

# LEGAL SERVICES ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6: Legal Complaints**

#### **Complaints Handling – the new system**

#### *Section 137: Determination of complaints*

355. This section makes provision for the ombudsman's powers in making a determination. The governing principle, set out in *section 137(1)*, is that the ombudsman must determine a complaint according to what is fair and reasonable in all the circumstances of the case. *Sections 137(2) and 137(3)* set out the directions which the ombudsman may make in a determination, namely:

- that the respondent make an apology to the complainant;
- that the respondent's fees for the services to which the complaint relates are limited to a specified amount (and any other action be taken, such as a refund, which may be necessary to give effect to this);
- that the respondent pay compensation for loss, inconvenience or distress;
- that the respondent at their own expense secure rectification of any specified error, omission or other deficiency in connection with the matter under complaint; or
- that the respondent at their own expense take such other action in the interests of the complainant as the direction may specify.

356. *Section 137(4)* allows for any amount payable pursuant to a determination to bear interest. *Section 137(5)* provides that the powers of the ombudsman in making a determination are not confined to cases where the complainant may have a cause of action in negligence (and so may be available in cases of "simple" inadequate professional service).