

**Request for submissions in accordance with recommendation 47 of the
NSW Ombudsman's Special Report on the review of the Freedom of
Information Act 1989**

I refer to your letter of 23 March 2009 and provide the following submissions.

Introduction

In response to recommendation 47 of the New South Wales Ombudsman's Special Report on the review of the Freedom of Information Act 1989 (**FOI Act**), 'Opening Up Government', (**Report**) I submit that the complaint-handling and investigative functions of my office remain in Schedule 2 to the FOI Act (**Schedule**), or, in the event that the FOI Act is repealed and replaced, that my office remain subject to an equivalent exemption in any new Act.

All legislative provisions referred to below are reproduced in the annexure.

The Role and Function of My Office

The provisions of the Legal Profession Act 2004 (**Act**) govern the complaint-handling and investigative functions of my office.

I have no power to find a practitioner guilty of unsatisfactory professional conduct (**UPC**) or professional misconduct (**PMC**), being the two categories of conduct which I am empowered to investigate and which are defined at ss496 and 497 of the Act. At the conclusion of an investigation, I will either dismiss a complaint or take disciplinary action against a practitioner in the Administrative Services Division of the Administrative Decisions Tribunal (**Tribunal**).

The Establishment of My Office and the FOI Act

In its 1993 report, 'Scrutiny of the Legal Profession: Complaints against Lawyers', the New South Law Reform Commission (**LRC**) recommended, among other things, that this office be established. In doing so, it noted that:

Confidentiality is an essential part of any investigative procedure, while subsequent proceedings should, to the greatest extent possible, be subject to principles of open justice.¹

In this regard, the LRC concluded that all files relating to the investigation of a complaint should be immune from civil discovery and exempt from production under the FOI Act. Doing so, it was noted, would militate against the investigations process being used inappropriately, such as an alternative discovery process in contemplation of litigation or for the purposes of commercial debt recovery. It is my view that these protections must be maintained.

The Ombudsmen's Criteria for Inclusion in the Schedule

In his Report, the Ombudsman identified six criteria which could be used to guide a decision as to whether complaint-handling or investigative bodies, of which the OLSC is one, should be included in the Schedule. They are addressed in turn below

¹ New South Wales Law Reform Commission, *Report 70 (1993) Scrutiny of the Legal Profession: Complaints Against Lawyers*, at 5.49.

Criterion 1: The relevant statutes comprehensively set out the circumstances in which the agencies are able or required to report on the outcome of their performance or function

The functions and powers of the Legal Services Commissioner are defined and governed by the provisions of Act. Section 691 of the Act establishes a mandatory reporting regime by which I am required to provide an annual report to the Attorney-General who, in turn, is required to lay that report before both Houses of Parliament as soon as practicable after receiving it.

By operation of s691, the annual report must deal comprehensively with the performance and function of my office; these reporting requirements are extensive.

Criterion 2: The agencies are required to give detailed reasons to support any findings adverse to any person or body, either publicly or directly to the person or body concerned

To the extent that my investigatory and complaint-handling functions are concerned, I cannot make a decision adverse to either a complainant or practitioner without the provision of reasons.

Section 542 of the Act provides that both complainants and practitioners about whom complaints are made are entitled to a statement of reasons in relation to a decision to dismiss a complaint, initiate proceedings against a practitioner in the Tribunal (reasons must also be given if certain matters raised in the original complaint are not to be particularised in any such proceedings) or a decision to conclude a complaint summarily by caution, reprimand or warning pursuant to s540 of the Act. That provision allows certain disciplinary outcomes to follow in circumstances where I am satisfied that there is a reasonable likelihood that a practitioner would be found by the Tribunal to have engaged in UPC (but not PMC), but that the practitioner is generally competent and diligent and that the circumstances of the particular complaint justify such action being taken.

Criterion 3: Information generated by the function has greater value as intelligence to guide or inform future action if the fact or nature of the information is kept secret

I make no submissions in this regard.

Criterion 4: An agency is very unlikely to exercise a discretion under the FOI Act to release relevant documents in any circumstances

It is unlikely that I would exercise my discretion to release documents relating to my complaint-handling, investigative, review and reporting functions, were those functions to be removed from the Schedule.

In addition to those matters raised by the LRC and noted above, I note the following.

Firstly, s723 of the Act provides that any person who discloses information obtained in the administration of the Act will be guilty of an offence unless such disclosure:

- a) is made with the consent of the person to whom the information relates,
- or

- b) is authorised under a provision of this Act, or
- c) is made in connection with the administration of this Act, or
- d) is made for the purpose of legal proceedings arising out of this Act or of any report of any such proceedings, or
- e) is made with other lawful excuse.

The provisions of the Act which would authorise disclosure are comprehensive and include ss576 to 582, which deal with the publication of disciplinary action, and s677 which allows for the disclosure of information in certain circumstances which would assist the proper investigation of the complaint. These sections reflect the underpinning public interest in maintaining an investigative process which, in its confidentiality, encourages full and frank disclosure of relevant information by all parties absent any concern that the information will be used for purposes other than the investigation, whilst also making public instances where a practitioner, at the conclusion of a proper investigation, has been found, to the requisite standard (discussed further below), to have engaged in UPC or PMC.

In light of the numerous and detailed legislative provisions which strike a careful balance between maintaining crucial confidences whilst also protecting the public, it becomes difficult to conceive of a situation where it would satisfy the public interest to exercise any discretion to disclose documents beyond the already available mechanisms.

Secondly, issues of legal professional privilege arise. Whilst I acknowledge the Ombudsman's comments at 5.4.2 of his Report, I submit that the vast majority of documents to which the privilege may arise in the context of my office's functions belong to a unique category. In his Special Report, the Ombudsman noted that claims to legal professional privilege in a freedom of information context are often made as a matter of course and without recourse to a consideration of the appropriateness of claiming the privilege to resist the disclosure of information, nor of whether, in the circumstances, the privilege should be waived. Those comments, however, are relevant to documents created by an agency which is subject to a freedom of information request. Given the function of this office, many documents obtained in the course of an investigation, such as advices given by a respondent practitioner to a complainant client, are subject to legal professional privilege, though are not created by my office. In the example given, it is the complainant client's privilege and, in the ordinary course, it would be for them to assert or waive.

Section 604 of the Act provides that a complainant client is taken to have waived their privilege or any other right to confidentiality so as to allow the respondent practitioner to provide any such information as is necessary to properly respond to the complaint. Similarly, s724 provides that a respondent practitioner may not decline to provide documents requested in the course of an investigation on the basis of legal professional privilege or any duty of confidentiality or any privilege against self-incrimination.

That the combined effect of these provisions allows for the proper investigation of complaints by recourse to all relevant information does not provide a sound policy basis for me disclosing such documents, which would otherwise be subject to a legitimate claim for privilege, for any other purpose.

Indeed, allowing them to be disclosed beyond the parameters already established by the Act would damage the integrity of the investigative function of my office itself.

I submit that the Act already covers the field to the extent of the disclosure of documents obtained in the exercise of those functions listed in the Schedule. Accordingly, there would be no utility in me considering exercising any discretion to further disclose documents pursuant to a freedom of information request.

Criterion 5: Findings arising from the performance of the function are generally based on the civil standard of proof:

Before proceeding against a practitioner in the Tribunal, I must be satisfied that there is a reasonable likelihood that an adverse finding will be made against them. A strong line of precedent in the Tribunal unambiguously states that I must satisfy myself to the Briginshaw Standard before taking such action. That is to say, I must be satisfied beyond the typical civil standard – the balance of probabilities – prior to taking adverse action against a practitioner. Accordingly, it is simply not possible for me take such action capriciously or without reference to an objective standard.

As a corollary to this, when disciplinary action is taken, either in the form of orders entered by the Tribunal or by myself pursuant to s540 of the Act, the outcomes of that action are made publicly available on a disciplinary register. That there is a cogent and compelling public interest rationale for doing so is uncontroversial. I do have concerns, however, were my office to be removed from the Schedule, the existence of unfounded complaints or allegations which fell short of the requisite standard for disciplinary action, could be disclosed. The negative publicity for an individual practitioner which could thus be generated could have an extraordinarily detrimental impact on their ability to practise law. It is also entirely possible that disclosure of a complainant's history of dealings with my office could prejudice their ability to obtain legal representation and, to this extent, inclusion in Schedule 2 could be regarded as an access to justice issue.

Criterion 6: The rights of affected individuals are usually protected by statutory procedural fairness provisions:

The rules of procedural fairness apply to my investigative functions as well as any disciplinary proceedings taken against a practitioner and are explicitly incorporated by sections 591 and 494(3)(b) of the Act.

If you have any further questions, please contact Lynda Muston, Assistant Commissioner (Legal)

Steve Mark
Commissioner

1 April 2009

Annexure: Relevant Legislative Provisions (in the order referred to in the submission)

Section 496

For the purposes of this Act:

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

Section 497

(1) For the purposes of this Act:

"professional misconduct" includes:

(a) unsatisfactory professional conduct of an Australian legal 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 an Australian legal 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.

(2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the matters that would be considered under section 25 or 42 if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate and any other relevant matters.

Section 691

(1) As soon as practicable after 30 June (but before 31 December) in each year, the Commissioner is to prepare and forward to the Attorney General a report on his or her activities for the 12 months ending on 30 June in that year.

(2) The Attorney General is to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(3) The Commissioner is to include the following information in the annual report:

(a) the number and type of complaints made during the year (including the number and type made by the Commissioner and the number and type made by each Council),

(b) the sources of those complaints,

(c) the number of consumer disputes referred to mediation during the year and the results of mediation,

(d) the number and type of complaints investigated during the year by each Council, the Commissioner and an independent investigator under section 532,

(e) the number and type of complaints dismissed during the year by each Council and by the Commissioner,

(f) the number and type of complaints in respect of which an Australian lawyer was reprimanded or cautioned during the year by each Council and by the Commissioner,

(g) the number and type of complaints in respect of which proceedings were instituted in the Tribunal during the year by each Council and by the Commissioner,

(h) the number of matters referred to mediation under section 336 or Part 4.3 during the year and the outcome of those matters,

(i) the number of compensation orders made under Part 4.9 during the year,

(j) a summary of the results of proceedings in the Tribunal completed during the year,

(k) the number of complaints not finally dealt with at the end of the year (including the number at each stage of proceedings),

(l) the age of complaints not finally dealt with at the end of the year (that is, the number of those complaints made respectively in that year and in each previous year),

(m) time intervals involved in the complaints process, including:

(i) the time between the receipt of a complaint and the decision of the Commissioner or a Council under Part 4.5 in respect of the complaint, and

(ii) the time between the receipt of a complaint and the decision of the Commissioner on completion of a review under Part 4.6,

(n) information about any review of a legal profession rule requested by the Commissioner during the year under this Act,

(o) information on the operation of the complaints process during the year and any recommendations for legislative or other improvements to the complaints process,

(p) information about the costs incurred by the Commissioner during the year, certified by the Auditor-General,

(q) such other information as the Commissioner considers appropriate to be included or as the Attorney General directs to be included.

(4) The Commissioner may include in the annual report a report on the exercise of functions by the Commissioner referred to in section 688 (1) (j), (k) and (l).

(5) Matters included in a report must not identify individual clients, Australian lawyers or Australian-registered foreign lawyers unless their names have already lawfully been made public under Part 4.10 (Publishing disciplinary action).

Section 542

(1) If a complaint has been made about an Australian legal practitioner, the complainant and the practitioner are entitled to receive a statement of reasons from the Commissioner or Council, as the case requires, in relation to:

- (a) a decision to dismiss the complaint, or
- (b) a decision to commence proceedings in the Tribunal with respect to the complaint, or
- (c) a decision to take action under section 540 (Summary conclusion of complaint procedure by caution, reprimand, compensation order or imposition of conditions), or
- (d) a decision to omit, from the allegations particularised in a disciplinary application made to the Tribunal in respect of the complaint, matter that was originally part of the complaint.

(2) The right of the complainant to apply to the Commissioner for a review of the decision must be included in the statement under this section, except in the case of a decision to commence proceedings in the Tribunal.

(3) A statement to a complainant is not required under this section in the case of an official complaint.

Section 540

(1) This section applies if:

(a) either:

(i) the Commissioner or a Council completes an investigation of a complaint against an Australian legal practitioner, or

(ii) the report of an independent investigator is given to the Commissioner, and

(b) the Commissioner or Council (as the case requires):

(i) is satisfied that there is a reasonable likelihood that the practitioner would be found by the Tribunal to have engaged in unsatisfactory professional conduct (but not professional misconduct), and

(ii) is satisfied that the practitioner is generally competent and diligent, and

(iii) is satisfied that the taking of action under this section is justified having regard to all the circumstances of the case (including the seriousness of the conduct concerned) and to whether any other substantiated complaints have been made against the practitioner.

(2) The Commissioner or Council may do any or all of the following:

(a) caution the practitioner,

(b) reprimand the practitioner,

(c) make a compensation order under Part 4.9 if the complainant requested a compensation order in respect of the complaint,

(d) determine that a specified condition be imposed on the practitioner's practising certificate.

(3) Failure to attend as required by the Commissioner or Council to receive a caution or reprimand is capable of being professional misconduct.

(4) If action is taken under subsection (2), no further action is to be taken under this Chapter with respect to the complaint.

(5) If the Commissioner or Council decides to reprimand or make a compensation order against an Australian legal practitioner under this section, or that a condition be imposed on an Australian legal practitioner's practising certificate under this section, the practitioner may apply to the Tribunal for a review of the decision.

Note: Reviews are carried out under Chapter 5 of the Administrative Decisions Tribunal Act 1997 . Section 729A modifies the operation of that Act. An appeal lies to the Supreme Court under section 729A against a decision of the Administrative Decisions Tribunal.

(6) If the Commissioner determines that a specified condition be imposed on a practising certificate, the appropriate Council is required to impose and maintain the condition. The condition may be amended, suspended, reinstated or revoked with the concurrence of the Commissioner.

Section 723

A person who discloses any information obtained in the administration of this Act is guilty of an offence unless the disclosure:

- (a) is made with the consent of the person to whom the information relates, or
- (b) is authorised under a provision of this Act, or

Note: Examples of authorised disclosure provisions include Part 4.10 (Publicising disciplinary action) and section 677 (Permitted disclosure of confidential information obtained in course of investigation, examination or audit).

- (c) is made in connection with the administration of this Act, or
- (d) is made for the purpose of legal proceedings arising out of this Act or of any report of any such proceedings, or
- (e) is made with other lawful excuse.

Maximum penalty: 50 penalty units.

Section 576

In this Division:

"disciplinary action" against an Australian legal practitioner means any of the following actions taken under a law of this or another jurisdiction, whether or not taken under this Chapter or under provisions of a corresponding law that correspond to this Chapter:

- (a) the suspension or cancellation of the Australian practising certificate of the practitioner,
- (b) the refusal to grant or renew an Australian practising certificate applied for by the practitioner (other than a refusal on the ground that the practitioner is not eligible to apply for the grant or renewal),

- (c) the removal of the name of the practitioner from an Australian roll,
- (d) the making of an order by a court or tribunal, or by another person or body, for or following a finding of unsatisfactory professional conduct or professional misconduct by the practitioner, other than an order cautioning the practitioner,
- (e) the reprimanding of the practitioner, or the making of a compensation order against the practitioner, by a person or body without a formal finding of unsatisfactory professional conduct or professional misconduct,
- (f) the appointment of a manager or receiver for a legal practice of which the practitioner is a legal practitioner associate, where the associate is specified or referred to in the notice of appointment served on the law practice.

Section 577

(1) The Commissioner is to keep a register (in this Act referred to as the "Register of Disciplinary Action") of:

- (a) disciplinary action taken under this Act against Australian legal practitioners, and
- (b) disciplinary action taken under a corresponding law against Australian legal practitioners who are or were enrolled or practising in this jurisdiction when the conduct that is the subject of the disciplinary action occurred, and
- (c) disciplinary action taken under a corresponding law against Australian legal practitioners who are enrolled or practising in this jurisdiction if the disciplinary action was recorded on a register of disciplinary action kept under the corresponding law when the practitioner became enrolled or commenced to practise in this jurisdiction.

(2) The Register is to include:

- (a) the full name of the person against whom the disciplinary action was taken (including any name by which the person was previously known and any name by which the person becomes known after the disciplinary action is taken), and
- (b) the person's business address or former business address, and
- (c) the person's home jurisdiction or most recent home jurisdiction, and
- (d) particulars of the disciplinary action taken, and
- (e) other particulars prescribed by the regulations.

(3) The Register may be kept in a form determined or identified by the Commissioner and may form part of other registers.

(4) The Register is to be made available for public inspection on:

- (a) the internet site of the Commissioner, or
- (b) an internet site identified on the internet site of the Commissioner.

(5) Information recorded in the Register may be provided to members of the public in any other manner approved by the Commissioner.

(6) The Commissioner may cause any error in or omission from the Register to be corrected.

(7) The requirement to keep the Register applies only in relation to disciplinary action taken after the commencement of this section, but details relating to earlier disciplinary action may be included in the Register.

(8) A Council or the Tribunal must provide to the Commissioner sufficient information to enable the Commissioner to exercise the Commissioner's functions in respect of the Register.

Section 578

(1) The Commissioner or Council may publicise disciplinary action taken against an Australian legal practitioner in any manner the Commissioner or Council thinks fit.

(2) Nothing in this section affects the provisions of this Part relating to the Register.

Section 579

(1) If disciplinary action is quashed on appeal or review, any reference to that disciplinary action must be removed from the Register.

(2) If disciplinary action is quashed on appeal or review after the action was publicised by the Commissioner or a Council under section 578 (Other means of publicising disciplinary action), the result of the appeal or review must be publicised with equal prominence by the Commissioner or Council.

Section 580

(1) No liability is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of:

(a) publicising disciplinary action taken against an Australian legal practitioner, or

(b) exercising the powers or functions of the Commissioner or a Council under this Part, or

(c) keeping, publishing or enabling access to the Register.

(2) Without limiting subsection (1), no liability (including liability in defamation) is incurred by a person publishing in good faith:

(a) information about disciplinary action:

(i) recorded in the Register, or

(ii) otherwise publicised by the Commissioner or a Council under this Part, or matter purporting to contain information of that kind where the matter is incorrect in any respect, or

(b) a fair report or summary of that information.

(3) In this section:

"protected person" means:

(a) the State, or

(b) the Commissioner, or

(c) a Council, or

- (d) a person responsible for keeping the whole or any part of the Register, or
- (e) an internet service provider or internet content host, or
- (f) a member of staff of or a person acting at the direction of an authority of the State or any person or body referred to in this definition.

Section 581

(1) Disciplinary action taken against a person is not to be recorded in the Register or otherwise publicised under this Part if the action was taken because of the person's inability properly to carry out the requirements of legal practice and the inability arises wholly or principally from infirmity, injury or mental or physical illness.

(2) Subsection (1) does not apply where the disciplinary action involves:

- (a) the suspension or cancellation of the person's Australian practising certificate, or
- (b) a refusal to grant or renew an Australian practising certificate applied for by the person, or
- (c) a restriction or prohibition on the person's right to engage in legal practice, but in that case the reason for the disciplinary action, and any other information relating to the infirmity, injury or mental or physical illness, is not to be recorded in the Register or otherwise publicised under this Division without the person's consent.

Section 582

(1) The provisions of this Part apply despite any confidentiality or secrecy provisions of this Act.

(2) The provisions of this Part are subject to any order made by:

- (a) the Tribunal in relation to disciplinary action taken under this Chapter, or
- (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this Chapter, or
- (c) a court or tribunal of this or another jurisdiction,

so far as the order prohibits or restricts the disclosure of information.

(3) Despite subsection (2), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register in accordance with the requirements of this Part and may be otherwise publicised under this Part.

Section 677

(1) A Council, the Commissioner or an investigator may disclose information obtained in the course of a trust account investigation, trust account examination, complaint investigation or compliance audit to any of the following:

- (a) any court, tribunal or other person acting judicially,
- (b) the Attorney General,
- (c) any authority regulating legal practitioners in any jurisdiction,

- (d) any officer of or Australian legal practitioner instructed by:
 - (i) any authority regulating legal practitioners in any jurisdiction, or
 - (ii) the Commonwealth or a State or Territory of the Commonwealth, or
 - (iii) an authority of the Commonwealth or of a State or Territory of the Commonwealth,

in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation, examination or audit,

(e) an investigative or prosecuting authority established by or under legislation (for example, the Australian Securities and Investments Commission),

(f) a police officer-if the Council, the Commissioner or the investigator suspects on reasonable grounds that the information relates to an offence that may have been committed by:

(i) if a law practice is the subject of the investigation, examination or audit-the law practice or an associate or former associate of the law practice, or

(ii) if an Australian lawyer is the subject of the investigation, examination or audit-the lawyer or an associate or former associate of the law practice of which the lawyer is or was an associate,

Note: Section 730A requires a Council to report suspected offences to the relevant law enforcement or prosecution authority.

(g) if the subject of the investigation, examination or audit is or was:

(i) a law practice-a principal of the law practice, or

(ii) an incorporated legal practice-a director or shareholder in the practice, or

(iii) an Australian lawyer-the lawyer or a principal of the law practice of which the lawyer is or was an associate,

(h) if the subject of the investigation, examination or audit is or was:

(i) a law practice-a client of the practice, or

(ii) an Australian lawyer-a client of the law practice of which the lawyer is or was an associate,

but only if the information relates to the client,

(i) if the subject of the investigation, examination or audit is or was:

(i) a law practice-a supervisor, manager or receiver appointed in relation to the law practice, or

(ii) an Australian lawyer-a supervisor, manager or receiver appointed in relation to the law practice of which the lawyer is or was an associate,

or an Australian legal practitioner or accountant employed by the supervisor, manager or receiver,

(j) an investigator carrying out another investigation, examination or audit in relation to the law practice or Australian lawyer who is or was the subject of the investigation, examination or audit,

(k) any other person to the extent that it is necessary for the purposes of properly conducting the investigation, examination or audit and making a report on the matter.

(2) A reference in subsection (1) to information obtained in connection with any such investigation, examination or audit includes a reference to any finding, opinion or recommendation of the investigator in relation to the investigation, examination or audit.

(3) No liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information under this section.

(4) For the purposes of subsection (3):

"protected person" means any of the following:

(a) the Law Society or Bar Association,

(b) a Council or a member of a Council,

(c) the Commissioner,

(d) an investigator,

(e) a member of staff of or a person acting at the direction of any person or entity referred to in this definition.

Section 604

(1) If a client of an Australian legal practitioner makes a complaint about the practitioner, the complainant is taken to have waived client legal privilege, or the benefit of any duty of confidentiality, to enable the practitioner to disclose to the appropriate authorities any information necessary for investigating and dealing with the complaint.

(2) Without limiting subsection (1), any information so disclosed may be used in or in connection with any procedures or proceedings relating to the complaint.

Section 724

(1) This section applies to a requirement under:

(a) section 263 (Reporting certain irregularities and suspected irregularities) to give written notice of an irregularity in connection with a trust account, a trust ledger account or trust money, or

(b) section 638 (Power of receiver to require documents or information) to give access to documents or information, or

(c) a provision of Chapter 6 (Provisions relating to investigations) to produce documents, provide information or otherwise assist in, or co-operate with, an investigation.

(2) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on the ground of:

(a) legal professional privilege, or

(b) privilege against self-incrimination, or

(c) any other duty of confidence.

(3) If, before complying with the requirement, the person objects to the body or person to whom the notice, document or information is required to be given on the ground that giving it may tend to incriminate the person, the notice, document or information is inadmissible in evidence in any proceeding against the person for an offence, other than:

(a) an offence against this Act, or

(b) any other offence relating to the keeping of trust accounts or the receipt of trust money, or

(c) an offence relating to the falsity of the answer, or

(d) proceedings taken by the receiver for the recovery of regulated property (as defined in Chapter 5).

Section 591

The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act or the regulations, apply in relation to the investigation of complaints and the procedures of the Commissioner and the Councils under this Chapter.

Section 494(3)(b)

(3) The objects of this Chapter relating to the providers of legal services are as follows:

[...]

(b) to ensure that the rules of natural justice (being rules for procedural fairness) are applied to any disciplinary proceedings taken against lawyers,

