended by omitting “constitutes professional misconduct or unprofessional conduct” and substituting “is capable of constituting unsatisfactory professional conduct or professional misconduct”.

Part 8 substituted

25. Part 8 of the Principal Act is repealed and the following Part is substituted:

PART 8 – COMPLAINTS AND DISCIPLINE

Division 1 – Preliminary

Interpretation of Part 8

56. In this Part –

“conduct complaint” means a complaint that appears to involve an issue of unsatisfactory professional conduct or professional misconduct;

“insolvent under administration” means –

- (a) a person who is an undischarged bankrupt within the meaning of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country); or
- (b) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* of the

Commonwealth (or the corresponding provisions of the law of a foreign country) if the terms of the deed have not been fully complied with; or

- (c) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country) if a final payment has not been made under that composition; or
- (d) a person for whom a debt agreement has been made under Part IX of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country) if the debt agreement has not ended or has not been terminated;

“party to a complaint” means –

- (a) the practitioner to whom the complaint relates; and
- (b) the person who makes the complaint;

“serious offence” means an offence whether committed in or outside this State that is –

- (a) an indictable offence against a law of the Commonwealth or the State in which the offence is committed

(whether or not the offence is or may be dealt with summarily); or

- (b) an offence against a law of another State that would be an indictable offence against a law of this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this State); or
- (c) an offence against a law of a foreign country that would be an indictable offence against a law of the Commonwealth or this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this State);

“tax offence” means any offence under the *Taxation Administration Act 1953* of the Commonwealth, whether committed in or outside this State.

Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

57. Without limiting the definitions of “professional misconduct” and “unsatisfactory professional conduct”, conduct which is capable of constituting unsatisfactory professional conduct or professional misconduct includes –

- (a) conduct consisting of a contravention of this Act or any regulations, rules or by-laws made under this Act; and

- (b) neglect or delay in connection with the provision of legal services; and
- (c) charging of excessive fees or costs in connection with the provision of legal services; and
- (d) conduct in respect of which a court makes a finding of guilt for –
 - (i) a serious offence; or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty; and
- (e) becoming insolvent under administration; and
- (f) conduct that results in disqualification from managing or being involved in the management of any corporation under the *Corporations Act 2001* of the Commonwealth.

Practitioners to whom this Part applies

58. This Part applies to a practitioner in respect of conduct to which this Part applies, and so applies –

- (a) whether or not the practitioner is a legal practitioner referred to in paragraph (a) of the definition of “legal practitioner” in section 3; and
- (b) whether or not the practitioner holds a practising certificate issued under this Act; and

- (c) whether or not the practitioner holds a practising certificate issued under a corresponding law; and
- (d) whether or not the practitioner resides or has an office in this State; and
- (e) whether or not the person making a complaint about the conduct resides or has an office in this State.

Conduct to which this Part applies

59. (1) Subject to subsection (3), this Part applies to conduct of a practitioner occurring in this State.

(2) This Part also applies to a practitioner's conduct occurring outside this State, but only –

- (a) if it is part of a course of conduct that has occurred partly in this State and partly in another State, and either –
 - (i) the regulatory authority of each other State in which the conduct has occurred consents to its being dealt with under this Act; or
 - (ii) the complainant and the practitioner consent to its being dealt with under this Act; or
- (b) if it occurs in Australia but wholly outside this State and the practitioner is a legal practitioner referred to in paragraph (a) of the definition of “legal practitioner” in section 3 or holds a current practising certificate issued under this Act, and either –

- (i) the regulatory authority of each State in which the conduct has occurred consents to its being dealt with under this Act; or
- (ii) the complainant and the practitioner consent to its being dealt with under this Act; or
- (c) if –
 - (i) it occurs wholly or partly outside Australia; and
 - (ii) the practitioner is a legal practitioner referred to in paragraph (a) of the definition of “legal practitioner” in section 3 or holds a current practising certificate issued under this Act.

(3) This Part does not apply to conduct occurring in this State if –

- (a) the Board consents to it being dealt with under a corresponding law; or
- (b) the complainant and the practitioner consent to its being dealt with under a corresponding law and it is so dealt with.

(4) Subsection (3) does not apply if the conduct is not capable of being dealt with under the corresponding law.

(5) The Board may give consent for the purposes of subsection (3)(a), and may do so conditionally or unconditionally.

Division 2 – Complaints**Complaints**

60. (1) Any person may make a complaint under this Part about a practitioner's conduct to which this Part applies.

(2) A complaint that is duly made is to be dealt with in accordance with this Part.

(3) If a complaint relates to a consumer dispute and also involves an issue of unsatisfactory professional conduct or professional misconduct, the Board may (but need not) treat the complaint as 2 complaints, one being a complaint relating to a consumer dispute and the other being a conduct complaint.

Making of complaints

61. (1) A complaint is to be made to the Board.

(2) A complaint is to be in writing.

(3) A complaint is to –

- (a)** identify the complainant and the practitioner against whom the complaint is made; and
- (b)** describe the alleged conduct of the practitioner that is the subject of the complaint; and
- (c)** if compensation is claimed, specify to the best of the complainant's knowledge any pecuniary loss incurred; and

- (d) be lodged with the executive officer.

(4) The executive officer is to take all reasonable steps to ensure that a person who wishes to make a complaint is given such assistance as is necessary to enable that person to make the complaint in accordance with this Part.

(5) On receipt of a complaint, the executive officer is to –

- (a) record the date on which the complaint was received; and
- (b) place the complaint before the Board without undue delay.

Further information and verification

62. The Board may require the complainant to do either or both of the following:

- (a) to give further information about the complaint;
- (b) to verify the complaint, or any further information, by statutory declaration.

Complaints made more than 6 years after conduct concerned

63. (1) Subject to subsection (2), a complaint may be made about conduct of a practitioner whether or not the conduct occurred or allegedly occurred before or after the commencement of this Part.

(2) A complaint cannot be dealt with if the complaint –

- (a) is made more than 6 years after the conduct is alleged to have occurred, unless the Board determines, after giving both the complainant and the respondent to the complaint the opportunity to be heard, that –
 - (i) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; and
 - (ii) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint; or
- (b) is a consumer dispute and the conduct giving rise to the dispute occurred or allegedly occurred before the commencement of this Part.

(3) A determination made under subsection (2) is final and cannot be challenged in any proceedings by the complainant or the practitioner concerned.

Summary dismissal of complaints

64. (1) The Board may dismiss a complaint if –

- (a) further information is not given by the complainant as required by the Board; or
- (b) the complaint or further information is not verified by the complainant as required by the Board; or

- (c) in the opinion of the Board the complaint is vexatious, misconceived, frivolous or lacking in substance; or
- (d) it is not in the public interest to deal with the complaint having regard to the fact that the name of the practitioner to whom the complaint relates has already been removed from each roll of practitioners in which he or she was enrolled.

(2) The Board must dismiss a complaint if –

- (a) the complaint was made more than 6 years after the conduct complained of is alleged to have occurred, unless a determination is made under section 63 in relation to the complaint; or
- (b) the conduct complained about has been the subject of a previous complaint that has been dismissed or dealt with by the Council before the commencement of this Part or by the Board, unless the complaint contains new evidence that, in the opinion of the Board, warrants investigation; or
- (c) the complaint is not one that the Board has power to deal with.

(3) The Board may dismiss a complaint under subsection (1) without completing an investigation if, having considered the complaint, the Board forms the view that the complaint requires no further investigation.

(4) During or after the investigation of a complaint against a practitioner, the Board may

dismiss the complaint and discontinue any investigation, if satisfied that it is in the public interest to do so.

(5) If proceedings have been instituted in the Tribunal by the Board, the Tribunal may, on the application of the Board pursuant to subsection (4), dismiss the proceedings.

Withdrawal of complaints

65. (1) The complainant may withdraw the complaint by giving written notice to the Board or to an employee of the Board.

(2) The Board is to notify the practitioner who is the subject of the complaint of the withdrawal.

(3) A complaint may be withdrawn even though the Board has commenced or completed an investigation of the complaint, but cannot be withdrawn if proceedings with respect to the complaint have been instituted in the Tribunal.

(4) Notwithstanding the withdrawal of the complaint, the Board may continue to investigate a complaint if it is satisfied that investigation or further investigation of the complaint is justified in the particular circumstances.

(5) Subject to subsections (3) and (4), if a complaint is duly withdrawn, no further action is to be taken under this Part with respect to the complaint.

(6) The withdrawal of a complaint does not prevent action being taken on any other complaint duly made with respect to that matter.

(7) A further complaint about the matter that is the subject of the withdrawn complaint cannot be made by the same person unless the Board is satisfied that it is appropriate to do so in the circumstances.

Division 3 – Procedural fairness

Practitioner to be notified of complaint

66. (1) The Board is to ensure that written notice of the making of a complaint, the nature of the complaint and the identity of the complainant is given to the practitioner about whom the complaint is made.

(2) The practitioner is to be notified within 7 days of receipt of the complaint by the Board.

(3) The Board is to also inform the practitioner in writing –

- (a) of any action already taken by the Board in relation to the complaint; and
- (b) of the practitioner's right to make submissions to the Board, unless the Board advises the practitioner that the Board has dismissed or intends to dismiss the complaint.

(4) Notice is not required to be given under subsection (1) –

- (a) if the giving of the notice will or is likely –
 - (i) to prejudice the investigation of the complaint; or

- (ii) to place the safety of the complainant or another person at risk; or
 - (iii) to place the complainant or another person at risk of intimidation or harassment; or
- (b) if the Board has dismissed the complaint under section 64.

(5) If a notice is not given because of the circumstances referred to in subsection (4)(a), notice must be given under subsection (1) as soon as practicable after the Board considers those circumstances cease to be relevant.

Submissions by practitioner

67. (1) The practitioner about whom a complaint is made may, within a reasonable time after being notified of the complaint, make submissions to the Board about the complaint or its subject matter or both.

(2) The Board may determine what constitutes a reasonable time limit for response by the practitioner under subsection (1).

(3) The Board is to consider any submissions made under subsection (1) before deciding what action is to be taken in relation to the complaint, unless the Board has dismissed or intends to dismiss the complaint.

Complainant and practitioner to be informed of action by Board

68. (1) If a complaint has been made about a practitioner –

- (a) the Board is to notify the complainant in writing of receipt of the complaint by the Board; and
- (b) the Board is to notify the complainant and the practitioner in writing of action taken by the Board in relation to the complaint.

(2) Without limiting subsection (1), the complainant and the practitioner are entitled to receive written notice of –

- (a) a decision to dismiss the complaint; or
- (b) a decision to omit, from the allegations particularised in an application made to the Tribunal in respect of the complaint, a matter that was originally part of the complaint.

(3) In the case of a decision by the Board to dismiss a conduct complaint under section 64, the Board is to notify the complainant in writing of the right of the complainant to apply to the Tribunal or Supreme Court under section 87 for the matter to be heard.

Division 4 – Cost disputes**Cost disputes**

69. (1) If any part of a complaint relates to a bill of costs, the Board may –

- (a) refer the bill to a taxing officer referred to in Part 11 to be taxed; or
- (b) deal with that part of the complaint.

(2) The referral of a bill of costs under subsection (1) does not affect the power of the Board to investigate any other part of a complaint which does not relate to the dispute about the bill of costs.

Division 5 – Investigations

Investigation of complaints

70. (1) Except as otherwise provided in this Part, the Board is required to conduct an investigation of each complaint.

(2) The Board, on its own motion, may investigate the conduct of any practitioner if it has reason to believe that that conduct may amount to unsatisfactory professional conduct or professional misconduct.

(3) This section does not apply to –

- (a) a complaint referred to another regulatory authority by the Board; or
- (b) a complaint that is dismissed or withdrawn under this Part; or
- (c) a consumer dispute if an agreement has been reached under section 78.

Timeframe for investigation of complaints

71. In investigating a complaint, the Board is to conduct the investigation as efficiently and expeditiously as possible.

Report to complainant

72. (1) The Board, at the request of a complainant, must provide the complainant, free of charge, with –

- (a) full details of –
 - (i) the person or persons conducting the investigation; and
 - (ii) the progress of the investigation into the matter; and
 - (iii) the documents being examined; and
- (b) copies of any documents relating to the investigation.

(2) The Board is not required to provide the details or copies of documents referred to in subsection (1) –

- (a) if the provision of the details or documents will or is likely –
 - (i) to prejudice the investigation of the complaint; or
 - (ii) to place the safety of the complainant or another person at risk; or

- (iii) to place the complainant or another person at risk of intimidation or harassment; or
- (b) if the Board has previously provided the details or documents to the complainant and there has been no material change to the details of the complaint; or
- (c) if the Board considers that the details or documents should not be provided in order to protect the Board's legal professional privilege.

Other investigations

73. An investigation into the affairs of a practitioner under any other Part or under any other Act may be conducted despite any provisions of this Part.

Powers of Board when investigating complaints

74. (1) For the purpose of investigating a complaint, the Board may, by notice served on a practitioner, require the practitioner to do any one or more of the following:

- (a) to provide written information, on or before a specified date, and to verify the information by statutory declaration;
- (b) to produce, at a specified time and specified place, any specified document or a copy of the document;

- (c) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.

(2) The Board may –

- (a) inspect any document produced before the Board under this section; and
- (b) make copies of the document or any part of the document; and
- (c) retain the document for such period as the Board reasonably thinks necessary for the purposes of the investigation of the complaint in relation to which it was produced.

(3) The Board may exercise its powers under this section despite any lien claimed over a document by a practitioner.

(4) A practitioner cannot claim professional privilege as a reason for failure to comply with a notice under subsection (1) except with the written consent of the person to whom the professional privilege relates.

(5) A requirement imposed on a practitioner under this section is to be notified in writing to the practitioner and is to specify a reasonable time for compliance.

(6) A practitioner must not, without reasonable excuse, fail to comply with –

- (a) a requirement under this section; or
- (b) a requirement under a provision of a corresponding law that corresponds to this section.

(7) A practitioner must not mislead the Board in the performance of –

- (a) any function by the Board under this Division; or
- (b) any function under a provision of a corresponding law that corresponds to this Division.

(8) A contravention of subsection (6) or (7) is capable of being unsatisfactory professional conduct or professional misconduct.

Entry and search of premises

75. (1) The Board may, for the purpose of searching for evidence relating to the subject matter of the complaint, enter and search premises where the Board believes on reasonable grounds that the evidence may be located or available.

(2) The entry and search may be made –

- (a) only with the consent of the occupier of the premises; or
- (b) under the authority of a search warrant.

(3) Nothing in this Act requires a practitioner or other person to give consent for the purposes of this section.

(4) The Board may apply to a magistrate for a search warrant for the purposes of this section, but a search warrant is not to be issued unless –

- (a) the Board satisfies the magistrate that there are reasonable grounds to suspect

that evidence relating to the complaint is located at the premises; and

- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(5) During a search under this section, the Board may do any or all of the following:

- (a) search for any document or information relating to the subject matter of the complaint;
- (b) with respect to any such documents of that kind –
 - (i) inspect a document; and
 - (ii) make copies of a document or any part of a document; and
 - (iii) seize and take away a document;
- (c) with respect to any computer or other equipment that the Board suspects on reasonable grounds may contain any such documents or information of that kind –
 - (i) inspect and gain access to a computer or equipment; and
 - (ii) download or otherwise obtain any documents or information; and
 - (iii) make copies of any documents or information held in it; and

- (iv) seize and take away any such computer or equipment or any part of it;
- (d) do anything else reasonably necessary to obtain information for the purposes of the investigation of the complaint.

(6) Any documents, information or anything else obtained by the Board may be used for the purposes of the investigation of the complaint.

(7) Subject to subsection (8), the Board may exercise powers under this section despite any professional privilege that may exist in respect of any document or information.

(8) A practitioner cannot claim professional privilege in respect of any document or information except with the written consent of the person to whom the professional privilege relates.

(9) If information is obtained during a search under this section, the information cannot be used in any proceedings other than proceedings relating to the complaint.

Interim order for suspension or non-issue of practising certificate

76. (1) During the investigation of a complaint about a practitioner, the Board may by order –

- (a) suspend a practising certificate held by the practitioner for a specified period; or
- (b) decline to issue a practising certificate to the practitioner for a specified period.

(2) If a period of time specified in an order made under subsection (1) expires, the Board may make another order for a further specified period of time.

(3) The Board may revoke an order made under subsection (1) or (2).

(4) The Board must not make an order under subsection (1) or (2) unless it is satisfied –

- (a) that the practitioner is likely to be found guilty of professional misconduct; and
- (b) that it is necessary in the public interest that the order be made.

(5) The practitioner may appeal to the Tribunal or Supreme Court against an order under this section.

(6) The Tribunal or Supreme Court may –

- (a) affirm the order; or
- (b) amend the order (whether by extending or reducing any period specified in the order or otherwise); or
- (c) set aside the order.

Division 6 – Consumer disputes

Referral for conciliation

77. (1) The Board may –

- (a) refer a complaint relating to a consumer dispute for conciliation; or

- (b) if it is of the opinion that conciliation is unlikely to succeed, hear and determine the matter under section 80.

(2) The Board may appoint a suitably qualified person as a conciliator.

(3) A person appointed under subsection (2) may be a member or delegate of the Board.

(4) Participation in the conciliation by the parties to a complaint relating to a consumer dispute is voluntary.

(5) If the parties do not agree to participate in a conciliation, the complaint relating to a consumer dispute is to be dealt with by the Board under section 80.

(6) If in the course of the conciliation it becomes apparent that the matter involves a conduct complaint, the part of the matter that is the subject of the conduct complaint must be dealt with by the Board in accordance with this Part.

Agreement reached through conciliation

78. (1) If agreement is reached through conciliation under this Division between the parties to a complaint relating to a consumer dispute –

- (a) the agreement must be recorded in writing and signed by the parties to the agreement and certified by the Board by a person authorised for the purpose; and
- (b) a signed and certified copy of the agreement must be given to each of the parties.

(2) An agreement signed in accordance with this section and providing for the payment of a monetary sum by a party to the agreement will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of such a debt.

(3) The Board or a party to a complaint relating to a consumer dispute may cause an agreement made under section 78(1) to be filed in the Supreme Court as a judgment made under the *Supreme Court Civil Procedure Act 1932* within 6 months after the date of that agreement.

(4) An agreement filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.

(5) Without limiting subsections (3) and (4), if a practitioner contravenes or fails to comply with the terms of an agreement reached following conciliation under this section, the contravention or non-compliance is capable of being unsatisfactory professional conduct or professional misconduct.

Confidentiality of conciliation process

79. (1) Subject to subsection (2), evidence of anything said or admitted during the conciliation or attempted conciliation of a consumer dispute and any document prepared for the purposes of any such conciliation are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence.

(2) Subsection (1) does not apply to an agreement reached during conciliation.

(3) A conciliator may recommend to the Board that a complaint should be investigated (but without disclosing any such evidence, admission or document).

Consumer disputes heard and determined by Board

80. (1) If a complaint relating to a consumer dispute is not resolved by conciliation, the Board is to hold a hearing to determine the complaint.

(2) If a member of the Board is appointed as a conciliator under section 77(2), that member must not take part in any hearing or determination of the dispute by the Board.

(3) After hearing the complaint relating to the consumer dispute, the Board may make any one or more of the following determinations:

- (a) that the complaint relating to the consumer dispute be dismissed;
- (b) that the practitioner be cautioned or reprimanded;
- (c) that the practitioner make an apology;
- (d) that the practitioner take or refrain from taking specified action;
- (e) that the practitioner waive the whole or part of any fees charged to a specified person in respect of specified work;
- (f) that the practitioner repay the whole or part of any fees paid by a specified person in respect of specified work;

- (g) that the practitioner carry out for a specified person such professional legal work, either free of charge or for such fee, as the Board may specify;
- (h) that the practitioner waive any lien in respect of a specified document or documents;
- (i) that the dispute be referred to the Tribunal with a recommendation that the Tribunal make a compensation order.

(4) Failure to comply with a determination made under subsection (3), other than paragraph (f), is capable of being unsatisfactory professional conduct or professional misconduct.

(5) The Board may cause a determination made under subsection (3)(f) to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932* after the expiration of 21 days after the date of that determination.

(6) A determination filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.

Application to Tribunal relating to compensation orders

81. (1) If the Board makes a determination under section 80(3)(i), the Board is to make an application under section 93D for the Tribunal to determine the matter.

(2) An application is to contain the recommendation of the Board for the making of the compensation order.

Division 7 – Conduct complaints

Hearing before Board

82. (1) If, as a result of an investigation carried out under this Part, the Board considers that any matter which is the subject of that investigation amounts to unsatisfactory professional conduct, the Board, subject to subsections (2), (3) and (4), is to hold a hearing in relation to the matter in accordance with this Division.

(2) If the Board considers that the subject matter of a complaint amounts to unsatisfactory professional conduct that is not sufficiently serious to warrant a hearing under this section, it may deal with the complaint in accordance with section 86.

(3) The Board may make an application under section 93D for the Tribunal to hear and determine any matter the Board considers –

- (a) amounts to both unsatisfactory professional conduct and professional misconduct; or
- (b) is conduct which ought to be determined by the Tribunal.

(4) If after completing an investigation under section 70(2) the Board considers that the conduct amounts to unsatisfactory professional conduct, the Board is to make an application under section 93D for the Tribunal to hear and determine the matter.

Referral of matters relating to professional misconduct

83. If, during an investigation or hearing under this Division, the Board considers that any matter which is the subject of the investigation or hearing amounts to professional misconduct, it is to make an application –

- (a) under section 93D for the Tribunal to hear and determine the matter; or
- (b) to the Supreme Court to hear and determine the matter.

Determination of Board

84. (1) If, after it has completed a hearing under this Division, the Board is not satisfied that a practitioner is guilty of unsatisfactory professional conduct, the Board is to dismiss the complaint.

(2) If, after it has completed a hearing under this Division, the Board is satisfied that a practitioner is guilty of unsatisfactory professional conduct, the Board may make any one or more of the following determinations:

- (a) a determination that the practitioner be admonished or reprimanded;
- (b) a determination that the practitioner pay a fine not exceeding 50 penalty units as it may specify;
- (c) a determination that the complaint be referred to the Tribunal with a recommendation that the Tribunal make a compensation order;

- (d) a determination that the practitioner waive the whole or part of any fees charged to a specified person in respect of specified work;
- (e) a determination that the practitioner repay the whole or part of any fees paid by a specified person in respect of specified work;
- (f) a determination that the practitioner carry out for a specified person such professional legal work, either free of charge or for such fee, as the Board may specify;
- (g) a determination that the practitioner waive any lien in respect of a specified document or class of document;
- (h) a determination that the practitioner, within a specified period, complete a specified course of further legal education or receive counselling as specified by the Board;
- (i) a determination that the practitioner subject his or her practice to periodic supervision or inspection by a specified person and for a specified period;
- (j) a determination that the practitioner seek appropriate advice from a specified person in relation to the management of the practice of the practitioner;
- (k) a determination that the practitioner cease to accept instructions in relation to a specified class of work for a specified period;

- (l) a determination prohibiting the practitioner from acting as a practitioner otherwise than in the course of employment by a practitioner holding an unrestricted practising certificate;
- (m) a determination that the practitioner pay to the Board any costs incurred by the Board in investigating and hearing a complaint.

(3) If the Board makes a determination under subsection (2)(l), the Board may endorse the practising certificate to give effect to that determination.

(4) The Board has the power to do all things necessary to give effect to any determination made by it.

(5) If –

- (a) the Board makes a determination under subsection (2)(b), (e) or (m); and
- (b) an application for appeal is not made –

the Board may, after the expiration of 21 days after the making of the determination, cause that determination to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932*.

(6) A determination filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.

(7) If a practitioner fails to comply with a determination made under subsection (2)(d), (f), (g), (h), (i), (j), (k), (l) or (m), the Board may, after the

expiration of 21 days after the making of the determination, apply to the Supreme Court for an appropriate order.

(8) Any fine imposed under this section is to be paid to the Board.

Application to Tribunal relating to compensation orders

85. (1) If the Board makes a determination under section 84(2)(c), the Board is to make an application under section 93D for the Tribunal to determine the matter.

(2) An application is to contain the recommendation of the Board for the making of the compensation order.

Procedure for less serious complaints

86. (1) If the Board considers that a conduct complaint may not be sufficiently serious to warrant a hearing, it may serve on the practitioner –

- (a) notice to appear before it to give an explanation of the matter; or
- (b) notice to provide it with a written explanation.

(2) A notice under subsection (1)(a) is to –

- (a) set out particulars of the matter; and
- (b) state that the practitioner is entitled to make submissions and give and adduce evidence when appearing before the

Board but is not entitled to be represented; and

- (c) state that the appearance before the Board is not open to the public; and
- (d) inform the practitioner that he or she may request that the matter be referred directly to the Tribunal; and
- (e) inform the practitioner of the other circumstances in which the matter may be referred to the Tribunal; and
- (f) specify the date, time and place at which the practitioner is required to appear.

(3) A notice under subsection (1)(b) is to –

- (a) contain the same information as is specified in subsection (2)(a), (d) and (e) in relation to a notice requiring a personal appearance; and
- (b) specify a date by which the practitioner is required to provide the Board with the written explanation.

(4) A notice may contain such other information as the Board considers necessary or expedient.

(5) The date specified under subsection (2)(f) or subsection (3)(b) is to be not less than 14 days after the date of serving the notice.

(6) The Board is to dismiss the complaint if, after considering the explanation of the practitioner concerned, it is not satisfied that the matter has been substantiated.

(7) If the Board is satisfied, after considering the explanation, that the matter has been substantiated but that it is not sufficiently serious to warrant a hearing, the Board may make any one or more of the following determinations:

- (a) that the practitioner be cautioned or reprimanded;
- (b) that the practitioner make an apology;
- (c) that the practitioner make an undertaking to take, or refrain from taking, any specified action;
- (d) that the practitioner make reparation on terms specified by the Board;
- (e) that the practitioner, within a specified timeframe, complete a specified course of further legal education or receive counselling, as specified by the Board.

(8) Failure to comply with a determination made under subsection (7), other than a determination under subsection (7)(a), is capable of constituting unsatisfactory professional conduct or professional misconduct.

(9) The Board is to refer a matter to the Tribunal if –

- (a) the practitioner concerned fails to appear before the Board as required by a notice under subsection (1)(a) or, before the date of appearance specified in the notice, requests in writing that the matter be so referred; or

- (b) the practitioner concerned fails to provide the Board with a written explanation as required by a notice under subsection (1)(b) or, before the date on which the explanation is required to be provided, requests in writing that the matter be so referred; or
- (c) in the course of giving an explanation of the matter the practitioner concerned requests, orally or in writing, that the matter be so referred; or
- (d) after or in the course of considering an explanation of the matter the Board determines that the matter is sufficiently serious to warrant a hearing.

(10) A meeting of the Board convened for the purposes of this section is not open to the public.

Appeals against determinations

87. (1) A person who is served with a notice of the determination of the Board in relation to a conduct complaint may, within 21 days after the date of that determination –

- (a) apply to the Supreme Court or Tribunal to have the matter to which the determination relates heard by the Tribunal under Division 8 or the Supreme Court under Division 9; and
- (b) make an application to the Supreme Court or Tribunal to stay that order pending the determination of the appeal.

(2) For the purposes of this section, a decision of the Board to dismiss a conduct complaint under section 64 is a determination of the Board.

Division 8 – Disciplinary Tribunal

Interpretation

88. In this Division –

“**lay member**” means a person referred to in section 89(2)(b);

“**practitioner member**” means a person referred to in section 89(2)(a).

Disciplinary Tribunal

89. (1) The Disciplinary Tribunal is established.

(2) The Tribunal consists of –

- (a) 10 barristers or legal practitioners appointed by the judges from a panel of 15 barristers or legal practitioners consisting of 2 persons to be nominated by the Tasmanian Bar Association, 2 persons to be nominated by the Tasmanian Independent Bar and the balance to be nominated by the Society; and
- (b) 5 persons, who are not barristers or legal practitioners, appointed by the judges on the nomination of the Minister.

(3) The judges are to appoint a chairperson and deputy chairperson of the Tribunal from the practitioner members of the Tribunal.

(4) Schedule 4 has effect with respect to the membership of the Tribunal.

Composition of Tribunal for proceedings

90. (1) The powers and functions of the Tribunal may be exercised and performed by any 3 or more of its members, of whom –

- (a) one must be the chairperson or, in the absence of the chairperson, the deputy chairperson or, in the absence of both the chairperson and deputy chairperson, a practitioner member appointed by the chairperson; and
- (b) at least one must be a practitioner member; and
- (c) at least one must be a lay member.

(2) Subject to subsection (1), the chairperson is to determine the members who are to constitute the Tribunal for a particular hearing.

(3) The chairperson of the Tribunal may appoint a person as a special member of the Tribunal for a particular hearing whom the chairperson considers to have the skill, knowledge or experience that is relevant for the purposes of that hearing.

(4) A person referred to in subsection (3) may or may not be a legal practitioner or barrister.

(5) Notwithstanding subsection (1), the chairperson or deputy chairperson of the Tribunal may sit alone for the purpose of making an interim order, giving directions or adjourning proceedings.

(6) The chairperson or deputy chairperson or practitioner member appointed by the chairperson under subsection (1)(a) is to preside at a Tribunal hearing.

Change in composition

91. (1) If one of the members (other than the member presiding) constituting the Tribunal for the purposes of a hearing vacates office or becomes incapable of sitting for any reason before the hearing is completed, the hearing may be continued and completed by the remaining members.

(2) If the member presiding or more than one member vacates office or becomes incapable of sitting before the Tribunal has completed the hearing or made a determination in respect of the hearing, the hearing is terminated and a new hearing may be commenced before the Tribunal constituted in accordance with this Division.

(3) In a new hearing the Tribunal may have regard to the record of the proceeding before the Tribunal as previously constituted, including the record of any evidence taken in the proceeding.

Immunity of members of Tribunal

92. An action does not lie against a member of the Tribunal in respect of any act done by that member in good faith and in the exercise or purported

exercise of any power conferred, or in the performance or purported performance of any function imposed, by this Act.

Confidentiality

93. (1) A member of the Tribunal or a person employed or engaged on work related to the affairs of the Tribunal must not divulge any information gained by virtue of that office or position except –

- (a) in the course of and for a purpose related to carrying out the duties of the office or position; or
- (b) as may be authorised by this Act or any other Act; or
- (c) as may be required by a court in relation to proceedings before the court.

Penalty: Fine not exceeding 100 penalty units.

(2) Notwithstanding subsection (1), a person referred to in that subsection may divulge information referred to in that subsection to –

- (a) the Tribunal; and
- (b) the Minister; and
- (c) a member of a law enforcement or prosecution authority of a State, or of the Commonwealth, relating to a matter referred to the authority by the Minister or reported to the authority by the Tribunal to which the information is relevant; and

- (d) a regulatory authority of a participating State who has requested the information in connection with actual or possible disciplinary action against a practitioner.

General functions and powers of Tribunal

93A. (1) Subject to subsection (2), the Tribunal must hear and determine any –

- (a) matter relating to professional misconduct; and
- (b) matter referred to it in an application made under this Division.

(2) If, during the course of a hearing, the Tribunal is of the opinion that a matter is one which should be heard and determined by the Supreme Court –

- (a) it may refer the matter to the Supreme Court to be dealt with as an application under Division 9; and
- (b) it must suspend the hearing with effect from the date of the referral; and
- (c) it must advise the parties accordingly.

(3) If, during the course of a hearing, the Tribunal is of the opinion that a related matter may constitute professional misconduct, it may require the Board to conduct an investigation under this Part.

(4) The Tribunal may do all things necessary or convenient to be done for hearing and

determining a matter to which an application under this Division relates.

(5) The Tribunal may make rules for regulating the making, hearing and determining of applications under this Division.

Secretary to Tribunal

93B. (1) Subject to subsection (2), the Tribunal is to appoint a secretary to the Tribunal to assist the Tribunal in the performance of its functions and exercise of its powers under this Act.

(2) The Tribunal must not appoint a person who is a member of the Board as secretary to the Tribunal.

Report of Tribunal

93C. (1) The Tribunal must provide on or before 31 July after the end of each financial year to the Board a report, stating –

- (a) the number of applications made to it under section 93D for that financial year and the nature of those applications; and
- (b) the orders made by it in respect of those applications; and
- (c) any other information the Tribunal considers relevant.

(2) The Board may require the Tribunal to provide further information in relation to any matter contained in a report submitted under subsection (1).

Applications to Tribunal

93D. (1) An application may be made to the Tribunal to hear and determine a complaint by –

- (a) any person if the application relates to a complaint other than a complaint relating to a consumer dispute; or
- (b) the Board if a determination has been made by the Board under section 80(3)(i) and the application to the Tribunal recommends the making of a compensation order.

(2) An application –

- (a) is to be made in writing; and
- (b) is to specify the facts upon which the application is based; and
- (c) is to be lodged with the secretary to the Tribunal.

(3) The secretary to the Tribunal is to serve a copy of an application on all the other parties to the complaint.

(4) The Tribunal may direct or authorise the amendment of an application at any time.

(5) On receipt of an application, the Tribunal is to serve on the parties to the complaint a notice in writing specifying the date, time and place for the hearing of the application.

(6) The date specified in a notice for the hearing of an application shall be a date that is 14 days or more after the date of service of the notice.

Procedure of Tribunal

93E. (1) In respect of an application under this Division, the Tribunal may do any or all of the following:

- (a) summon any person whose evidence appears to be material to the application;
- (b) proceed to hear and determine the application in the absence of any party who has been summoned to appear before it and who has failed to appear in response to the summons;
- (c) take evidence by affidavit;
- (d) take evidence on oath or affirmation and, for that purpose, administer oaths and affirmations;
- (e) require any person to produce or authorise another person to produce any documents or records, or class of documents or records, in that person's possession or subject to that person's control that in the opinion of the Tribunal appear to be material to the application;
- (f) require a person who appears before it to answer any question that, in the opinion of the Tribunal, appears to be material to the application;
- (g) require the Board to conduct any investigation that the Tribunal considers necessary in order to hear and determine a complaint;

- (h) require any person to assist the Board in such an investigation;
- (i) adjourn the hearing of an application or any part of an application from place to place and from time to time;
- (j) regulate its own procedure in relation to the hearing of an application;
- (k) subject to its rules, order the joinder of more than one application against the same or different practitioners.

(2) The Tribunal may make an order imposing a fine not exceeding 50 penalty units on any person who, if required to do so under subsection (1), neglects or fails, without reasonable excuse –

- (a) to comply with a summons; or
- (b) to make an oath or affirmation; or
- (c) to produce or authorise another person to produce any documents or records when required to do so; or
- (d) to answer any question when lawfully required to do so; or
- (e) to assist the Board in an investigation.

(3) Any fine imposed under subsection (2) is to be paid to the Board.

(4) The Tribunal may cause an order made under subsection (2) to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932* after the expiration of 21 days after the date of the order.

(5) An order filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.

(6) A person may not claim professional privilege as a reason for failure to comply with a requirement made under subsection (1)(e) or (f) except with the written consent of the person to whom the professional privilege relates.

(7) The Tribunal may refer the subject matter of an application to be heard and determined by the Board under this Part if, after taking into account any report made by the Board, it considers that the matter –

- (a) relates to unsatisfactory professional conduct; or
- (b) is an alleged contravention of a regulation, rule or by-law made under this Act which is of such a nature that it ought to be heard and determined by the Board.

Procedure at hearing of application

93F. (1) The hearing of an application under this Division is to be open to the public unless the Tribunal otherwise orders.

(2) If the Tribunal orders that a hearing of an application under this Division is not open to the public, the Tribunal may determine who, other than the parties or their representative, may be present before it at any stage of the proceedings.

(3) At the hearing of an application under this Division, a party to the application may –

- (a) be represented by a barrister or legal practitioner who holds a practising certificate; and
- (b) give and adduce evidence and examine any other person who gives evidence at the hearing; and
- (c) give the Tribunal a written submission in respect of the matter to which the hearing relates.

(4) The Tribunal may make an order imposing a fine not exceeding 50 penalty units on any person who –

- (a) obstructs, hinders or interrupts the proceedings of the Tribunal; or
- (b) threatens or insults a member of the Tribunal; or
- (c) gives an answer or makes a statement which, to that person's knowledge, is false or misleading.

(5) Any fine imposed under this section is to be paid to the Board.

(6) The Tribunal may cause an order made under subsection (4) to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932* after the expiration of 21 days after the date of the order.

(7) An order filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.

Evidence of conviction and sentence

93G. At a hearing held under this Division, a certificate purporting to be signed by a proper officer of a court of this State, of another State or of a court in any jurisdiction relating to the conviction and sentencing of a person by that court is admissible.

Orders of Tribunal

93H. (1) The Tribunal, pending the determination of the application made to it under section 93D, may –

- (a) make an order suspending the practitioner from practice; or
- (b) make an order imposing such conditions on the right of the practitioner to practise as it thinks necessary; or
- (c) make any other order it thinks fit.

(2) After holding a hearing in respect of a complaint against a practitioner, the Tribunal may make any one or more of the following orders:

- (a) an order dismissing the complaint;
- (b) an order admonishing or reprimanding the practitioner;
- (c) an order that the practitioner pay a fine not exceeding 200 penalty units;
- (d) an order suspending the practitioner from practising as a barrister or legal practitioner for such period as is specified in the order;

- (e) an order prohibiting the practitioner from practising as a barrister or legal practitioner, otherwise than in accordance with such conditions as are specified in the order;
- (f) an order directing the Registrar to remove the name of the practitioner from the roll of barristers or legal practitioners;
- (g) an order in respect of costs, including the costs incurred by the Board in investigating and hearing a complaint;
- (h) an order directing that costs be taxed in accordance with the *Supreme Court Rules 2000*;
- (i) a compensation order;
- (j) an order that the practitioner undertake and complete a specified course of further legal education;
- (k) an order that the practitioner subject his or her practice to periodic supervision or inspection by a specified person and for a specified period;
- (l) an order that the practitioner seek appropriate advice from a specified person or class of persons in relation to the management of the practice of the practitioner;
- (m) an order that the practitioner cease to employ in the practice of the practitioner a specified person;

- (n) an order that the practitioner employ in the practice of the practitioner a person belonging to a specified class of persons;
- (o) an order that the practitioner cease to accept instructions in relation to a specified class of work for a specified period;
- (p) an order prohibiting the practitioner from acting as a practitioner, otherwise than in the course of employment by a practitioner holding an unrestricted practising certificate;
- (q) an order that the practitioner waive the whole or part of any fees charged to a specified person in respect of specified work;
- (r) an order that the practitioner repay the whole or part of any fees paid by a specified person in respect of specified work;
- (s) an order that the practitioner carry out for a specified person such work, either free of charge or for such fee, as the Tribunal may so specify;
- (t) an order that the practitioner waive any lien in respect of a specified document or class of document;
- (u) an order that the Board publish or broadcast an order under this section including a statement of findings;

- (v) an order wholly or partly suspending the payment of a fine, or making the payment of a fine conditional.

(3) The Tribunal may make an order imposing a fine not exceeding 50 penalty units on any practitioner who fails to comply with or contravenes a prohibition under subsection (2)(e) or (p).

(4) The Tribunal may cause an order made under subsection (2)(c), (g), (h), (i) or (r) of subsection (3) to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932* after the expiration of 21 days after the date of that order.

(5) An order filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.

(6) If a practitioner fails to comply with an order made under subsection (1) or subsection (2)(d), (e), (j), (k), (l), (m), (n), (o), (p), (q), (s) or (t), the Tribunal may, after the expiration of 21 days after the date of the order, apply to the Supreme Court for an appropriate order.

(7) An order made under this section, except an order under subsection (2)(d) or (f), takes effect after the period within which an appeal under section 93J may be instituted expires.

(8) The Tribunal is to record an order made by it under this section together with the reasons for the order.

(9) The Tribunal is to provide the Board with a copy of any order made by it under this section together with the reasons for the order.

(10) Any fine imposed under this section is to be paid to the Board.

(11) The Tribunal may make ancillary orders, including an order for payment by the practitioner of expenses associated with orders under subsection (2).

(12) Where an order of the Tribunal is made against a practitioner under this section, the Board is to cancel, suspend or endorse the practising certificate of that practitioner to accord with or give effect to that order.

(13) The Tribunal may find a person guilty of –

- (a) unsatisfactory professional conduct even though the complaint alleged professional misconduct; or
- (b) professional misconduct even though the complaint alleged unsatisfactory professional conduct.

Costs

93L. (1) The Tribunal must make orders requiring a practitioner whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Board and the complainant), unless the Tribunal is satisfied that exceptional circumstances exist.

(2) The Tribunal may make orders requiring a practitioner whom it has not found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Board

and the complainant), if the Tribunal is satisfied that –

- (a) the sole or principal reason why the proceedings were instituted in the Tribunal was a failure of the practitioner to cooperate with the Board; or
- (b) exceptional circumstances exist which warrant the making of such an order in the particular circumstances.

(3) An order for costs –

- (a) may be for a specified amount; or
- (b) may be for an unspecified amount but must specify the basis on which the amount is to be determined.

(4) An order for costs may specify the terms on which costs must be paid.

Appeals against orders of Tribunal

93J. A party to a complaint who is aggrieved by an order made by the Tribunal under this Part may –

- (a) appeal against that order to the Supreme Court; and
- (b) make an application to stay that order pending the determination of the appeal.

Hearing and determination of appeal

93K. (1) An appeal under this Division is to be made in accordance with the *Supreme Court Rules 2000* and dealt with by way of rehearing.

(2) Any rehearing conducted under subsection (1) is to be limited to consideration of the matters considered at the hearing which is the subject of appeal.

(3) The Supreme Court, in deciding an appeal against an order made by the Tribunal under this Division, may –

- (a) confirm that order; or
- (b) vary that order; or
- (c) quash that order; or
- (d) substitute for that order any order that the Tribunal had jurisdiction to make; or
- (e) refer the matter of the appeal to the Tribunal for rehearing; or
- (f) make any other order, including an order in respect of costs, it thinks appropriate.

(4) An order varied or substituted under subsection (3) takes effect on and from the date of the decision to vary or substitute the order.

***Division 9 – Disciplinary proceedings before
Supreme Court***

Applications to Supreme Court

93L. (1) Any person may make an application to the Supreme Court to hear and determine a complaint.

(2) An application under this section, unless the Supreme Court otherwise orders, is to be heard in open court and in accordance with the *Supreme Court Rules 2000*.

(3) Notice of an application made under this section is to be given to the parties to the complaint to which the application relates.

(4) If the Supreme Court considers that an application relating to a complaint should be heard and determined by the Board or the Tribunal, it may refer that complaint to be heard and determined by the Board or Tribunal.

Hearing and determination of application

93M. The Supreme Court, in deciding an application made under this Division, may –

- (a) dismiss the application; or
- (b) make any one or more of the orders specified in section 93H; or
- (c) make a default order under section 111;
or
- (d) make any order, including an order in respect of costs, it thinks appropriate.

Orders pending determination of complaint

93N. (1) If a complaint is made against a practitioner under this Part, the Supreme Court may, on application made to it and pending the determination of the complaint –

- (a) make an order suspending the practitioner from practice; or
- (b) make an order imposing such conditions on the right of the practitioner to practise as it thinks necessary; or
- (c) make any other order it thinks fit.

(2) An application under subsection (1) may be made *ex parte*.

Division 10 – Compensation orders**Compensation orders**

93O. (1) A compensation order is an order, made in respect of a complaint against a practitioner under this Part, to compensate the complainant for pecuniary loss suffered because of conduct that is the subject of the complaint.

(2) A compensation order consists of an order that the practitioner pay to the complainant, by way of monetary compensation for the loss, a specified amount within a specified period.

(3) A compensation order for the payment of an amount exceeding 50 penalty units, or such other amount as may be determined by the Minister, is not to be made unless the complainant and the practitioner both consent to the order.

(4) Failure to comply with a compensation order is capable of being unsatisfactory professional conduct or professional misconduct.

Prerequisites to making of compensation orders

93P. (1) A compensation order is not to be made unless the Tribunal or Supreme Court is satisfied –

- (a) that the complainant has suffered loss because of the conduct concerned; and
- (b) that it is in the interests of justice that the order be made.

(2) A compensation order is not to be made in respect of any loss for which the complainant has received or is entitled to receive –

- (a) compensation under an order made by a court; or
- (b) compensation from the Guarantee Fund.

Other remedies not affected

93Q. The recovery of compensation awarded under this Part does not affect any other remedy available to a complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

Division 11 – Publication of disciplinary action**Publication of disciplinary action**

93R. (1) Subject to section 93S(1), if a practitioner is found guilty of unsatisfactory professional conduct or professional misconduct by the Board, Tribunal or Supreme Court, the details referred to in subsection (2) are to be published in the next annual report of the Board and in any publication circulated to the profession by the Board, after the later of –

- (a) the expiry of the period during which a party may appeal against the order; and
- (b) the determination of any appeal against the order.

(2) The details to be published are –

- (a) the name of the practitioner; and
- (b) whether the practitioner was found guilty of unsatisfactory professional conduct or professional misconduct and the nature of the offence; and
- (c) the order made by the Board, Tribunal or Supreme Court; and
- (d) the result of the appeal (if any).

(3) Information regarding the outcome of disciplinary action may be provided to members of the public on request.

Suppression of publication

93S. (1) The Board, Tribunal or Supreme Court may, if it thinks it appropriate in the circumstances, order that particulars of, or any matters relating to, the making of a complaint or an application under this Part not be published.

(2) Any person who publishes any matter contrary to an order made under subsection (1) is guilty of an offence.

Penalty: Fine not exceeding 100 penalty units.

Division 12 – Miscellaneous**Hearings of Board under this Part**

93T. Schedule 3A has effect with respect to hearings of the Board under this Part.

Notice of determination and record of determination

93U. (1) The Board, by notice in writing served on each party to a complaint, is to state its determination and the reasons for the determination.

(2) The Board is to cause a record of its determination with respect to a complaint, together with reasons for the determination, to be kept in respect of each complaint dealt with under this Part.

Jurisdiction of Supreme Court

93V. Nothing in this Part derogates from the inherent jurisdiction of the Supreme Court to discipline a practitioner.

Power to remove name from roll

93W. A power under this Part to remove the name of a person from the roll of barristers or legal practitioners includes a power –

- (a) in the case of a person who is a barrister, to disbar that person; or
- (b) in the case of a person who is an articulated clerk –
 - (i) to terminate the articles of clerkship of that person; and
 - (ii) to terminate the limited right of audience granted to that person under section 45; and
 - (iii) to cancel a certificate issued to that person under section 41(2).

Power to suspend from practice

93X. A power under this Part to suspend a person from practising is a power, in the case of a person who is an articulated clerk –

- (a) to suspend the articles of clerkship of that person; or

- (b) to suspend the limited right of audience granted to that person under section 45.

Referral of matter involving crimes

93Y. (1) If, during the course of any investigation or hearing, the Tribunal or Board is of the opinion that a crime has been committed, it must refer the subject matter of the investigation or hearing to the Commissioner of Police.

(2) If the subject matter of the investigation or hearing has been referred to the Commissioner of Police under subsection (1), the Board may –

- (a) suspend that part of the hearing that relates to the crime with effect from the date of the referral until –
 - (i) after criminal proceedings relating to that matter are concluded; or
 - (ii) the Commissioner of Police advises the Tribunal or Board that no criminal proceedings are to be taken; or
- (b) suspend the hearing with effect from the date of the referral until –
 - (i) after criminal proceedings relating to that matter are concluded; or
 - (ii) the Commissioner of Police advises the Tribunal or Board that no criminal proceedings are to be taken; or

(3) If a hearing is suspended, the Tribunal or Board may, if it thinks it appropriate to do so –

- (a) serve a notice in accordance with section 109; and
- (b) suspend the practising certificate of the practitioner who is the subject of the hearing for such period as the Tribunal or Board considers appropriate.

Section 96 amended (Membership of Trust)

26. Section 96 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “Attorney-General” and substituting “Minister”;
- (b) by omitting from subsection (5) “Attorney-General” and substituting “Minister”.

Section 100 amended (Accounts, reports and audit)

27. Section 100 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “Council” and substituting “Board”;
- (b) by omitting from subsection (4) “Council” twice occurring and substituting “Board”;
- (c) by omitting from subsection (5) “Society” and substituting “Board”.

Section 102 amended (Deposit of trust money)

28. Section 102 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “Council” and substituting “Board”;
- (b) by omitting from subsection (3) “Council” and substituting “Board”;
- (c) by omitting from subsection (6) “Council” twice occurring and substituting “Board”;
- (d) by omitting from subsection (7) “Council” and substituting “Board”;
- (e) by omitting from subsection (8) “Council” and substituting “Board”.

Section 103 amended (Withdrawals)

29. Section 103 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “Council” and substituting “Board”;
- (b) by omitting from subsection (5) “Council” and substituting “Board”;
- (c) by omitting from subsection (6) “Council” and substituting “Board”.

Section 104 amended (Interest on trust account)

30. Section 104(1) of the Principal Act is amended by omitting “Society” twice occurring and substituting “Board”.

Section 105 amended (Trust to invest interest)

31. Section 105(1) of the Principal Act is amended by omitting “Society” and substituting “Board”.

Section 106 amended (Audited accounts of interest)

32. Section 106 of the Principal Act is amended by omitting “Society” and substituting “Board”.

Section 107 amended (Solicitors’ Guarantee Fund)

33. Section 107(3)(b) of the Principal Act is amended by omitting “Society” and substituting “Board”.

Section 108 amended (Application of funds of Guarantee Fund)

34. Section 108 of the Principal Act is amended as follows:

- (a) by omitting subparagraph (i) from subsection (2)(a);
- (b) by omitting from subsection (2)(a)(ii) “Society” and substituting “Board”;
- (c) by omitting from subsection (2)(b)(iii) “Law Society” and substituting “Board”;
- (d) by omitting from subsection (2)(b)(iii) “Council” and substituting “Board”;
- (e) by omitting from subsection (3) “Council” and substituting “Board”.

Section 109 amended (Prohibition on withdrawal of certain property)

35. Section 109 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board or Tribunal”;
- (b) by omitting from subsection (4) “Council” and substituting “Board or Tribunal”.

Section 110 amended (Appeal against notice)

36. Section 110(3) of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 111 amended (Default order and Court fund)

37. Section 111(1)(a) of the Principal Act is amended by omitting “Society” and substituting “Board”.

Section 112 amended (Application of Court fund)

38. Section 112(3) of the Principal Act is amended by omitting “Society” and substituting “Board”.

Section 119 amended (Management of practice)

39. Section 119 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board”;

- (b) by omitting from subsection (2)(a) “Council” and substituting “Board”;
- (c) by omitting from subsection (2)(c) “Council” and substituting “Board”;
- (d) by omitting from subsection (2)(d) “Council” and substituting “Board or Tribunal”;
- (e) by omitting from subsection (5) “Council” and substituting “Board”.

Section 121 amended (Inspections of accounts)

40. Section 121 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board”;
- (b) by omitting from subsection (2) “Council” and substituting “Board”.

Section 123 amended (Rules)

41. Section 123(1) of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 125 amended (Provision of information)

42. Section 125 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(d) “paragraph (c).” and substituting “paragraph (c); or”;
- (b) by inserting the following paragraph after paragraph (d) in subsection (2):

- (e) a member, employee or delegate of the Board.
- (c) by omitting from subsection (3)(b) “Attorney-General” and substituting “Minister”;
- (d) by inserting in subsection (3)(c) “Board or” after “the”.

Section 125A inserted

43. After section 125 of the Principal Act, the following section is inserted in Part 10:

Notification of Board

125A. The Society is to notify the Board of –

- (a) any failure by a firm or legal practitioner corporation to make any payment required under the rules made under section 124; and
- (b) any default by a firm or legal practitioner corporation in relation to the firm’s or legal practitioner corporation’s professional indemnity insurance.

Section 128 amended (Rules in respect of costs and taxation of costs)

44. Section 128 of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 134 amended (Appointment by Board of persons to tax costs)

45. Section 134(1) of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 135A amended (Assistance to taxing officer)

46. Section 135A(1) of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 141 amended (Arbitrators)

47. Section 141 of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 143A amended (Information for client)

48. Section 143A(3)(h) of the Principal Act is amended by omitting “Law Society” and substituting “Board”.

Section 143F amended (Effect of failure to give information)

49. Section 143F(b) of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 148 amended (Practising certificates for legal practitioner corporations)

50. Section 148 of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 149 amended (Application for practising certificate)

51. Section 149 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” first occurring and substituting “Board”;
- (b) by omitting from subsection (1)(a) “Council” and substituting “Board”;
- (c) by omitting from subsection (2) “Council” twice occurring and substituting “Board”.

Section 150 amended (Issue of practising certificates)

52. Section 150 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board”;
- (b) by omitting from subsection (2) “Council” and substituting “Board”;
- (c) by omitting from subsection (3) “Council” and substituting “Board”.

Section 151 amended (Memorandum and articles of association)

53. Section 151 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b)(ii) “Council” and substituting “Board”;
- (b) by omitting from paragraph (c) “Council” and substituting “Board”;

- (c) by omitting from paragraph (e)(ii) “Council” and substituting “Board”;
- (d) by omitting from paragraph (g) “Council” and substituting “Board”;
- (e) by omitting from paragraph (h) “Council” and substituting “Board”;
- (f) by omitting from paragraph (j) “the *Legal Profession Act 1993*” and substituting “this Act”.

Section 152 amended (Notification of non-compliance with memorandum and articles of association)

54. Section 152 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” twice occurring and substituting “Board”;
- (b) by omitting from subsection (2) “Council” and substituting “Board”;
- (c) by omitting from subsection (3) “Council” first occurring and substituting “Board”;
- (d) by omitting from subsection (3)(b) “Council” and substituting “Board”.

Section 153 amended (Alteration to memorandum or articles of association)

55. Section 153 of the Principal Act is amended by omitting “Council” and substituting “Board”.

Section 155 amended (Applications for renewal of practising certificates)

56. Section 155 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board”;
- (b) by omitting from subsection (2)(a) “Council” and substituting “Board”;
- (c) by omitting from subsection (3) “Council” twice occurring and substituting “Board”.

Section 156 amended (Issue of renewal of practising certificates)

57. Section 156 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board”;
- (b) by omitting from subsection (2) “Council” and substituting “Board”;
- (c) by omitting from subsection (3) “Council” and substituting “Board”;
- (d) by omitting from subsection (4) “Council” and substituting “Board”.

Section 157 amended (List of legal practitioner corporations)

58. Section 157 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board”;

- (b) by omitting from subsection (2) “Council” first occurring and substituting “Board”;
- (c) by omitting from subsection (2)(b)(iv) “Council” and substituting “Board”;
- (d) by omitting from subsection (3) “Council” and substituting “Board”;
- (e) by omitting from subsection (4) “Council” and substituting “Board”;
- (f) by omitting from subsection (5) “Council” and substituting “Board”.

Section 158 amended (Evidentiary provision with respect to list)

59. Section 158(2) of the Principal Act is amended by omitting “President of the Society” and substituting “executive officer”.

Section 159 amended (Appeals)

60. Section 159 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Council” and substituting “Board”;
- (b) by omitting from subsection (5) “Council” and substituting “Board”.

Section 162 amended (Foreign corporations)

61. Section 162 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “Council” and substituting “Board”;
- (b) by omitting from subsection (3)(a) “Council” and substituting “Board”;
- (c) by omitting from subsection (3)(b) “Council” and substituting “Board”;
- (d) by omitting from subsection (4) “Council” first occurring and substituting “Board”;
- (e) by omitting from subsection (4) “Council” second occurring and substituting “Board”;
- (f) by omitting from subsection (4)(b) “Council” and substituting “Board”;
- (g) by omitting from subsection (5) “Council” and substituting “Board”.

Section 165 amended (Protection from liability)

62. Section 165 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) A liability that would, but for this section, attach to –

- (a) a member of the Council or a delegate under section 11, attaches to the Society;
or
- (b) an arbitrator, attaches to the Board.

Sections 165A and 165B inserted

63. After section 165 of the Principal Act, the following sections are inserted in Part 14:

Change of name

165A. (1) If a body referred to in this Act changes its name, the Governor, by order, may amend the provisions of this Act in which the name of the body occurs by substituting the body's new name.

(2) If a body referred to in this Act ceases to exist, the Governor may amend the provisions of this Act in which the name of the body occurs by substituting the name of a body which the Governor is satisfied substantially represents the interests represented by the first-mentioned body.

Rules of procedural fairness

165B. The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act, apply in relation to dealing with complaints under this Act by the Board or Tribunal.

Section 166 amended (Regulations)

64. Section 166 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) Without limiting the generality of subsection (1), regulations may be made –

(a) for or with respect to the fees payable under this Act including –

- (i) fees payable in respect of practising certificates; and
 - (ii) fees payable in respect of an application to sit for examinations conducted by the Board; and
 - (iii) fees payable in respect of articles of clerkship; and
 - (iv) fees payable in respect of admission of barristers or legal practitioners; and
 - (v) fees payable for an audit or inspection of records relating to money received, held or paid on behalf of clients; and
- (b) the manner in which those fees may be disbursed.

Schedules 1 and 2 substituted

65. Schedules 1 and 2 to the Principal Act are repealed and the following Schedules are substituted:

**SCHEDULE 1 – PROVISIONS WITH RESPECT
TO MEMBERSHIP OF BOARD**

Section 17A(5)

Interpretation

1. In this Schedule –

“member” means a member of the Board, and includes the chairperson of the Board.

Term of office

2. (1) A member is appointed for such term, not exceeding 3 years, as is specified in the member's instrument of appointment.

(2) A member may serve any number of terms but may not serve more than 6 years in succession.

Holding other office

3. The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

State Service Act 2000

4. (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.

(2) A person may hold the office of member in conjunction with State Service employment.

Remuneration of members and conditions of appointment

5. (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.

(2) A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.

(3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

Vacation of office

6. (1) A member vacates office if the member –

- (a) dies; or
- (b) resigns by written notice to the Minister; or
- (c) is removed from office under subclause (2) or (3); or
- (d) ceases to be qualified for office by virtue of subclause (4).

(2) The Governor may remove a member from office if the member –

- (a) is absent from 3 consecutive meetings of the Board without the permission of the Board; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's

remuneration or estate for their benefit;
or

- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term exceeding 3 months; or
- (d) fails, without reasonable excuse, to comply with the member's obligation under clause 7 of Schedule 2; or
- (e) is convicted of an offence against this Act.

(3) The Governor may remove a member from office if satisfied that the member is unable to perform or is not performing adequately or competently the duties of the office.

(4) A member referred to in section 17A(1)(a) vacates office if he or she ceases to be eligible for appointment.

Chairperson may resign but remain a member

7. The chairperson may resign from that office but remain a member.

Validity of proceedings, &c.

8. (1) An act or proceeding of the Board or of a person acting under any direction of the Board is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.

(2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or was incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or was capable of being, a member, and as if the Board had been fully constituted.

Presumptions

9. In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) the appointment of any member.

SCHEDULE 2 – PROVISIONS WITH RESPECT TO MEETINGS OF BOARD

Section 17A(6)

Interpretation

1. In this Schedule –

“meeting” does not include a hearing under Part 8.

Convening of meetings

2. (1) The chairperson of the Board, after giving each member of the Board reasonable notice of a meeting –

- (a) may convene a meeting at any time; and

- (b) must convene a meeting when requested to do so by 2 or more other members.

(2) If the chairperson of the Board is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given, by –

- (a) two or more members of the Board; or
- (b) a person authorised by the Board to do so.

(3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Board.

Presiding at meetings

3. (1) The chairperson of the Board is to preside at all meetings of the Board at which he or she is present.

(2) If the chairperson of the Board is not present at a meeting of the Board, a member of the Board elected by the members present at the meeting is to preside.

Quorum and voting at meetings

4. (1) Four members of the Board, one of whom must be a person referred to in section 17A(1)(b), constitute a quorum at a duly convened meeting of the Board.

(2) Notwithstanding subclause (1), three members of the Board, two of whom must be persons

referred to in section 17A(1)(a) and one of whom must be a person referred to in section 17A(1)(b), constitute a quorum at a duly convened meeting of the Board for the purpose of dealing with a matter under section 86.

(3) A meeting of the Board under subclause (1) at which a quorum is present is competent to transact any business of the Board for which the meeting is convened.

(4) A meeting of the Board under subclause (2) at which a quorum is present is competent to transact any business of the Board for which the meeting is convened.

(5) At a meeting of the Board –

- (a) the member of the Board presiding has a deliberative vote only; and
- (b) a question is decided by a majority of votes of the members present and voting; and
- (c) if there is an equality of votes of the members present and voting, the matter stands adjourned until the next meeting.

Conduct of meetings

5. (1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

(2) The Board may permit members of the Board to participate in a particular meeting or all meetings by –

- (a) telephone; or
- (b) video conference; or
- (c) any other means of communication approved by the Board.

(3) A member of the Board who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

(4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

Minutes

6. The Board is to keep accurate minutes of its meetings.

Disclosure of interests

7. (1) If a member of the Board has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered, or about to be considered, by the Board, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.

(2) Unless the Board otherwise determines, a member of the Board who has made a disclosure under subclause (1) in relation to a matter must not –

- (a) be present during any deliberation of the Board in relation to the matter; or

- (b) take part in any decision of the Board in relation to the matter.

(3) For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in making the determination.

Meetings to be open to public

8. (1) Except as provided in subclause (2), a meeting of the Board is to be open to the public.

(2) The Board may do any or all of the following at a meeting if it considers that there are compelling grounds to do so:

- (a) make an order excluding any person from the meeting;
- (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the meeting or prohibiting the reporting or other disclosure of particular information in respect of the meeting.

(3) Without limiting the range of grounds that may be relevant for the purposes of subclause (2), the Board may exercise its power under that subclause if –

- (a) it is dealing with privileged information or information that has been

communicated to the Board in confidence; or

- (b) it is dealing with information concerning the personal affairs, finances or business arrangements of a practitioner or any other person; or
- (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a practitioner or any other person.

General procedure

9. Except as provided by this Act, the Board may regulate its own proceedings.

Presumptions

10. In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Board; and
- (b) the presence of a quorum at any meeting of the Board.

Schedule 3A inserted

66. After Schedule 3 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 3A – PROVISIONS WITH
RESPECT TO HEARINGS OF BOARD UNDER
PART 8**

Section 93T

Convening of hearings

1. (1) The chairperson of the Board, after giving each member of the Board reasonable notice of a hearing, may convene a hearing of the Board at any time.

(2) If the chairperson of the Board is absent from duty or otherwise unable to perform the duties of the office, a hearing of the Board may be convened, after reasonable notice of the hearing has been given, by a person authorised by the Board to do so.

(3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Board.

Presiding at hearings

2. (1) The chairperson of the Board is to preside at all hearings of the Board at which he or she is present.

(2) If the chairperson of the Board is not present at a hearing of the Board, a member of the Board elected by the members present is to preside at the hearing.

Quorum and voting at hearings

3. (1) Three members of the Board, two of whom must be persons referred to in section 17A(1)(a) and one of whom must be a person referred to in section 17A(1)(b), constitute a quorum at a duly convened hearing of the Board under section 80.

(2) Four members of the Board, one of whom must be a person referred to in section 17A(1)(b), constitute a quorum at a duly convened hearing of the Board under section 82.

(3) At a hearing of the Board –

- (a) the member of the Board presiding has a deliberative vote only; and
- (b) an issue is decided –
 - (i) by a majority of votes of the members present and voting; or
 - (ii) in the negative if there is an equality of votes of the members present and voting.

Hearings to be open to public

4. (1) Except as provided in subclause (2), a hearing of the Board is to be open to the public.

(2) The Board may do any or all of the following at a hearing if it considers that there are compelling grounds to do so:

- (a) make an order that the hearing be closed to the public;

- (b) make an order excluding any person from the hearing;
- (c) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the hearing or prohibiting the reporting or other disclosure of particular information in respect of the hearing.

(3) Without limiting the range of grounds that may be relevant for the purposes of subclause (2), the Board may exercise its power under that subclause if –

- (a) it is dealing with privileged information or information that has been communicated to the Board in confidence; or
- (b) it is dealing with information concerning the personal affairs, finances or business arrangements of a practitioner or any other person; or
- (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a practitioner or any other person.

(4) If the Board makes an order under subclause (2)(b), the Board may determine who, other than the parties or their representative, may be present before it at any stage of the proceedings.

Procedure

5. (1) If the Board convenes a hearing, it is to serve a notice in writing on the practitioner to attend the

hearing, not less than 14 days before the date of the hearing.

(2) The Board may require a party to a complaint to provide evidence relating to the complaint.

(3) In respect of a hearing of the Board, the Board may do any or all of the following:

- (a) summon any person whose evidence, in the opinion of the Board, appears to be material to the hearing;
- (b) proceed to hold a hearing in the absence of any person who has been duly summoned to appear;
- (c) take evidence by affidavit;
- (d) take evidence on oath or affirmation and, for that purpose, administer oaths and affirmations;
- (e) require any person to produce or to authorise another person to produce any documents or records, or class of documents or records, in that person's possession or subject to that person's control that, in the opinion of the Board, appear to be material to the hearing;
- (f) require a person who appears at the hearing to answer any questions that, in the opinion of the Board, appear to be material to the hearing;
- (g) adjourn the hearing from place to place and from time to time.

(4) In respect of a hearing of the Board, the Board is not bound to observe the rules of law governing the admission of evidence but may inform itself of any matter in such manner as it thinks fit.

(5) A person may not claim any professional privilege as a reason for failure to comply with a requirement made under subclause (3)(e) or (f) except with the written consent of the person in respect of whom the professional privilege is claimed.

(6) Except as provided by this Act, the Board may regulate its own procedure in relation to a hearing.

(7) A person who fails without reasonable excuse to –

- (a) attend a hearing of the Board as required by the Board; or
- (b) take an oath or make an affirmation; or
- (c) produce or authorise another person to produce any documents when required to do so; or
- (d) answer any question when required to do so; or
- (e) assist in the course of an investigation –

is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

(8) If a practitioner contravenes subclause (7), the Board may refer the complaint that is the subject matter of the hearing to the Tribunal by

making an application to the Tribunal under section 93D.

Representation

6. Each party to a complaint is entitled to be represented by an advocate at a hearing of the Board under that Part.

Disclosure of interests

7. (1) If a member of the Board has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered, or about to be considered, by the Board, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.

(2) Unless the Board otherwise determines, a member of the Board who has made a disclosure under subclause (1) in relation to a matter must not –

- (a) be present during any deliberation of the Board in relation to the matter; or
- (b) take part in any decision of the Board in relation to the matter.

(3) For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in making the determination.

Schedule 4 amended (Provisions with Respect to Membership of Tribunal)

67. Schedule 4 to the Principal Act is amended as follows:

- (a) by inserting “and includes the chairperson or deputy chairperson of the Tribunal” after “Tribunal” in the definition of “member” in clause 1;
- (b) by omitting the definition of “substitute member” from clause 1;
- (c) by inserting in clause 2 “, and is eligible for reappointment” after “appointment”;
- (d) by omitting from clause 3(a) “or substitute member”;
- (e) by omitting from clause 3(b) “or substitute member”;
- (f) by omitting clauses 4 and 5 and substituting the following clauses:

State Service Act 2000

4. (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.

(2) A person may hold the office of member in conjunction with State Service employment.

Remuneration of members and conditions of appointment

5. (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.

(2) A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.

(3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

(g) by inserting the following paragraph after paragraph (b) in clause 6(3):

(ba) fails, without reasonable excuse, to comply with the member's obligation under clause 7A; or

(h) by omitting from clause 6(4) "or substitute member" twice occurring;

(i) by inserting the following clause after clause 7:

Disclosure of interests

7A. (1) If a member has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being heard, or about to be heard, by the Tribunal, the member must, as soon as

practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Tribunal.

(2) Unless the Tribunal otherwise determines, a member who has made a disclosure under subclause (1) in relation to a matter must not –

- (a) be present during any deliberation of the Tribunal in relation to the matter; or
- (b) take part in any decision of the Tribunal in relation to the matter.

(3) For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –

- (a) be present during any deliberation of the Tribunal for the purpose of making the determination; or
- (b) take part in making the determination.

- (j) by inserting the following clause after clause 8:

Presumptions

9. In any proceeding by or against the Tribunal, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Tribunal; or
- (b) the appointment of any member.

Schedule 5 amended (Provisions with respect to membership of trust)

68. Schedule 5 to the Principal Act is amended as follows:

- (a) by omitting from clause 4 “Society” and substituting “Board”;
- (b) by omitting from clause 6(3)(a) “Council” and substituting “Board”;
- (c) by omitting from clause 6(4)(b) “Council” and substituting “Board”;
- (d) by omitting from clause 7 “Council” and substituting “Board”.

Statutory Rules rescinded

69. The Statutory Rules specified in Schedule 2 are rescinded.

***Legal Aid Commission Act 1990* amended**

70. Section 8 of the *Legal Aid Commission Act 1990* is amended by omitting subsection (3).

Payment to Board with respect to practising certificate fees

71. The Society must pay to the Board any fee collected by the Society in respect of practising certificates for the period commencing on the commencement of section 9 of this Act and ending on 31 December immediately following that commencement.

Recovery of costs by Board

72. The Board may recover from the Society as a debt due to the Board any reasonable costs incurred in relation to dealing with any complaint made under Part 8 of the Principal Act as in force immediately before the commencement of section 23 of this Act which has, by virtue of Schedule 1, been dealt with by the Board under the Principal Act as amended by this Act.

Savings and transitional provisions

73. The savings and transitional provisions set out in Schedule 1 have effect.

SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS

Section 73

Acts, &c., done by or in relation to Board of Legal Education

1. All acts, matters and things done or omitted before the commencement of section 9 of this Act by or in relation to the Board of Legal Education under the Principal Act as in force immediately before that commencement have, on and after that commencement, the same force and effect as if they had been done or omitted by or in relation to the Board.

Applications

2. (1) Any application which, immediately before the commencement of section 23 of this Act, was made under the Principal Act as in force immediately before that commencement, other than an application under section 63 or 72 of the Principal Act as so in force, and was not finally determined at that commencement, is to be dealt with under the Principal Act as amended by this Act.

(2) Any application made to the Society or Council before the commencement of section 9 of this Act and not finally determined by the Society or Council before that commencement is to be dealt with by the Board as if the application had been made to that Board.

(3) Any application which, immediately before the commencement of section 23 of this Act, was made by the Society or Council under the Principal Act as in force immediately before that commencement, other than an application under section 63 or 72 of the Principal Act as so in force, and was not finally determined at that

commencement, is taken on that commencement to be made by the Board.

(4) Any application which, immediately before the commencement of section 23 of this Act, was made to the Supreme Court under section 80 of the Principal Act as in force immediately before that commencement and was not finally determined at that commencement is taken on that commencement to be made under section 93L of the Principal Act as inserted by this Act.

Notices

3. (1) Any notice made or served under the Principal Act, as in force immediately before the commencement of section 23 of this Act, is taken to have been made or served and has effect under the Principal Act as amended by this Act.

(2) Any notice made or served by the Council under the Principal Act, as in force immediately before the commencement of section 23 of this Act, is taken to have been made or served by the Board and has effect under the Principal Act as amended by this Act.

Complaints

4. Any complaint made under Part 8 of the Principal Act as in force immediately before the commencement of section 23 of this Act –

- (a) that has not been dismissed or finally determined by the Council; or
- (b) in relation to which a hearing has not begun under Part 8 of the Principal Act as in force immediately before that commencement; or

- (c) in relation to which an application has not been made under section 72 of the Principal Act as in force immediately before that commencement –

is to be dealt with by the Board as if it were a complaint made to the Board under the Principal Act as amended by this Act.

Hearing of complaints

5. (1) If, immediately before the commencement of section 23 of this Act, a hearing had begun into a complaint made under Part 8 of the Principal Act as in force immediately before that commencement, but had not been concluded, the Council may –

- (a) terminate the hearing; or
- (b) continue and conclude the hearing as if this Act had not been enacted.

(2) In making a decision under subclause (1), the Council may have regard to such matters as it considers appropriate but must have particular regard to –

- (a) how far the hearing had progressed by the commencement of section 23 of this Act; and
- (b) fairness to the person who is the subject of the hearing; and
- (c) cost and inconvenience to any person; and
- (d) any submissions made to the Board by or on behalf of the person who is the subject of the hearing.

(3) If a hearing is terminated under subclause (1)(a), the complaint is to be dealt with as if it were a complaint made to the Board under the Principal Act as amended by this Act.

(4) The Council, upon the conclusion of the hearing continued under subclause (1)(b), may take such action as it considers appropriate as if this Act had not been enacted.

Application to Tribunal

6. (1) If, before the commencement of section 23 of this Act, an application was made under section 72 of the Principal Act as in force immediately before that commencement, and a hearing in relation to the application had not commenced at that commencement, the application is taken on that commencement to be made under section 93D of the Principal Act as inserted by this Act.

(2) If, immediately before the commencement of section 23 of this Act, a hearing had begun into an application made under section 72 of the Principal Act as in force immediately before that commencement but had not been concluded, the Tribunal, as constituted under the Principal Act as in force immediately before that commencement, may –

- (a)** terminate the hearing; or
- (b)** continue and conclude the hearing as if this Act had not been enacted.

(3) If a decision is made to terminate the hearing under subclause (2)(a), the application is to be dealt with as if it were an application made to the Tribunal under section 93D of the Principal Act as inserted by this Act.

(4) In making a decision under subclause (2), the Tribunal may have regard to such matters as it considers appropriate but must have particular regard to –

- (a) how far the hearing had progressed by the commencement of section 23 of this Act; and
- (b) fairness to the person who is the subject of the hearing; and
- (c) cost and inconvenience to the Tribunal, the person who is the subject of the hearing or other persons; and
- (d) any submissions made to the Tribunal by or on behalf of the person who is the subject of the hearing.

(5) In a case to which subclause (2)(b) applies, the Tribunal, on the conclusion of the hearing, may take such action as it considers appropriate having regard to the findings of the hearing, as if this Act had not been enacted.

Application for rehearing

7. (1) If, before the commencement of section 23 of this Act, an application was made under section 63 of the Principal Act as in force immediately before that commencement and a hearing in relation to the application had not commenced at that commencement, the application is taken on that commencement to be made under section 87 of the Principal Act as inserted by this Act.

(2) If, immediately before the commencement of section 23 of this Act, a hearing had begun into an application made under section 63(1)(a) of the Principal Act as in force immediately before that commencement but

had not been concluded, the Tribunal, as constituted under the Principal Act as in force immediately before that commencement may –

- (a) terminate the hearing; or
- (b) continue and conclude the hearing as if this Act had not been enacted.

(3) If a decision is made to terminate the hearing under subclause (2)(a), the application is to be dealt with as if it were an application made to the Tribunal under section 87 of the Principal Act as inserted by this Act.

(4) In making a decision under subclause (2), the Tribunal may have regard to such matters as it considers appropriate but must have particular regard to –

- (a) how far the hearing had progressed by the commencement of section 23 of this Act; and
- (b) fairness to the person who is the subject of the hearing; and
- (c) cost and inconvenience to the Tribunal, the person who is the subject of the hearing or other persons; and
- (d) any submissions made to the Tribunal by or on behalf of the person who is the subject of the hearing.

(5) In a case to which subclause (2)(b) applies, the Tribunal, on the conclusion of the hearing, may take such action as it considers appropriate, as if this Act had not been enacted.

(6) If, immediately before the commencement of section 23 of this Act, a hearing had begun in relation to an application made under section 63(1)(b) of the Principal Act as in force immediately before that commencement,

but had not been concluded, the Supreme Court is to continue and conclude the hearing and take such action as it considers appropriate, as if this Act had not been enacted.

Orders

8. (1) An order made under section 76 of the Principal Act as in force immediately before the commencement of section 23 of this Act is taken to have been made under section 93H(2) of the Principal Act as inserted by this Act.

(2) An action taken under section 79(2) of the Principal Act as in force immediately before the commencement of section 23 of this Act is taken to have been taken under section 93K(2) of the Principal Act as inserted by this Act.

(3) An order made under section 81 of the Principal Act as in force immediately before the commencement of section 23 of this Act is taken to have been made under section 93M of the Principal Act as inserted by this Act.

(4) An order made under section 89 of the Principal Act as in force immediately before the commencement of section 23 of this Act is taken to have been made under section 93N of the Principal Act as inserted by this Act.

Determinations under sections 61 and 65B

9. (1) A determination made under section 61(2) of the Principal Act as in force immediately before the commencement of section 23 of this Act is taken to have been made under section 83(2) of the Principal Act as inserted by this Act.

(2) A determination made under section 65B(2) of the Principal Act as in force immediately before the commencement of section 23 of this Act is taken to have been made under section 85(8) of the Principal Act as inserted by this Act.

Determinations imposing fines

10. Where a fine imposed on a person pursuant to Part 8 of the Principal Act as in force immediately before the commencement of section 23 of this Act had not been paid, or paid in full, immediately before that commencement, that fine, or the unpaid balance of that fine, is due and payable to the Board, and may be recovered as a debt due to the Board in a court of competent jurisdiction.

Appeals

11. Where, before the commencement of section 23 of this Act, an appeal was made in accordance with section 78 of the Principal Act as in force immediately before that commencement but has not been determined, that appeal is taken to be made under section 93J of the Principal Act as inserted by this Act.

Undertakings

12. (1) The requirement of a practitioner to give an undertaking to the Council or Tribunal in accordance with a determination or order under Part 8 of the Principal Act as in force immediately before the commencement of section 23 of this Act that has not been complied with immediately before that commencement is taken to be a requirement to give an undertaking to the Board or Tribunal under the Principal Act as amended by this Act.

(2) An undertaking given to the Council or Tribunal by a practitioner under Part 8 of the Principal Act as in force immediately before the commencement of section 23 of this Act and subsisting immediately before that commencement is taken to be an undertaking given to the Board or Tribunal under the Principal Act as amended by this Act and any breach of the undertaking may be dealt with and have consequences under the Principal Act as amended by this Act in all respects the same as a failure to honour an undertaking given to the Board or Tribunal after that commencement.

Practising certificates

13. A practising certificate in force under the Principal Act, as in force immediately before the commencement of section 9 of this Act, continues in force for a period of 3 months after that commencement.

Legal Profession (Board of Legal Education) Rules 1994

14. The *Legal Profession (Board of Legal Education) Rules 1994* made under section 22 of the Principal Act as in force immediately before the commencement of section 10 of this Act are taken to have been made under section 17I of the Principal Act as inserted by this Act.

SCHEDULE 2 – STATUTORY RULES RESCINDED

Section 69

Rules of Practice 1994 (No. 229 of 1994)*Legal Profession (Disciplinary Tribunal) Rules 1995* (No.
99 of 1995)*Rules of Practice Amendment 1995* (No. 176 of 1995)*Rules of Practice Amendment Rules 2000* (No. 182 of 2000)*Rules of Practice Amendment Rules 2003* (No. 33 of 2003)