

Western Australia

Legal Profession Act 2008

Legal Profession Regulations 2009

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Legal Profession Regulations 2009

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Legal Profession Regulations 2009

Part 1 — Preliminary

1. Citation

These regulations are the *Legal Profession Regulations 2009*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Legal Profession Act 2008* section 598 comes into operation.

3. Terms used

In these regulations —

community legal centre has the meaning given in section 388(1) of the Act;

entity means an individual or a body.

4. Default determination of associate's home jurisdiction: section 7(4)

- (1) This regulation applies to an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, if —

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- (a) section 7(4)(b) of the Act is applicable to the associate;
and
 - (b) the home jurisdiction for the associate can be determined under neither section 7(4)(b)(i) nor section 7(4)(b)(ii).
- (2) For the purposes of section 7(4)(b)(iii) of the Act, the home jurisdiction for the associate is to be determined in accordance with the following criteria —
- (a) the jurisdiction of the associate's place of residence in Australia; or
 - (b) if the associate does not have a place of residence in Australia — the jurisdiction of the associate's last place of residence in Australia.

Part 2 — Reservation of legal work and related matters

5. Presumptions about taking or using name, title or description: section 14(2)

(1) In this regulation —

Australian law means a law of the Commonwealth or of a State or Territory;

employee of an entity means a person who is employed or engaged under a contract of service or contract for services in or by the entity whether or not —

- (a) the person works full-time, part-time or on a temporary or casual basis; or
- (b) the person is a law clerk or articled clerk;

government agency means —

- (a) a government department of the Commonwealth or of a State or Territory; or
- (b) a body that is established by or under the law of the Commonwealth or a State or a Territory for a public purpose or to exercise governmental functions,

and includes an entity (or a class of entities) specified in the Table to regulation 11.

(2) For the purposes of section 14(2) of the Act, the kinds of person specified in column 3 of the Table are persons who are entitled, in the circumstances specified opposite in column 4, to take or use a name, title or description specified opposite in column 2.

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Table

Column 1	Column 2	Column 3	Column 4
Item	Name, title or description	Kinds of persons	Circumstances
1	lawyer	Australian lawyer	all circumstances (no restriction)
2	lawyer	Australian-registered foreign lawyer	all circumstances (no restriction)
3	legal practitioner	Australian legal practitioner	all circumstances (no restriction)
4	legal practitioner	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee in a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate

Column 1	Column 2	Column 3	Column 4
Item	Name, title or description	Kinds of persons	Circumstances
5	barrister and solicitor solicitor and barrister solicitor attorney	Australian legal practitioner	when the Australian legal practitioner holds an Australian practising certificate and engages in legal practice in the manner of a solicitor
6	barrister and solicitor solicitor and barrister solicitor attorney	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a solicitor as an employee in a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate

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Column 1	Column 2	Column 3	Column 4
Item	Name, title or description	Kinds of persons	Circumstances
7	barrister	Australian legal practitioner	when the Australian legal practitioner —
			(a) holds an Australian practising certificate; and (b) engages in legal practice in the manner of a barrister; and (c) in the case of a local legal practitioner — has undertaken to the Supreme Court to practise solely as a barrister

Column 1	Column 2	Column 3	Column 4
Item	Name, title or description	Kinds of persons	Circumstances
8	barrister	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice in the manner of a barrister as an employee in a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal
			practice of that kind without having to hold an Australian practising certificate
9	counsel	Australian legal practitioner	all circumstances (no restriction)

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Column 1	Column 2	Column 3	Column 4
Item	Name, title or description	Kinds of persons	Circumstances
10	counsel	Australian lawyer	when the Australian lawyer, not holding an Australian practising certificate, engages in legal practice as an employee in a government agency in circumstances in which an Australian law permits an Australian lawyer to engage in legal practice of that kind without having to hold an Australian practising certificate
11	Senior Counsel or SC	Australian lawyer	when the Australian lawyer holds the status of Senior Counsel, as
			recognised by the High Court or a Supreme Court of any jurisdiction

Column 1	Column 2	Column 3	Column 4
Item	Name, title or description	Kinds of persons	Circumstances
12	Queen’s Counsel or QC King’s Counsel or KC Her Majesty’s Counsel His Majesty’s Counsel	Australian lawyer	when the Australian lawyer holds the appropriate status as given by the Crown in any capacity or as recognised by the High Court or the Supreme Court of a jurisdiction
13	attorney	Australian-registered foreign lawyer	when entitled to use the name, title or description under section 157 of the Act
14	attorney	patent attorney	when using the expression “patent attorney”
15	attorney	donee of a power of attorney	when indicating that the donee holds or is acting under a power of attorney
16	attorney	Attorney-General of a jurisdiction or a foreign country	all circumstances (no restriction)

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Column 1	Column 2	Column 3	Column 4
Item	Name, title or description	Kinds of persons	Circumstances
17	solicitor	Solicitor-General of a jurisdiction or a foreign country	all circumstances (no restriction)

6. Exempted lay associates: section 15(8)

- (1) In this regulation —
lay associate has the meaning given in section 15(1) of the Act.
- (2) Section 15(2)(a) does not apply in respect of a lay associate of a law practice who —
 - (a) was a lay associate of the law practice immediately before this regulation came into operation; or
 - (b) is undertaking approved practical legal training requirements (as defined in section 21(1) of the Act) with the law practice; or
 - (c) does not provide legal or related services to the law practice.

Part 3 — Legal practice by Australian legal practitioners

7. Completion of periods of supervised legal practice: sections 50 and 72

- (1) In this regulation —
required experience has the meaning given in sections 50(1) and 72(1) of the Act.
- (2) For the purposes of sections 50(2) and 72(2) of the Act, regard can be had to periods of supervised legal practice that satisfy the requirements of this regulation.
- (3) The following periods of supervised legal practice satisfy the requirements of this regulation —
 - (a) one period of supervised legal practice, worked on a full-time basis, that is equal to the required experience worked out on a full-time basis; or
 - (b) one period of supervised legal practice, worked on a part-time basis as approved by the Board or an interstate regulatory authority, that is equivalent to the required experience worked out on a full-time basis; or
 - (c) 2 or more periods of supervised legal practice, worked on either or both of those bases as approved by the Board or an interstate regulatory authority, that together are equal or equivalent to the required experience.
- (4) For the purposes of this regulation —
 - (a) public holidays during a relevant period are to be included as days of supervised legal practice, whether or not the person engaged in legal practice on those days; and
 - (b) normal periods of leave taken during a relevant period by the person are to be included as periods of supervised legal practice.

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8. Register of local practising certificates: section 76(2)(b)

- (1) For the purposes of section 76(2)(b) of the Act, the particulars referred to in subregulation (2) are prescribed as particulars to be included in the register kept under section 76 of the Act in relation to a local legal practitioner, except where the Board is required under subregulation (5) not to include them in the register.
- (2) The particulars to be included in the register are as follows —
 - (a) the name of the local legal practitioner;
 - (b) the type of local practising certificate held by the practitioner;
 - (c) the name of the law practice of which the practitioner is an associate or, if the practitioner is not an associate of a law practice, the name of the entity of which the practitioner is a director, officer or employee or with which the practitioner is otherwise engaged in legal practice;
 - (d) the contact details of the office of the law practice or other entity in this jurisdiction;
 - (e) by way of separate additional entry, the name of the law practice or other entity and the contact details of the office of the law practice or other entity —
 - (i) in this jurisdiction; and
 - (ii) in any other jurisdictions in which it has an office, except where the Board considers those particulars need not be included in respect of an entity that is not a law practice;
 - (f) any other particulars about the practitioner, law practice or other entity that the Board considers should be included.
- (3) Contact details of an office are as follows —
 - (a) its street address (the address where the office is physically located);

- (b) its postal address (a post office box number and the location and postcode of the post office), if any;
 - (c) its DX address (the number of the exchange box in a document exchange (DX)), if any.
- (4) A local legal practitioner may, by notice in writing to the Board, request the Board not to include any or any specified particulars about the practitioner, law practice or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available (for example, if the safety or well-being of a person would be substantially affected by making the particulars publicly available).
- (5) If the Board is satisfied that those special circumstances exist, the Board is required not to include the particulars concerned in the register, unless the Board considers that the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

Part 4 — Government lawyers

Division 1 — General

9. Eligibility to be principal for articulated clerk

- (1) The following persons are eligible to be the principal for one or more articulated clerks —
 - (a) the State Solicitor;
 - (b) the Director of Legal Aid appointed under the *Legal Aid Commission Act 1976* section 18;
 - (c) the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991* section 5;
 - (d) the Director in Western Australia of the Australian Government Solicitor established by the *Judiciary Act 1903* (Commonwealth);
 - (e) the Regional Commissioner of the Australian Securities and Investment Commission in Western Australia;
 - (f) the Deputy Director, Perth Office of the Office of the Director of Public Prosecutions established by the *Director of Public Prosecutions Act 1983* (Commonwealth).
- (2) Subregulation (1) does not operate to restrict the persons who are eligible under the rules to be the principal for an articulated clerk.

10. Supervised legal practice: section 3

- (1) WA government lawyers who are eligible under the rules to be the principal for an articulated clerk are prescribed for the purpose of paragraph (c)(iv) of the definition of *supervised legal practice* in section 3 of the Act.

- (2) The following office holders are prescribed for the purpose of paragraph (d)(iii) of the definition of *supervised legal practice* in section 3 of the Act —
- (a) an office holder listed in regulation 9(1)(d), (e) or (f);
 - (b) any other interstate government lawyer who is eligible under the rules to be the principal for an articulated clerk.

11. Government agencies: section 36(1) WA government lawyer

The entities listed in the Table are prescribed for the purposes of the definition of *WA government lawyer* in section 36(1) of the Act.

Table

Item	Government agency
1	An agency as defined in the <i>Public Sector Management Act 1994</i> section 3(1)
2	The office of a Minister of the State
3	The office of the Solicitor General appointed under the <i>Solicitor-General Act 1969</i>
4	A department of the staff of Parliament referred to in the <i>Parliamentary and Electorate Staff (Employment) Act 1992</i>
5	The office of the Builders' Registration Board of Western Australia established under the <i>Builders' Registration Act 1939</i>
6	The office of the Commissioner for Children and Young People established under the <i>Commissioner for Children and Young People Act 2006</i>
7	The office of the person designated as the Commissioner for the purposes of the <i>Fair Trading Act 2010</i>

Item	Government agency
8	The office of the Corruption and Crime Commission established under the <i>Corruption and Crime Commission Act 2003</i>
9	The office of the Parliamentary Inspector of the Corruption and Crime Commission established under the <i>Corruption and Crime Commission Act 2003</i>
10	The office of the Commissioner for Equal Opportunity established under the <i>Equal Opportunity Act 1984</i>
11A	The Health and Disability Services Complaints Office continued by the <i>Health and Disability Services (Complaints) Act 1995</i> section 6(1)
11	The office of the Information Commissioner established under the <i>Freedom of Information Act 1992</i>
12	The office of the Public Advocate created under the <i>Guardianship and Administration Act 1990</i>
13	The office of the Heritage Council of Western Australia established under the <i>Heritage of Western Australia Act 1990</i>
14	The office of The Western Australian Industrial Relations Commission established under the <i>Industrial Relations Act 1979</i>
15	The office of the Law Reform Commission of Western Australia established under the <i>Law Reform Commission Act 1972</i>
[16	<i>deleted]</i>
17	The office of the Mental Health Review Board established under the <i>Mental Health Act 1996</i>
18	The office of the Mentally Impaired Accused Review Board established under the <i>Mental Health Act 1996</i>

Item	Government agency
19	The office of the Commission for Occupational Safety and Health established under the <i>Occupational Safety and Health Act 1984</i>
20	The office of the Parliamentary Commissioner for Administrative Investigations established under the <i>Parliamentary Commissioner Act 1971</i>
21	The Police Force of Western Australia
22	The office of the Prisoners Review Board established under the <i>Sentence Administration Act 2003</i>
[23	<i>deleted]</i>
24	The Public Trust Office established under the <i>Public Trustee Act 1941</i>
[26	<i>deleted]</i>
27	Water Corporation established by the <i>Water Corporation Act 1995</i>

[Division 1 amended in Gazette 11 Feb 2011 p. 504; 3 Jun 2011 p. 1982; 22 Jul 2011 p. 3019; 6 Mar 2012 p. 894.]

Division 2 — Continuing professional development of WA government lawyers

12. Terms used

In this Division —

approved CPD arrangements means arrangements for continuing professional development of WA government lawyers that are approved under regulation 13;

CPD rules means the rules made by the Board in relation to continuing professional development of local legal practitioners;

employing authority has the meaning given in section 36(1) of the Act;

government agency has the meaning given in section 36(1) of the Act;

WA government lawyer has the meaning given in section 36(1) of the Act.

13. Continuing professional development arrangements

- (1) An employing authority of one or more WA government lawyers must —
 - (a) make arrangements for the continuing professional development of the lawyers; and
 - (b) submit to the Attorney General a description of the arrangements.
- (2) An employing authority must comply with subregulation (1) —
 - (a) in relation to a WA government lawyer employed before 1 January 2010 — not later than that date; or
 - (b) otherwise — as soon as practicable after becoming the employing authority of a WA government lawyer.
- (3) The Attorney General may approve or refuse to approve the arrangements.
- (4) The approval of the Attorney General may specify the duration of the approval.
- (5) If the arrangements are refused approval, the employing authority must make other arrangements and another submission within such time as the Attorney General directs.

14. Review of arrangements

- (1) An employing authority may review its approved CPD arrangements at any time and make a further submission for approval under regulation 13.
- (2) An employing authority that has approved CPD arrangements must, in accordance with subregulation (3) —
 - (a) review the arrangements; and

- (b) make a further submission for approval under regulation 13.
- (3) The employing authority must act under subregulation (2) —
 - (a) if the Attorney General has specified the duration of the approval of the arrangements — before the approval ceases to have effect; or
 - (b) otherwise — not later than 2 years after the Attorney General last approved the arrangements.

15. Effect of participation in approved CPD arrangement

- (1) A WA government lawyer is not required to comply with continuing professional development or continuing legal education requirements for local legal practitioners except as provided in this Part.
- (2) Participation by a WA government lawyer in an activity under an approved CPD arrangement in accordance with the arrangement is to be taken to be an approved CPD activity for the purposes of the CPD rules.
- (3) Participation by a WA government lawyer in an approved CPD arrangement in accordance with the arrangement is to be taken to be compliance with any continuing professional development or continuing legal education requirements imposed under the Act.
- (4) The State Solicitor, Parliamentary Counsel, Director of Public Prosecutions and Solicitor-General are to be taken to be QA providers when providing continuing professional development to WA government lawyers in the offices of any of those officers under an approved CPD arrangement.
- (5) In subregulation (4) —
QA provider means an entity approved under the CPD rules as a quality assured provider of professional development activities.

16. Report to Board

- (1) In this regulation —
CPD period means the period from 1 April to 31 March.
- (2) WA government lawyers are not required to report to the Board in relation to their compliance with the CPD rules or approved CPD arrangements.
- (3) Before 1 July in each year, each employing authority of a WA government lawyer must give written notice to the Board of—
 - (a) the name of each WA government lawyer employed by or under the employing authority in the previous CPD period; and
 - (b) the name of any WA government lawyer employed by or under the employing authority in the previous CPD period who has not complied with the approved CPD arrangements for that lawyer for that period.
- (4) An employing authority must give the Board written notice of—
 - (a) the name of any person who commences employment as a WA government lawyer by or under the employing authority; and
 - (b) the name of any person who ceases to be a WA government lawyer employed by or under the employing authority.
- (5) The Board may request the employing authority of a WA government lawyer to provide information to the Board in relation to the continuing professional development provided by the employing authority.

17. Directions to WA government lawyers

The following entities may give directions to WA government lawyers in their respective offices in relation to participation in approved CPD arrangements —

- (a) the State Solicitor;
- (b) the Parliamentary Counsel;
- (c) the Director of Public Prosecutions;
- (d) the employing authority of a WA government lawyer.

18. Professional discipline

The failure of a WA government lawyer to comply with a requirement of an approved CPD arrangement is capable of constituting unsatisfactory professional conduct or professional misconduct.

Part 5 — Incorporated legal practices and multi-disciplinary partnerships

19. Community legal centres are not incorporated legal practices: section 99

For the purposes of section 99(2)(c) of the Act, community legal centres are not incorporated legal practices.

20. Prohibition on conduct of managed investment scheme by incorporated legal practice: section 100(2)

Section 100(2) of the Act is declared to be a Corporations legislation displacement provision for the purposes of the Corporations Act section 5G in relation to the Corporations legislation.

21. Information to be given to Board by corporation

- (1) A notice given under section 102(1) must be accompanied by —
 - (a) a copy of the corporation's constitution or other constituent documents; and
 - (b) documentary evidence of the directors and officers of the corporation.
- (2) While the corporation continues to provide legal services it must notify the Board of any change in any of the information given under subregulation (1).

22. Notice of ceasing provision of legal services: section 104

For the purposes of section 104 of the Act, the prescribed period within which a corporation must give a notice under that section is 14 days after the corporation ceases to engage in legal practice in this jurisdiction.

23. Disqualifications and prohibitions

- (1) This regulation applies to —
 - (a) an order made under section 119 of the Act disqualifying a corporation from providing legal services in this jurisdiction; or
 - (b) an order made under section 120 of the Act disqualifying a person from managing a corporation that is an incorporated legal practice; or
 - (c) an order made under section 145 of the Act prohibiting an Australian legal practitioner from being a partner of a specified person,

being an order made on the application of the Board or the Complaints Committee.
- (2) The Board or the Complaints Committee or both of them may publicise an order in any manner the Board or Complaints Committee thinks fit.
- (3) The applicant for an order —
 - (a) must, as soon as practicable after an order is made, give written notice of the order to the corresponding authority of every other jurisdiction; and
 - (b) may give written notice of the order to any regulatory authority of any jurisdiction.
- (4) The notice under subregulation (3) for an order made under section 119 of the Act —
 - (a) must state —
 - (i) the corporation's name; and
 - (ii) the Australian Company Number (ACN) of the corporation; and
 - (iii) the office or business address of the corporation as last known to the Board or Complaints Committee; and

- (iv) the date of the order;
 - and
 - (b) may contain other relevant information; and
 - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (5) The notice under subregulation (3) for an order made under section 120 or 145 of the Act —
 - (a) must state —
 - (i) the person's name; and
 - (ii) the person's address as last known to the Board; and
 - (iii) the date of the order;
 - and
 - (b) may contain other relevant information; and
 - (c) may be accompanied by a copy or summary of, or extract from, the order.
- (6) 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 purposes of this regulation.
- (7) In subregulation (6) —
protected person means any of the following —
 - (a) the State;
 - (b) the Board;
 - (c) the Complaints Committee;
 - (d) a member of the Board or the Complaints Committee;
 - (e) a person responsible for keeping the whole or any part of a register or any similar record in or by which an order is publicised;
 - (f) an internet service provider or internet content host;

- (g) a person acting at the direction of the State or an entity referred to in this definition.

24. Conduct of multi-disciplinary partnership: section 132(3)

- (1) In this regulation —

external administrator means —

- (a) a Corporations Act administrator as defined in section 124(1) of the Act; or
 - (b) a person who is appointed under legislation (whether or not legislation of this jurisdiction) to a position equivalent to a position covered by paragraph (a); or
 - (c) an agent for the mortgagee.
- (2) An Australian legal practitioner must not be in partnership with a person who conducts a managed investment scheme where the business of the partnership includes the provision of legal services, except where the person conducts the managed investment scheme in the person's capacity as an external administrator.

[Regulation 24 inserted in Gazette 30 Aug 2011 p. 3507-8.]

Part 6 — Legal practice by foreign lawyers

25. Scope of practice: section 154(1)

- (1) For the purposes of section 154(1)(b) of the Act, arbitration proceedings in which —
 - (a) the arbitrator is not required to apply the rules of evidence; and
 - (b) knowledge of Australian law is not essential,are prescribed as a kind of arbitration proceedings in relation to which an Australian-registered foreign lawyer may provide legal services (including appearances).
- (2) For the purposes of section 154(1)(d) of the Act, all forms of dispute resolution are prescribed as kinds of dispute resolution in relation to which an Australian-registered foreign lawyer may provide legal services, except to the extent to which —
 - (a) the provisions of other legislation applying to dispute resolution; or
 - (b) the requirements of a body responsible for dispute resolution; or
 - (c) the provisions of a contract that provides for dispute resolution,restrict participation in dispute resolution to persons of a specified class that does not include Australian-registered foreign lawyers.
- (3) In subregulation (2) —

dispute resolution means conciliation, mediation and other forms of consensual dispute resolution.

26. Trust money and trust accounts: section 161

For the purposes of section 161 of the Act —

- (a) the provisions of Part 9 of the Act and any other provisions of the Act (other than Part 12 of the Act) relating to trust money and trust accounts; and
- (b) the provisions of Part 7 of these regulations and any other provisions of these regulations relating to trust money and trust accounts; and
- (c) any provisions of any legal profession rules relating to trust money and trust accounts,

apply to Australian-registered foreign lawyers as if a reference in those provisions to a law practice or an Australian legal practitioner were a reference to an Australian-registered foreign lawyer.

27. Professional indemnity insurance: section 162

- (1) For the purposes of section 162(1)(b)(ii) of the Act a disclosure statement must be in English or, if the client does not have a reasonable understanding of English, in some other language of which the client has a reasonable understanding.
- (2) For the purposes of section 162(1)(c) of the Act a disclosure statement must —
 - (a) be in English or, if the client does not have a reasonable understanding of English, in some other language of which the client has a reasonable understanding; and
 - (b) state that the foreign lawyer does not have —
 - (i) professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian lawyers in any jurisdiction; or
 - (ii) professional indemnity insurance that covers the practice of foreign law in this jurisdiction and

that complies with the relevant requirements of a foreign law or foreign registration authority.

28. Guarantee Fund contributions: section 344(2)

- (1) This regulation applies to a locally registered foreign lawyer who —
 - (a) is practising, or intends to practise, foreign law in this jurisdiction as an associate of a law practice; and
 - (b) has applied for the grant or renewal of registration as a foreign lawyer under the Act.
- (2) A foreign lawyer to whom this regulation applies must, when his or her application for the grant of registration as a foreign lawyer under the Act is granted by the Board, pay to the Board for application to the Guarantee Fund the contribution to the Guarantee Fund for the year ending on 30 June during which the registration is to be in force.
- (3) A foreign lawyer to whom this regulation applies must, for each of the 4 years following the year in which payment is made under subregulation (3), when his or her application for the renewal of registration as a foreign lawyer under the Act is granted by the Board, pay to the Board for application to the Guarantee Fund the contribution to the Guarantee Fund for the year ending on 30 June during which the registration is to be in force.
- (4) The amount of contribution is an amount that is the same as the amount that would have to be paid under section 337 of the Act if the foreign lawyer were a local legal practitioner required to make a payment under that section.

29. Guarantee Fund levy: sections 339, 344

Section 339 of the Act applies to a locally registered foreign lawyer practising in this jurisdiction as an associate of a law practice in the same way as it applies to a local legal practitioner.

30. Failure to pay Guarantee Fund levy: sections 340, 344

- (1) Section 340 of the Act applies to a locally registered foreign lawyer practising in this jurisdiction as an associate of a law practice in the same way as it applies to a local legal practitioner with the modification made by subregulation (2).
- (2) Section 340 of the Act applies under this regulation as if a reference in that section to a local practising certificate were a reference to a local registration certificate within the meaning of section 150 of the Act.

31. Locally registered foreign lawyers not covered by Guarantee Fund

- (1) This regulation applies to a locally registered foreign lawyer practising foreign law in this jurisdiction otherwise than as an associate of a law practice.
- (2) A foreign lawyer to whom this regulation applies may not practise foreign law in this jurisdiction on behalf of a client unless he or she has provided the client with a disclosure statement in respect of the foreign lawyer's lack of cover by the Guarantee Fund.
- (3) A disclosure statement under subregulation (2) is not valid unless —
 - (a) it is in writing; and
 - (b) it is in English or, if the client does not have a reasonable understanding of English, in some other language of which the client has a reasonable understanding; and
 - (c) it states that the client is not covered by the Guarantee Fund with respect to the practice of foreign law in this jurisdiction; and
 - (d) it states that Australian legal practitioners generally are covered by the Guarantee Fund.

**32. Register of locally registered foreign lawyers:
section 198(2)(b)**

- (1) For the purposes of section 198(2)(b) of the Act, the particulars mentioned in subregulation (2) are prescribed as particulars to be included in the register kept under section 198 of the Act in relation to a locally registered foreign lawyer, except if the Board is required by subregulation (5) not to include them in the register.
- (2) The particulars to be included in the register are as follows —
 - (a) the name of the foreign lawyer;
 - (b) the name of the partnership of which the lawyer is a member or, if the lawyer is not a member or employee of a partnership, the name of the entity of which the lawyer is a director, officer or employee or with which the lawyer is otherwise engaged in legal practice;
 - (c) the contact details of the office of the partnership or other entity in this jurisdiction;
 - (d) by way of separate additional entry, the name of the partnership or other entity and the contact details of the office of the partnership or other entity —
 - (i) in this jurisdiction; and
 - (ii) in any other jurisdictions in which it has an office, except where the Board considers those particulars need not be included in respect of an entity that is not a law practice;
 - (e) details of the foreign registration authority or authorities by which the lawyer is registered to engage in legal practice in a foreign country or foreign countries;
 - (f) any other particulars about the lawyer, partnership or other entity that the Board considers should be included.
- (3) Contact details of an office are as follows —
 - (a) its street address (the address where the office is physically located);

- (b) its postal address (a post office box number and the location and postcode of the post office), if any;
 - (c) its DX address (the number of the exchange box in a document exchange (DX)), if any.
- (4) A locally registered foreign lawyer may, by notice in writing to the Board, request the Board not to include any or any specified particulars about the lawyer, partnership or other entity in the register, on the ground that special circumstances warrant the particulars not being publicly available (for example, if the safety or well-being of a person would be substantially affected by making the particulars publicly available).
- (5) If the Board is satisfied that those special circumstances exist, the Board is required not to include the particulars concerned in the register, unless the Board considers that the public interest in maintaining public access to the particulars outweighs any individual interest in the particulars not being publicly available.

Part 7 — Trust money and trust accounts

Division 1 — Preliminary matters

33. Operation of this Part

This Part has effect for the purposes of Part 9 of the Act, and accordingly applies to a law practice in respect of —

- (a) trust money received by the practice in this jurisdiction, unless the practice has an office in one or more other jurisdictions but not in this jurisdiction; and
- (b) trust money received by the practice in another jurisdiction, if the practice has an office in this jurisdiction but in no other jurisdiction; and
- (c) trust money received by the practice in another jurisdiction, if the practice has an office in —
 - (i) this jurisdiction; and
 - (ii) one or more other jurisdictions but not in the jurisdiction in which the money was received,unless the money is dealt with in accordance with the corresponding law of a jurisdiction in which the practice has an office.

34. Terms used

In this Part —

BSB number (Bank State Branch number) means the number assigned to identify a particular branch of a particular ADI;

matter description means a brief phrase or expression assigned by a law practice to describe a matter;

matter reference means a number or other reference assigned by a law practice to identify a matter;

trust money means trust money in respect of which this Part for the time being applies, as mentioned in regulation 33.

Division 2 — Computerised accounting systems

35. Application of Division

This Division applies where a law practice maintains trust records (including records relating to controlled money) by means of a computerised accounting system.

36. Copies of trust records to be printed

- (1) The law practice must print a paper copy of trust records as follows —
 - (a) trust account receipts and payments cash books are to be printed monthly as at the end of each month, unless a copy of the books as at the end of the month is kept in electronic form that is readable or reportable on demand;
 - (b) reconciliation statements prepared under regulation 51 are to be printed as at the end of each month;
 - (c) lists of trust account ledgers and their balances are to be printed monthly as at the end of each month;
 - (d) lists of controlled money accounts and their balances are to be printed monthly as at the end of each month;
 - (e) trust ledger accounts, the register of controlled money and the trust account transfer journal are to be printed before they are archived or deleted from the system;
 - (f) trust ledger account and controlled money account details are to be printed on request by and provided to an investigator as defined in section 205(1) of the Act.
- (2) The trust records printed monthly as at the end of a month under subregulation (1)(a) to (d) must be printed within 15 working days after the end of the month.
- (3) The paper copies printed under subregulation (1) must be kept by the law practice, except where they are printed on request under that subregulation.

- (4) The electronic copy of the trust account cash books under subregulation (1)(a) must be kept by the law practice.

37. Chronological record of information to be made

- (1) The law practice must maintain a record, compiled in chronological sequence, of the creation, amendment or deletion of information in its computerised accounting system in relation to the following —
- (a) client name;
 - (b) client address;
 - (c) matter reference;
 - (d) matter description;
 - (e) ledger account number or other descriptor.
- (2) The record must be kept by the law practice.

38. Requirements regarding computer accounting systems

- (1) The law practice must ensure that its computerised accounting system is not capable of accepting, in respect of a trust ledger account, the entry of a transaction resulting in a debit balance to the account, unless a contemporaneous record of the transaction is made in a manner that enables the production in a permanent form, on demand, of a separate chronological report of all occurrences of that kind.
- (2) The law practice must ensure that the system is not capable of deleting a trust ledger account unless —
- (a) the balance of the account is zero and all outstanding cheques have been presented; and
 - (b) when the account is deleted, a copy of the account is kept in a permanent form.
- (3) The law practice must ensure that any entry in a record produced in a permanent form appears in a chronological sequence.

- (4) The law practice must ensure that each page of each printed record is numbered sequentially or is printed in such a way that no page can be extracted.
- (5) The law practice must ensure that its computerised accounting system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.
- (6) The law practice must ensure that its computerised accounting system requires input in every field of a data entry screen intended to receive information required by this Part to be included in trust records.

39. Back-ups

The law practice must ensure that —

- (a) a back-up copy of all records required by this Part is made not less frequently than once each month; and
- (b) each back-up is kept by the law practice; and
- (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

Division 3 — General trust accounts

40. Establishment of general trust account: section 214(2)

- (1) A law practice may at any time establish a general trust account that satisfies the requirements of this regulation, but must, as soon as practicable after receiving trust money that is required to be paid into a general trust account, establish a general trust account that satisfies those requirements if the practice does not already have such a general trust account.

- (2) A general trust account satisfies the requirements of this regulation if —
- (a) the account is established in this jurisdiction, before or after the commencement of this regulation, with an ADI; and
 - (b) the account is and is to be maintained in this jurisdiction; and
 - (c) the name of the account includes —
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression “law practice trust account” or “law practice trust a/c”;and
 - (d) the account is of a kind that is for the time being approved by the Board.
- (3) Subregulation (2)(c) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (4) Subregulation (2)(c)(ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.

41. Receipting of trust money

- (1) This regulation applies if a law practice receives trust money that is required to be paid into a general trust account.
- (2) After receiving the trust money, the law practice must make out a receipt.
- (3) The receipt must be made out as soon as practicable —
 - (a) after the trust money is received, except as provided by paragraph (b); or
 - (b) in the case of trust money received by direct deposit — after the law practice receives or accesses notice or

confirmation (in written or electronic form) of the deposit from the ADI concerned.

- (4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the trust account receipts cash book.
- (5) For the purposes of subregulation (4), the **required particulars** are as follows —
- (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression “trust account” or “trust a/c”;
 - (h) the name of the person who made out the receipt;
 - (i) the number of the receipt.
- (6) The original receipt must be delivered, on request, to the person from whom the trust money was received.
- (7) Receipts must be consecutively numbered and issued in consecutive sequence.
- (8) If a receipt is cancelled or not delivered, the original receipt must be kept.

42. Deposit records for trust money

- (1) This regulation applies if a law practice receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.
- (2) A deposit record must be produced to the ADI at the time the deposit is made.
- (3) The following particulars must be recorded on the deposit record —
 - (a) the date of the deposit;
 - (b) the amount of the deposit;
 - (c) whether the deposit consists of cheques, notes or coins (and the amount of each);
 - (d) for each cheque —
 - (i) the name of the drawer of the cheque;
 - (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn;
 - (iii) the amount of the cheque.
- (4) The deposit record must be made out in duplicate, whether by way of making a carbon copy or otherwise.
- (5) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

43. Direction for non-deposit of trust money in general trust account: section 215(4)

For the purposes of section 215(4) of the Act, the period for which a written direction mentioned in section 215(2)(a) of the Act must be kept is 7 years after the finalisation of the matter to which the direction relates.

44. Payment by cheque

- (1) In this regulation —
associate means an associate of a law practice;
authorised means authorised by the law practice to sign cheques drawn on the general trust account.
- (2) This regulation applies to the withdrawal of trust money from a general trust account of a law practice by cheque.
- (3) A cheque —
- (a) must be made payable to or to the order of a stated person or persons and not to bearer or cash; and
 - (b) must be crossed “not negotiable”; and
 - (c) must include —
 - (i) the name of the law practice or the business name under which the law practice engages in legal practice; and
 - (ii) the expression “law practice trust account” or “law practice trust a/c”.
- (4) A cheque must be signed —
- (a) by an authorised principal of the law practice; or
 - (b) if a principal referred to in paragraph (a) is not available —
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) by 2 or more authorised associates jointly.
- (5) A written record of the required particulars (including a record in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those

particulars are recorded by computer program in the trust account payments cash book.

- (6) If, at the time the cheque is issued, the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (7) For the purposes of subregulations (5) and (6), the **required particulars** are as follows —
 - (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (e) details clearly identifying the ledger account to be debited;
 - (f) particulars sufficient to identify the purpose for which the payment was made.
- (8) Written records relating to payments by cheque (including cheque requisitions) must be kept in the order in which the cheques were issued.
- (9) Subregulation (3)(c) does not apply to an account established in this jurisdiction before the commencement of this regulation.
- (10) Subregulation (3)(c)(ii) does not require the repetition of the words “law practice” if those words form part of the name or business name of the law practice.

45. Payment by electronic funds transfer

- (1) In this regulation —
- associate*** means an associate of a law practice;
- authorised*** means authorised by the law practice to effect, direct or give authority for an electronic funds transfer from the general trust account.
- (2) This regulation applies to the withdrawal of trust money from a general trust account of a law practice by electronic funds transfer.
- (3) An electronic funds transfer must be effected by, under the direction of or with the authority of —
- (a) an authorised principal of the law practice; or
 - (b) if a principal referred to in paragraph (a) is not available —
 - (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.
- (4) A written record of the required particulars must be kept of each payment unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.
- (5) If at the time the electronic funds transfer is effected the required particulars are recorded by computer program in the trust account payments cash book, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (6) For the purposes of subregulations (4) and (5), the ***required particulars*** are as follows —
- (a) the date and number of the transaction;

- (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and relevant BSB number;
 - (d) the name of the person to whom the payment was made or, for a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (7) Written records relating to payments by electronic funds transfer (including transfer requisitions) must be kept in the order in which the transfers were effected.

46. Recording transactions in trust account cash books

A law practice that keeps a general trust account must keep the following trust account cash books —

- (a) a trust account receipts cash book in accordance with regulation 47;
- (b) a trust account payments cash book in accordance with regulation 48.

47. Trust account receipts cash book

- (1) The following particulars must be recorded in a law practice's trust account receipts cash book in respect of each receipt of trust money —
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;

- (c) the amount of money received;
 - (d) the form in which the money was received;
 - (e) the name of the person from whom the money was received;
 - (f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
 - (g) particulars sufficient to identify the purpose for which the money was received;
 - (h) details clearly identifying the ledger account to be credited.
- (2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.
- (3) The particulars in respect of receipts must be recorded in the order in which the receipts are made out.
- (4) The particulars in respect of a receipt must be recorded within 5 working days counting from and including the day the receipt was made out.

48. Trust account payments cash book

- (1) The following particulars must be recorded in a law practice's trust account payments cash book in respect of each payment of trust money by cheque —
- (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

- (e) details clearly identifying the ledger account to be debited;
 - (f) particulars sufficient to identify the purpose for which the payment was made.
- (2) The following particulars must be recorded in a law practice's trust accounts payments cash book in respect of each payment of trust money by electronic funds transfer —
- (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) details clearly identifying the ledger account to be debited;
 - (g) particulars sufficient to identify the purpose for which the payment was made.
- (3) The particulars in respect of payments must be recorded in the order in which the payments are made.
- (4) The particulars in respect of a payment must be recorded within 5 working days counting from and including the day the payment was made.

49. Recording transactions in trust ledger accounts

- (1) A law practice that maintains a general trust account must keep a trust account ledger containing separate trust ledger accounts in relation to each client of the practice in each matter for which trust money has been received by the practice.

- (2) The following particulars must be recorded in the title of a trust ledger account —
- (a) the name of the person for or on behalf of whom the trust money was paid;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter in relation to which the trust money was received.
- (3) Details of any changes in the title of a trust ledger account must be recorded.
- (4) The following particulars must be recorded in the trust ledger account in respect of each receipt of trust money for the matter —
- (a) the date a receipt was made out for the money and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the amount of money received;
 - (d) the name of the person from whom the money was received;
 - (e) particulars sufficient to identify the purpose for which the money was received.
- (5) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by cheque —
- (a) the date and number of the cheque;
 - (b) the amount ordered to be paid by the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (d) particulars sufficient to identify the purpose for which the payment was made.

- (6) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by electronic funds transfer —
- (a) the date and number of the transaction;
 - (b) the amount transferred;
 - (c) the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) particulars sufficient to identify the purpose for which the payment was made.
- (7) The following particulars must be recorded in the trust ledger account in respect of each transfer of trust money effected by a journal entry —
- (a) the date of the transfer;
 - (b) the amount transferred;
 - (c) the journal reference number;
 - (d) the name of the other trust ledger account from which or to which the money was transferred;
 - (e) particulars sufficient to identify the purpose for which the payment was made.
- (8) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.
- (9) The particulars in respect of a receipt, payment or transfer of trust money must be recorded within 5 working days counting from and including the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.

- (10) The trust ledger account balance is to be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

50. Journal transfers

- (1) Trust money may be transferred by journal entry from one trust ledger account in a law practice's trust ledger to another trust ledger account in the trust ledger, but only if —
- (a) the law practice is entitled to withdraw the money and pay it to the other trust ledger account; and
 - (b) subregulation (2) is complied with.
- (2) The transfer must be authorised in writing —
- (a) by an authorised principal of the law practice; or
 - (b) if a principal referred to in paragraph (a) is not available —
 - (i) by an authorised legal practitioner associate; or
 - (ii) by an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) by 2 or more authorised associates jointly;
- or
- (c) by an external intervener for the practice.

- (3) For the purposes of subregulation (2) —

associate means an associate of a law practice;

authorised means authorised by the law practice or an external intervener for the practice to effect, direct or give authority for the transfer of trust money by journal entry from one trust ledger account in the practice's trust ledger to another trust ledger account in the trust ledger;

external intervener has the same meaning as in section 471 of the Act.

- (4) A law practice must keep a trust account transfer journal if it transfers trust money by journal entry.
- (5) The following particulars must be recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry —
 - (a) the date of the transfer;
 - (b) the trust ledger account from which the money is transferred (including its identifying reference);
 - (c) the trust ledger account to which the money is transferred (including its identifying reference);
 - (d) the amount transferred;
 - (e) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.
- (6) Journal pages or entries must be consecutively numbered.
- (7) A law practice must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

51. Reconciliation of trust records

- (1) A law practice that maintains one or more general trust accounts must reconcile the trust records relating to the only or each account.
- (2) The trust records relating to a general trust account are to be reconciled as at the end of each month by preparing —
 - (a) a statement —
 - (i) reconciling the general trust account balance as shown in ADI records with the balance of the practice's trust account cash books; and
 - (ii) showing the date the statement was prepared;and

- (b) a statement —
 - (i) reconciling the balance of the trust ledger accounts with the balance of the practice's trust account cash books; and
 - (ii) containing a list of the practice's trust ledger accounts showing the name, identifying reference and balance of each and a short description of the matter to which each relates; and
 - (iii) showing the date the statement was prepared.
- (3) The statements must be prepared within 15 working days after the end of the month concerned.
- (4) The statement must be kept by the law practice.

52. Trust ledger account in name of law practice or legal practitioner associate

- (1) A law practice must not maintain a trust ledger account in the name of the practice or a legal practitioner associate of the practice except as authorised by this regulation.
- (2) A law practice may maintain in its trust ledger —
 - (a) a trust ledger account in the practice's name, but only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the practice for legal costs; and
 - (b) a trust ledger account in a legal practitioner associate's name, but only in respect of money in which the associate has a personal and beneficial interest as a vendor, purchaser, lessor or lessee or in another similar capacity.
- (3) In a case to which subregulation (2)(a) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one

month after the day on which the money was transferred to the trust ledger account.

- (4) In a case to which subregulation (2)(b) applies, the law practice must ensure that the money in the trust ledger account is withdrawn from the general trust account at the conclusion of the matter to which the money relates.

53. Notification requirements regarding general trust accounts

- (1) In this regulation —
law practice includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.
- (2) Within 14 days after establishing a general trust account, a law practice must give the Board written notice of that fact.
- (3) Within 14 days after the closure of a general trust account maintained by it, a law practice must give the Board written notice of that fact.
- (4) A notice under this regulation given by a law practice must include particulars sufficient to identify the general trust accounts of the practice.
- (5) Despite anything else in this regulation —
- (a) subregulation (2) does not apply to a general trust account established before the commencement of this regulation; and
 - (b) subregulation (3) does not apply to a general trust account that was closed before the commencement of this regulation.

Division 4 — Controlled money

54. Maintenance of controlled money accounts: section 218(4)

- (1) For the purposes of section 218(4) of the Act, a controlled money account must be maintained under an account name that includes the following particulars —
 - (a) the name of the law practice concerned;
 - (b) the expression “controlled money account” or the abbreviation “CMA” or “CMA/c”;
 - (c) such particulars as are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the law practice.
- (2) This regulation does not apply to an account established in this jurisdiction before the commencement of this regulation.

55. Receipt of controlled money

- (1) This regulation applies if a law practice receives controlled money.
- (2) The law practice must operate a single controlled money receipt system for the receipt of controlled money for all its controlled money accounts.
- (3) After receiving controlled money, the law practice must make out a receipt.
- (4) The receipt must be made out as soon as practicable —
 - (a) after the controlled money is received, except as provided by paragraph (b); or
 - (b) in the case of controlled money received by direct deposit — after the law practice receives or accesses notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.
- (5) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or

otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.

- (6) For the purposes of subregulation (5), the *required particulars* are as follows —
- (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the amount of money received;
 - (c) the form in which the money was received;
 - (d) the name of the person from whom the money was received;
 - (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;
 - (h) the name of the law practice, or the business name under which the law practice engages in legal practice, and the expression “controlled money receipt”;
 - (i) the name of the person who made out the receipt;
 - (j) the number of the receipt.
- (7) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).
- (8) The original receipt must be delivered, on request, to the person from whom the controlled money was received.

- (9) Receipts must be consecutively numbered and issued in consecutive sequence.
- (10) If a receipt is cancelled or not delivered, the original receipt must be kept.
- (11) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

56. Deposit of controlled money: section 218(5)

For the purposes of section 218(5) of the Act, the prescribed period for which a written direction referred to in section 218(1) of the Act is to be kept is 7 years after finalisation of the matter to which the direction relates.

57. Withdrawal of controlled money must be authorised

- (1) In this regulation —
 - associate* means an associate of the law practice;
 - authorised* means authorised by the law practice to effect, direct or give authority for a withdrawal of money from the controlled money account.
- (2) A withdrawal of money from a controlled money account of a law practice must be effected by, under the direction of or with the authority of —
 - (a) an authorised principal of the law practice; or
 - (b) if a principal referred to in paragraph (a) is not available —
 - (i) an authorised legal practitioner associate; or
 - (ii) an authorised Australian legal practitioner who holds an unrestricted practising certificate authorising the receipt of trust money; or
 - (iii) 2 or more authorised associates jointly.

- (3) A written record of the required particulars must be kept of each withdrawal unless at the time the withdrawal is made those particulars are recorded by computer program.
- (4) If at the time the withdrawal is made the required particulars are recorded by computer program, a written record must be kept that is sufficient to enable the accuracy of the particulars recorded by the computer program to be verified.
- (5) For the purposes of subregulations (3) and (4), the **required particulars** are as follows —
 - (a) the date and number of the transaction;
 - (b) the amount withdrawn;
 - (c) in the case of a transfer made by electronic funds transfer — the name and number of the account to which the amount was transferred and the relevant BSB number;
 - (d) the name of the person to whom payment is to be made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;
 - (e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;
 - (f) particulars sufficient to identify the purpose for which the payment was made;
 - (g) the person or persons effecting, directing or authorising the withdrawal.
- (6) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.

58. Register of controlled money

- (1) A law practice that receives controlled money must maintain a register of controlled money consisting of the records of

controlled money movements for the controlled money accounts of the practice.

- (2) A separate record of controlled money movements must be maintained for each controlled money account.
- (3) A record of controlled money movements for a controlled money account must record the following information —
 - (a) the name of the person on whose behalf the controlled money is held;
 - (b) the person's address;
 - (c) particulars sufficient to identify the matter;
 - (d) any changes to the information referred to in paragraphs (a) to (c).
- (4) The following particulars must be recorded in a record of controlled money movements for a controlled money account —
 - (a) the date the controlled money was received;
 - (b) the number of the receipt;
 - (c) the date the money was deposited in the controlled money account;
 - (d) the name of and other details clearly identifying the controlled money account;
 - (e) the amount of controlled money deposited;
 - (f) details of the deposit sufficient to identify the deposit;
 - (g) interest received;
 - (h) details of any payments from the controlled money account, including the particulars required to be recorded under regulation 57(5).
- (5) With the exception of interest and other income received in respect of controlled money, particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the law practice or any payment is made.

- (6) Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the law practice is notified of its receipt.
- (7) The law practice must keep as part of its trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.
- (8) Within 15 working days after each month, the law practice must prepare and keep as a permanent record a statement as at the end of the month —
 - (a) containing a list of the practice's controlled money accounts showing —
 - (i) the name, number and balance of each account in the register; and
 - (ii) the name of the person on whose behalf the controlled money in each account was held; and
 - (iii) a short description of the matter to which each account relates;and
 - (b) showing the date the statement was prepared.

Division 5 — Transit money

59. Information to be recorded about transit money: section 220

- (1) This regulation has effect for the purposes of section 220 of the Act.
- (2) A law practice must, in respect of transit money received by the practice, record and keep brief particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

Division 6 — Trust money generally

60. Trust account statements

- (1) A law practice must furnish a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the law practice or an associate of the practice.
- (2) In the case of trust money in relation to which the law practice is required to maintain a trust ledger account, the practice must furnish a separate statement for each trust ledger account.
- (3) In the case of controlled money in relation to which the law practice is required to maintain a record of controlled money movements, the practice must furnish a separate statement for each record.
- (4) In the case of trust money subject to a power given to the law practice or an associate of the practice in relation to which the practice is required to keep a record of all dealings with the money to which the practice or associate is a party, the practice must furnish a separate statement for each record.
- (5) A trust account statement is to contain particulars of —
 - (a) all the information required to be kept under this Part in relation to the trust money included in the relevant ledger account or record; and
 - (b) the remaining balance (if any) of the money.
- (6) A trust account statement is to be furnished —
 - (a) as soon as practicable after completion of the matter to which the ledger account or record relates; or
 - (b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or

- (c) except as provided by subsection (7), as soon as practicable after 30 June in each year.
- (7) The law practice is not required to give a trust account statement under subsection (6)(c) in relation to a ledger account or record if at 30 June —
 - (a) the ledger account or record has been open for less than 6 months; or
 - (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or
 - (c) a trust account statement has been given within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.
- (8) The law practice must keep a copy of a trust account statement furnished under this regulation.

61. Trust account statements for sophisticated clients

- (1) In this regulation —
sophisticated client has the same meaning as in section 252 of the Act.
- (2) Regulation 60 does not apply to a sophisticated client to the extent to which the client directs the law practice not to provide trust account statements under that regulation.
- (3) If the sophisticated client directs the law practice to provide trust account statements on a basis different from that prescribed by regulation 60, the law practice must provide those statements as directed, except to the extent to which the direction is unreasonably onerous.
- (4) The law practice must keep a copy of a trust account statement furnished under this regulation.

62. Register of investments

- (1) This regulation applies if trust money referred to in section 206(3) of the Act is invested by a law practice for or on behalf of a client, but this regulation does not itself confer power to make investments.
- (2) The law practice must maintain a register of investments of trust money.
- (3) The register must record the following information in relation to each investment —
 - (a) the name in which the investment is held;
 - (b) the name of the person on whose behalf the investment is made;
 - (c) the person's address;
 - (d) particulars sufficient to identify the investment;
 - (e) the amount invested;
 - (f) the date the investment was made;
 - (g) particulars sufficient to identify the source of the investment, including, for example —
 - (i) a reference to the relevant trust ledger; and
 - (ii) a reference to the written authority to make the investment; and
 - (iii) the number of the cheque for the amount to be invested;
 - (h) details of any documents evidencing the investment;
 - (i) details of any interest received from the investment or credited directly to the investment;
 - (j) details of the repayment of the investment and any interest, on maturity or otherwise.
- (4) This regulation does not require particulars to be recorded in the register if the particulars are required to be recorded elsewhere by another regulation.

63. Trust money subject to specific powers: section 221

- (1) This regulation has effect for the purposes of section 221 of the Act.
- (2) If a law practice or an associate of the practice is given a power to deal with trust money for or on behalf of another person, the practice must keep —
 - (a) a record of all dealings with the money to which the practice or associate is a party; and
 - (b) all supporting information in relation to the dealings, in a manner that enables the dealings to be clearly understood.
- (3) The record, supporting information and power must be kept by the law practice as part of the practice's trust records.

64. Register of powers and estates in relation to trust money

- (1) A law practice must maintain a register of powers and estates in respect of which the law practice or an associate of the practice is acting or entitled to act, alone or jointly with the law practice or one or more associates of the practice, in relation to trust money.
- (2) Subregulation (1) does not apply where the law practice or associate is also required to act jointly with one or more persons who are not associates of the practice.
- (3) The register of powers and estates must record —
 - (a) the name and address of the donor and date of each power; and
 - (b) the name and date of death of the deceased in respect of each estate of which the law practice or associate is executor or administrator.

65. Withdrawing trust money for legal costs: section 225(1)(b)

- (1) This regulation prescribes, for the purposes of section 225(1)(b) of the Act, the procedure for the withdrawal of trust money held

in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the account.

- (2) The trust money may be withdrawn in accordance with the procedure set out in either subregulation (3) or (4).
- (3) The law practice may withdraw the trust money —
 - (a) if —
 - (i) the money is withdrawn in accordance with a costs agreement that complies with the legislation under which it is made and that authorises the withdrawal; or
 - (ii) the money is withdrawn in accordance with instructions that have been received by the practice and that authorise the withdrawal; or
 - (iii) the money is owed to the practice by way of reimbursement of money already paid by the practice on behalf of the person;and
 - (b) if, before effecting the withdrawal, the practice gives or sends to the person —
 - (i) a request for payment, referring to the proposed withdrawal; or
 - (ii) a written notice of withdrawal.
- (4) The law practice may withdraw the trust money —
 - (a) if the practice has given the person a bill relating to the money; and
 - (b) if —
 - (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
 - (ii) the person has objected within 7 days after being given the bill but has not applied for a review of

the legal costs under the Act within 60 days after being given the bill; or

(iii) the money otherwise becomes legally payable.

- (5) Instructions mentioned in subregulation (3)(a)(ii) —
- (a) if given in writing, must be kept as a permanent record; or
 - (b) if not given in writing, must be confirmed in writing either before, or not later than 5 working days after, the law practice effects the withdrawal and a copy must be kept as a permanent record.
- (6) For the purposes of subregulation (3)(a)(iii), money is taken to have been paid by the law practice on behalf of the person when the relevant account of the practice has been debited.

66. Keeping of trust records: section 228

- (1) This regulation has effect for the purposes of section 228 of the Act for the keeping in a permanent form of a law practice's trust records in relation to trust money received by the practice.
- (2) The trust records are to be kept for a period of 7 years after —
- (a) in the case of a trust record referred to in paragraphs (a) to (m) of the definition of *trust records* in section 205(1) of the Act — the only or the last transaction entry in the record; or
 - (b) in the case of any other trust record — finalisation of the matter to which the records relates.
- (3) This regulation does not apply to a written direction referred to in section 215(2)(a) or 218(1) of the Act.

67. Keeping other records and information

- (1) A record maintained under regulation 37 is, so far as it relates to particular information, to be kept by the law practice for a period of 7 years after finalisation of the matter to which the record relates.

- (2) Any other record or information required by this Part to be kept by a law practice is to be kept for a period of 7 years after finalisation of the matter to which the record relates.
- (3) This regulation does not apply to records to which regulation 43, 56 or 66 applies.

68. Statements regarding receipt or holding of trust money

- (1) The Board may, by notice given under this regulation, require a law practice to give the Board a statement —
 - (a) specifying whether or not the practice has, during a period specified by the Board, received or held trust money; and
 - (b) if it has received or held trust money during that period, specifying to which of the following categories the trust money belongs —
 - (i) general trust money (being trust money other than that referred to in subparagraphs (ii) to (iv));
 - (ii) controlled money;
 - (iii) transit money;
 - (iv) money subject to a power.
- (2) A notice may be given so as to apply in respect of one or more periods (whether they occur annually or otherwise), and may be withdrawn or varied by a further notice.
- (3) A notice may specify the time by which or the period during which the requirement must be complied with.
- (4) A notice is given to —
 - (a) a particular law practice by sending the notice by post to the practice; or
 - (b) a particular class of law practices by publishing the notice in a circular distributed generally to law practices of the class or in a magazine or other publication available generally to law practices of the class.

- (5) A law practice —
- (a) must comply with a requirement imposed on it under this regulation and must do so by the time or during the period specified in the notice for compliance; and
 - (b) must not include in the statement any information that is false or misleading in a material particular.

Division 7 — External examinations

69. Requirement for external examinations: section 237

- (1) For the purposes of section 237(1) of the Act, a law practice must appoint a designated person as an external examiner to examine the practice's trust records.
- (2) If the only trust money received or held by a law practice during a financial year is transit money, the practice's trust records in respect of that year are not required to be externally examined.

70. Appointment of external examiners: sections 237 and 239

A law practice must cause written notice to be given to the Board on each occasion that it appoints a designated person as an external examiner.

71. Prescribed form for law practice ceasing to be authorised to receive trust money or engage in legal practice: section 239(3)

For the purposes of section 239(3)(b) of the Act, the prescribed form of a statutory declaration to be lodged by a law practice is in Schedule 1 Form 1.

72. Report on external examiner's examination: section 240

For the purposes of section 240(3)(b) of the Act, an external examiner's report must include the information, and be given in the way, approved by the Board.

Division 8 — Miscellaneous

73. Trust money protocols: section 209

For the purposes of section 209(4) of the Act, a document is identified as a trust money protocol if the document describes itself as a protocol and is executed by or on behalf of the Board and by or on behalf of one or more regulatory authorities of other jurisdictions.

74. Law practice closing down, closing office or ceasing to receive or hold trust money

(1) In this regulation —

law practice includes a former law practice and the persons who were principals of a law practice immediately before the law practice ceased to exist as a law practice or to engage in legal practice in this jurisdiction.

(2) A law practice that holds trust money must give the Board at least 14 days written notice of its intention —

- (a) to cease to exist as a law practice; or
- (b) to cease to engage in legal practice in this jurisdiction; or
- (c) to cease to practise in such a way as to receive trust money.

(3) Within 14 days of ceasing to hold trust money, a law practice that holds trust money must give the Board —

- (a) written notice of that fact; and
- (b) if the practice has not given a notice under subregulation (2) within the previous 28 days, a notice that complies with that subregulation.

(4) A notice under this regulation must include particulars sufficient to identify —

- (a) a law practice's general trust accounts and controlled money accounts; and

- (b) trust money controlled by the practice (or by an associate of the practice) pursuant to a power; and
- (c) trust money invested by the practice.

75. Notification of money not received or held as trust money: section 248(4)

For the purposes of section 248(4) of the Act, a notification must include the information, and be given in the way, approved by the Board.

76. Disclosure of accounts used to hold money entrusted to legal practitioners: section 249(1)

- (1) For the purposes of section 249(1) of the Act, a law practice must notify the Board of the following details in relation to each account that is maintained at an ADI by the practice (or by any legal practitioner associate of the practice) and in which is held money entrusted to the practice or associate —
 - (a) the name of the ADI and its BSB number;
 - (b) the name and number of the account;
 - (c) the name of each person who is authorised to operate on the account;
 - (d) for each amount of money entrusted to the practice or associate —
 - (i) the name of the person for whom the money is entrusted; and
 - (ii) the purposes for which the money is entrusted; and
 - (iii) the date on which, and the manner in which, the money is deposited in the account; and
 - (iv) the date on which, and the manner in which, the money is withdrawn from the account.
- (2) The details must be given to the Board at the times and in the way the Board requires.

77. Exemptions

The Board may —

- (a) exempt a law practice from complying with any of the provisions of this Part subject to any conditions that may be imposed by the Board; and
- (b) at any time impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

Part 8 — Costs disclosure and assessment

78. When a matter has a substantial connection with this jurisdiction: section 258

For the purposes of Part 10 of the Act, a matter involving a client of a law practice has a substantial connection with this jurisdiction in any of the following circumstances —

- (a) the client is a natural person and is resident in this jurisdiction;
- (b) the client is a body corporate and —
 - (i) the client carries on its business activities principally in this jurisdiction; or
 - (ii) the legal services provided or to be provided relate principally to business activities carried on by the client in this jurisdiction;
- (c) the law practice, or the associate of the practice who is principally involved in the matter, engages in legal practice principally in this jurisdiction;
- (d) the legal services provided or to be provided relate to this jurisdiction, including, for example, legal services provided or to be provided for or in connection with —
 - (i) the conveyance or transfer of real property located in this jurisdiction; or
 - (ii) court proceedings in this jurisdiction.

79. Interest on unpaid legal costs: section 273(4)

- (1) This regulation is made for the purposes of section 273(4) of the Act and prescribes the rate of interest in excess of which a law practice may not charge interest under section 273 of the Act or under a costs agreement.
- (2) The rate is the rate that is equal to the Cash Rate Target as at the relevant date, increased by 2 percentage points.

- (3) In subregulation (2) —

Cash Rate Target means the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target;

relevant date means the date the bill was issued by the law practice concerned.

- (4) This regulation does not apply to a period occurring before the commencement of this regulation.

80. Disclosure of costs to clients form: section 260(5) and (7)

- (1) The form set out in Schedule 1 Form 2 is prescribed for the purposes of section 260(5) of the Act in connection with the details referred to in section 260(1)(b)(i) to (iii), (g), (i); (j) and (l) of the Act.
- (2) The Board is required to produce and maintain the fact sheet referred to in the form and make it available on the internet.

81. Exceptions to requirement for disclosure: section 263(2)(f)

For the purposes of section 263(2)(f) of the Act, the following circumstances are prescribed as circumstances in which disclosure under section 260 or 261(1) of the Act is not required —

- (a) the client is an overseas-registered foreign lawyer or a foreign law practice (within the meaning given to those terms in section 150 of the Act);
- (b) the client is a corporation that has a share capital and whose shares or the majority of whose shares are held beneficially for the Commonwealth, a State or a Territory.

82. Notification of client's rights form: section 291(3)

- (1) The form set out in Schedule 1 Form 3 is prescribed for the purposes of section 291(3) of the Act.

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- (2) The Board is required to produce and maintain the fact sheet referred to in the form and make it available on the internet.

Part 9 — Professional indemnity insurance

Division 1 — Preliminary

83. Terms used

In this Part —

exempt practitioner means an Australian legal practitioner who is entitled to exemption under regulation 97;

Law Mutual Fund means the Fund continued under section 330(1) of the Act;

PII arrangement means an arrangement made by the Law Society under regulation 84(1)(a);

professional indemnity insurance has the meaning given in section 327 of the Act;

renewal day means 15 May or such other day as is fixed by the Law Society in respect of a particular year by notice published in the *Gazette* not later than 15 April in that year.

Division 2 — PII arrangement and Law Mutual Fund

84. Law Society may make arrangements or approve scheme for professional indemnity insurance

- (1) The Law Society may do either or both of the following —
 - (a) make an arrangement from time to time with one or more insurers for the provision of professional indemnity insurance on such terms and conditions as the Law Society thinks fit;
 - (b) approve a scheme providing professional indemnity insurance.
- (2) The Law Society may do such acts and things as may be necessary or expedient for giving effect to the arrangement or scheme.

- (3) The Law Society must publish details of the arrangement or scheme by any means that it considers appropriate in order to bring those details to the attention of local legal practitioners and law practices practising in this jurisdiction.

85. Maintenance of Law Mutual Fund

The Law Mutual Fund must be maintained on an annual basis in relation to an insurance year.

86. Surplus funds

- (1) The Law Society may manage and apply any surplus funds in the Law Mutual Fund after the end of each insurance year as it thinks fit.
- (2) Without limiting subregulation (1), the Law Society may amalgamate the surplus funds into a reserve pool to be applied for the benefit of persons insured under this Part.

Division 3 — Duties of law practices

87. Requirements for professional indemnity insurance: law practices

- (1) Before commencing to engage in legal practice in this jurisdiction, a law practice must obtain professional indemnity insurance.
- (2) At all times while a law practice is engaged in legal practice in this jurisdiction, the law practice must maintain professional indemnity insurance.
- (3) If the insurance is not in accordance with the PII arrangement, the insurance must be in accordance with the terms and conditions of a scheme approved by the Law Society.
- (4) This regulation does not apply to a law practice that is exempt from compliance under regulation 95.

88. Application for professional indemnity insurance

- (1) Before commencing to engage in legal practice in this jurisdiction as a law practice, a law practice must apply to take and maintain professional indemnity insurance in compliance with regulation 87.
- (2) Not later than the renewal day in each year, each law practice engaged in legal practice in Western Australia must apply to take and maintain professional indemnity insurance in compliance with regulation 87.
- (3) The application must be in a form approved by the Law Society.
- (4) This regulation does not apply to a law practice that is exempt from compliance under regulation 95.

89. Late lodgment fee

- (1) A law practice that fails to make an application, and pay the amounts payable by the law practice under regulations 92 and 102(1)(a), must pay, in addition to those amounts, a late lodgment fee that is 10% of those amounts.
- (2) The Law Society may, in its discretion, waive payment of the late lodgment fee in whole or in part.

90. Restructured law practice

- (1) If —
 - (a) 2 or more law practices combine to form a single law practice; or
 - (b) a law practice becomes a multi-disciplinary partnership; or
 - (c) a law practice becomes an incorporated legal practice; or
 - (d) a law practice otherwise changes its business structure,the resulting law practice must immediately apply to take and maintain professional indemnity insurance in compliance with regulation 87.

- (2) The application must be in a form approved by the Law Society.
- (3) If, immediately before the occurrence of the event referred to in subregulation (1), all of the law practices involved had valid and current certificates of insurance in compliance with regulation 87, the Law Society may reduce or waive the annual contribution payable under regulation 92.

91. Certificate of insurance

When a law practice has —

- (a) made an application; and
- (b) paid the amounts payable by the law practice under regulations 92 and 102(1)(a); and
- (c) paid any amount payable under these regulations in relation to any previous period of insurance,

the Law Society must issue to the law practice a certificate of insurance under the PII arrangement.

92. Annual contribution

- (1) Each law practice is liable to pay an annual contribution to the Law Society for the purposes of the PII arrangement.
- (2) The Law Society must determine a method of assessment of annual contributions of law practices.
- (3) The method of assessment determined under subregulation (2) may take into account any matter the Law Society thinks relevant including the following —
 - (a) gross past or estimated future fee income of a law practice;
 - (b) professional indemnity insurance claims history of a law practice;
 - (c) in the case of a law practice that has not previously paid an annual contribution — the professional indemnity

- insurance claims history of the principals and employees of the law practice;
- (d) area of practice of a law practice;
 - (e) the business structure of a law practice;
 - (f) the number of principals in a law practice;
 - (g) the number of Australian legal practitioners employed by a law practice;
 - (h) the number of persons employed by a law practice;
 - (i) if a law practice is a multi-disciplinary partnership —
 - (i) the number of partners in the law practice who are not legal practitioner partners;
 - (ii) the types of non-legal services provided by the law practice;
 - (iii) the types of services provided by the law practice and the proportion of those services that are legal services;
 - (j) if a law practice is an incorporated legal practice —
 - (i) the number of directors of the law practice who are not legal practitioner directors;
 - (ii) the number of officers of the law practice and how many of them are Australian legal practitioners;
 - (iii) the types of services provided by the law practice and the proportion of those services that are legal services;
 - (k) the risk management practices of the law practice, including the attendance of principals and employees at risk management seminars.
- (4) The annual contribution of a law practice is the amount assessed by the Law Society in respect of that law practice in accordance with the method of assessment determined under subregulation (2).

- (5) If a law practice applies to take out and maintain insurance under the PII arrangement for part only of a year commencing on 1 July, the annual contribution payable by the law practice for that year is to be assessed on a pro rata basis.
- (6) This regulation does not apply to a law practice that is exempt from compliance under regulation 95.

93. Review and appeal

- (1) A law practice that is not satisfied with the assessment of its annual contribution under regulation 92 may apply to the Law Society for a review of the assessment, and the Law Society must review the assessment.
- (2) If, after the review, the law practice is still not satisfied with the assessment, the law practice may appeal against the assessment to a person nominated for that purpose by the Attorney General.
- (3) On an appeal under subregulation (2), the nominated person may —
 - (a) confirm the assessment; or
 - (b) revoke the assessment and make another assessment which has effect for the purposes of regulation 92.
- (4) The fact that the assessment of an annual contribution of a law practice is under review or appeal does not affect the law practice's obligation to pay the annual contribution.
- (5) If the annual contribution of a law practice is reduced on review or appeal, the amount of the reduction is to be refunded to the law practice, together with interest at a rate equal to that prescribed under the *Civil Judgments Enforcement Act 2004* section 8(1)(a) at the time the refund is made.
- (6) A law practice cannot apply for a review of, or appeal against, a determination under subregulation (3).

94. Incorrect information

If the assessment of the annual contribution of a law practice is made under regulation 92 on the basis of information supplied by the law practice which is found to be incorrect, the law practice must pay to the Law Society any additional amount that would have been payable if the annual contribution had been assessed on the basis of the correct information.

95. Exempt law practices

A law practice is exempt from the requirement to obtain or maintain professional indemnity insurance, and to pay an annual contribution, under this Division if each legal practitioner associate of the law practice is an exempt practitioner.

Division 4 — Duties of Australian legal practitioners

96. Requirements for professional indemnity insurance: Australian legal practitioners

An Australian legal practitioner must not engage in legal practice in this jurisdiction unless —

- (a) there is in force with respect to the legal practitioner a valid current certificate of insurance in accordance with this Part; or
- (b) there is in force with respect to the legal practitioner valid current professional indemnity insurance on terms and conditions approved by the Law Society; or
- (c) the practitioner is an exempt practitioner.

97. Exempt Australian legal practitioners

- (1) The following Australian legal practitioners are exempt from the requirement to comply with regulation 96(a) or (b) —
 - (a) a barrister who is covered by a policy of professional indemnity insurance that —

- (i) is in a form approved by resolution of the Council of The Western Australian Bar Association (Inc.); and
 - (ii) provides cover up to a limit which, in the aggregate, is not less than that provided under a certificate of insurance under the PII arrangement for the period in respect of which exemption is claimed;
- (b) a practitioner employed by an entity, other than an incorporated legal practice, if —
 - (i) the only legal services provided by the practitioner are to members or employees of the entity; and
 - (ii) the entity is covered by professional indemnity insurance approved by the Law Society for the period in respect of which the exemption is claimed;
- (c) a practitioner employed by an entity, other than an incorporated legal practice, if the only legal services provided by the practitioner are in-house legal services;
- (d) a practitioner who does not engage in legal practice otherwise than as a WA government lawyer or as an officer or employee of the State or of an instrumentality of the State;
- (e) a practitioner who engages in legal practice as an employee of —
 - (i) a community legal centre; or
 - (ii) the Legal Aid Commission or the Aboriginal Legal Service; or
 - (iii) any other body or organisation providing legal aid in respect of which the Law Society Council has resolved the employees of that body or organisation should be entitled to exemption, and who does not otherwise engage in legal practice;

- (f) a practitioner who does not engage in any legal practice that would result in the practitioner being required under section 12 of the Act to be an Australian legal practitioner;
 - (g) a practitioner who engages in legal practice as a principal or employee of a national law practice which —
 - (i) not later than 1 December, or such other day as is determined by the Law Society, in any year, gives an undertaking to the Law Society that the law practice will take out and maintain national insurance; and
 - (ii) not later than the renewal day immediately following the day on which notice is given under subparagraph (i), or such other day as is determined by the Law Society, provides evidence satisfactory to the Law Society that the insurance has been taken out; and
 - (iii) maintains that insurance.
- (2) The Law Society may revoke or amend a resolution made for the purposes of subregulation (1)(e)(iii).
- (3) The Law Society may make a determination under subregulation (1)(g)(i) or (ii) in relation to all national law practices, a class of national law practices or a specified national law practice.
- (4) In subregulation (1)(g) —
- national insurance*** means a policy of insurance —
- (a) that provides cover up to a limit which, in the aggregate, is not less than that provided under a certificate of insurance under the PII arrangement for the period in respect of which exemption is claimed; and

- (b) the terms of which are approved by the Law Society as being broadly equivalent to insurance under the PII arrangement;

national law practice means a law practice —

- (a) the business of which is primarily conducted in one or more other jurisdictions; and
- (b) of which all or the majority of the principals are interstate legal practitioners.

98. Notification of claim to exemption — Australian legal practitioners

- (1) An Australian legal practitioner, other than a barrister, who claims to be an exempt practitioner under regulation 97 and wishes to have his or her local practising certificate renewed must notify the Law Society of the claim not later than 15 May in each year.
- (2) The notice must be —
 - (a) in a form approved by the Law Society; and
 - (b) accompanied by the amount of the administration levy, if any, fixed under regulation 102(1)(b).
- (3) After 15 May in each year the Law Society must send notice to the Board informing the Board of the Australian legal practitioners who —
 - (a) have given notice under this regulation since the last previous notice was sent under the *Legal Practice (Professional Indemnity Insurance) Regulations 1995* regulation 12(2) or this subregulation; and
 - (b) are exempt practitioners.

99. Notification of claim to exemption — new local legal practitioners

- (1) An Australian lawyer who —
 - (a) has applied for a local practising certificate; and

- (b) claims that he or she will be an exempt practitioner if granted a local practising certificate,

must notify the Law Society of the claim as soon as practicable after applying for the local practising certificate.

- (2) The notice must be —
 - (a) in a form approved by the Law Society; and
 - (b) accompanied by the amount of the administration levy, if any, fixed under regulation 102(1)(b).
- (3) The Law Society must send notice to the Board informing the Board of the claim and advising as to whether the claimant will be an exempt practitioner.

100. Employee practitioners

- (1) Each Australian legal practitioner who —
 - (a) engages in legal practice in this jurisdiction as an employee under a contract of service with a legal practice; and
 - (b) does not otherwise engage in legal practice as a principal of a law practice,

must notify the Law Society of his or her status as such —

- (c) as soon as practicable after acquiring that status; and
 - (d) thereafter, not later than 15 May in each year or such other day as is determined by the Law Society.
- (2) The notice must be —
 - (a) in a form approved by the Law Society; and
 - (b) accompanied by the amount of the administration levy, if any, fixed under regulation 102(1)(c).
- (3) The Law Society may make a determination under subregulation (1)(d) in relation to all Australian legal practitioners, a class of Australian legal practitioners or a specified Australian legal practitioner.

101. Evidence as to PII compliance: section 40(3)

- (1) The Board is entitled to accept as evidence that an applicant for the grant or renewal of a local practising certificate is or will be covered by professional indemnity insurance that complies with the requirements of these regulations notice to that effect from the Law Society.
- (2) The Board is entitled to accept as evidence that an applicant for the grant or renewal of a local practising certificate is or will be an exempt practitioner notice to that effect from the Law Society under regulation 98(3) or 99(3).

Division 5 — Miscellaneous

102. Administration levy

- (1) The Law Society may from time to time fix an administration levy to be paid to the Law Society by a law practice or an Australian legal practitioner —
 - (a) applying to take and maintain insurance under the PII arrangement; or
 - (b) claiming under regulation 98 to be an exempt practitioner; or
 - (c) giving notification under regulation 100.
- (2) For the purposes of subregulation (1)(a), the Law Society may fix different administration levies according to —
 - (a) the number of Australian legal practitioners in or employed by a law practice; and
 - (b) whether those practitioners are, or are not, members of the Law Society.
- (3) For the purposes of subregulation (1)(b) and (c), the Law Society may fix different administration levies according to whether practitioners are, or are not, members of Law Society.

- (4) The Law Society may impose an additional administration levy on a law practice or an Australian legal practitioner if the law practice or practitioner fails to supply information as required under regulation 104.

103. Undertakings may be required

- (1) Every law practice or Australian legal practitioner —
- (a) applying to take and maintain insurance under the PII arrangement; or
 - (b) giving notification under regulation 98 or 100,
- must provide to the Law Society such undertakings as the Law Society may require with respect to that application or notification.
- (2) A law practice or Australian legal practitioner must comply with any undertaking given under subregulation (1), unless previously released from that undertaking by the Law Society.

104. Giving information to the Law Society

- (1) The Law Society may require a legal practice or Australian legal practitioner to supply the Law Society with any information the Law Society needs for the purposes of performing its functions under these regulations or of administering the PII arrangement.
- (2) Without limiting subregulation (1), the Law Society may at any time require —
- (a) a law practice claiming any matter affecting the assessment of its annual contribution under regulation 92; or
 - (b) an Australian legal practitioner claiming to be or to have been an exempt practitioner; or
 - (c) a practitioner or practitioners claiming, for any reason, not to be or to have been a law practice,
- to set out the facts and circumstances in support of that claim.

- (3) Information provided under subregulation (2) must, if the Law Society so requires, be verified by statutory declaration.
- (4) A requirement under this regulation may specify a time within which the requirement is to be complied with.
- (5) A law practice or Australian legal practitioner must comply with a requirement under this regulation and, if a time for compliance is specified, must do so within the specified time.

105. Interest payable on overdue amounts

- (1) Interest is payable on so much of an amount that is payable under these regulations for the period beginning on the day after the day on which the amount is due and ending on and including the day on which the amount payable is paid.
- (2) The rate of interest at any time is equal to that prescribed for that period under the *Civil Judgments Enforcement Act 2004* section 8(1)(a).
- (3) The Law Society may, in its discretion, waive payment of the interest in whole or in part.

106. Recovery of moneys payable

Any moneys that are not paid by a person in accordance with these regulations may be recovered from that person by the Law Society as a debt in a court of competent jurisdiction.

107. Compliance with regulations

The Law Society may take such steps as it considers necessary or expedient to ascertain whether or not these regulations are being complied with.

Part 10 — Fidelity cover

108. Fidelity protocols: section 377

- (1) The Trust may enter into fidelity protocols with corresponding authorities for or with respect to any of the following matters —
 - (a) the forwarding of claims, or copies of claims, under section 378 of the Act and corresponding laws;
 - (b) the making and acceptance of requests to act as agent under Part 12 Division 3 Subdivision 8 of the Act and corresponding laws;
 - (c) the processing of claims or aspects of claims as agent under Part 12 Division 3 Subdivision 8 of the Act and corresponding laws.
- (2) A fidelity protocol may be amended, revoked or replaced by agreement of the parties to it.

109. Payment of interest on trust accounts: section 387

- (1) For the purposes of the definition of *relevant period* in section 387(1) of the Act, the period of one month is prescribed in place of the periods referred to in paragraphs (a) and (b) of that definition.
- (2) For the purposes of section 387(2) of the Act, the prescribed percentage is 51%.
- (3) For the purposes of section 387(3) of the Act, the interest is to be paid within 10 working days of the end of the relevant period during which it was earned.
- (4) In subregulation (3) —
working day means a day that is not a Saturday, Sunday or a public holiday throughout the State.

r. 110

110. Prescribed bodies

The bodies listed in Schedule 2 are prescribed for the purposes of section 388(4)(c)(iv) and (v) of the Act.

Part 11 — Publicising disciplinary action

111. Register of Disciplinary Action: section 452(2)(e)

For the purposes of section 452(2)(e) of the Act, the following are prescribed as particulars to be included in the Register of Disciplinary Action for a person against whom disciplinary action was taken —

- (a) the date and jurisdiction of the person's first and each later admission to the legal profession;
- (b) the person's date of birth.

Part 12 — Miscellaneous

112. Approved forms

The Board —

- (a) must publish the current version of each approved form on its internet website; and
- (b) may publish an approved form in any other manner it thinks fit.

Part 13 — Repeal and transitional provisions

Division 1 — General

113. Terms used

In this Part —

2003 Act means the *Legal Practice Act 2003*;

2004 Rules means the *Legal Practice Board Rules 2004*;

2008 Act means the *Legal Profession Act 2008*;

commencement day means the day on which the 2008 Act section 598 comes into operation.

Division 2 — Repeals

114. Repeals

- (1) The *Legal Practice Regulations 2005* are repealed.
- (2) The *Legal Practice (Professional Indemnity Insurance) Regulations 1995* are repealed.

Division 3 — Professional indemnity insurance

115. Insurance under previous arrangements

Despite regulation 114(2) and Part 9 —

- (a) insurance taken out and maintained in accordance with arrangements made under the *Legal Practitioners (Professional Indemnity Insurance) Regulations 1988* continues to have effect with respect to any matter or thing occurring before 1 July 1995; and
- (b) insurance taken out and maintained in accordance with arrangements made under the *Legal Practice (Professional Indemnity Insurance) Regulations 1995* continues to have effect with respect to any matter or thing occurring before 1 July 2009.

116. Recovery of payments

Without limiting the operation of the *Interpretation Act 1984* sections 36 and 37, regulation 114(2) does not affect the power of the Law Society under the *Legal Practice (Professional Indemnity Insurance) Regulations 1995* regulation 18 to demand payment of, and recover, any moneys payable under those regulations.

Division 4 — Admission of local lawyers

117. Existing notices of intention to apply for admission

(1) In this regulation —

existing notice of intention means a notice of intention to apply for admission given to the Board under the 2004 Rules rule 36 before the commencement day that have not been dealt with by the Board before that day.

(2) For the purpose of the 2008 Act Part 4 Division 4 an existing notice of intention is to be taken to be an application to be admitted to the legal profession made under the 2008 Act section 25.

(3) In relation to an existing notice of intention —

(a) a reference in the 2008 Act Part 4 Division 4 to a person being eligible for admission is to be taken to be a reference to the person being eligible for admission under the 2003 Act; and

(b) a reference in the 2008 Act Part 4 Division 4 to an application being in accordance with the admission rules is to be taken to be a reference to the application being in accordance with the 2003 Act Part 4 and the 2004 Rules.

- (4) If —
- (a) after considering a person's existing notice of intention the Board files a compliance certificate under the 2008 Act section 31; and
 - (b) within 30 days after the certificate is filed the person applies to the Court under the 2008 Act to be admitted to the legal profession,

the person may be admitted as a lawyer under the 2008 Act if the applicant could have been admitted as a legal practitioner under the 2003 Act if this Act had not been enacted, and the admission requirements of the 2008 Act are taken to have been satisfied in relation to the applicant.

118. Existing compliance certificates

- If —
- (a) before the commencement day the Board issued a certificate under the 2003 Act section 28(1)(c) to a person; and
 - (b) as at the commencement day the person had not applied to the Court under the 2003 Act to be admitted as a legal practitioner; and
 - (c) within 30 days after the commencement day the person applies to the Court under the 2008 Act to be admitted to the legal profession,

the person may be admitted as a lawyer under the 2008 Act if the applicant could have been admitted as a legal practitioner under the 2003 Act if this Act had not been enacted, and the admission requirements of the 2008 Act are taken to have been satisfied in relation to the applicant.

119. Public notice of application for admission

Despite the repeal of the 2004 Rules, a person intending to make an application referred to in regulation 117(4)(b) or 118(c) must

comply with the 2004 Rules rule 38 as in force immediately before the commencement day.

Division 5 — Trust money and trust accounts

120. Continued application of 2003 Act

- (1) In this regulation —
relevant period means the period starting on the commencement day and ending on 30 June 2009.
- (2) Despite Part 9 of the 2008 Act and the repeal of the 2003 Act, a law practice to which Part 9 of the 2008 Act applies may keep and deal with trust money and keep records of the trust money in accordance with Part 10 of the 2003 Act for the relevant period as if the trust money were trust moneys under the 2003 Act.
- (3) If a law practice complies with the provisions of Part 10 of the 2003 Act during the relevant period, the law practice is taken to have complied with Part 9 of the 2008 Act in relation to the provisions of that Part about keeping and dealing with trust money or keeping records of the trust money during that period.

Division 6 — Costs disclosure and agreements

121. Terms used

In this Division —

relevant period means the period starting on the commencement day and ending on 30 June 2009.

[Regulation 121 amended in Gazette 27 Feb 2009 p. 655.]

122. Costs disclosure

- (1) Except as provided in subregulation (4), a law practice is not required to make a disclosure under section 260 or 261 of the 2008 Act in relation to a matter for which the law practice is retained during the relevant period.

- (2) Except as provided in subregulation (4), a law practice is not required to make a disclosure under section 264 of the 2008 Act in relation to a settlement that is executed during the relevant period.
- (3) Section 268 of the 2008 Act does not apply in relation to legal costs that are not required to be disclosed by reason of subregulation (1) or (2).
- (4) A law practice must make the costs disclosures required to be made to a client or associated third party payer for the client under Part 10 Division 3 of the 2008 Act if the law practice and the client make a costs agreement under Part 10 Division 6 of the 2008 Act in relation to those costs during the relevant period.

[Regulation 122 inserted in Gazette 27 Feb 2009 p. 656.]

123A. Costs agreements

- (1) Despite Part 10 of the 2008 Act and the repeal of Part 13 Division 2 of the 2003 Act, a law practice to which Part 10 of the 2008 Act applies may, during the relevant period, make a costs agreement under section 221 of the 2003 Act as if that section had not been repealed.
- (2) If a costs agreement is made as referred to in subregulation (1) between a client and a law practice during the relevant period —
 - (a) Part 13 Division 2 of the 2003 Act applies to and in relation to the agreement as if that Division had not been repealed; and
 - (b) Part 13 Division 3 of the 2003 Act applies to and in relation to the taxation and recovery of the legal costs the subject of the agreement as if that Division had not been repealed; and
 - (c) section 273 of the 2008 Act does not apply to legal costs the subject of the agreement; and

- (d) Part 10 Division 6 of the 2008 Act does not apply to the agreement or the law practice in relation to the client for the matter the subject of the agreement; and
- (e) Part 10 Division 7 of the 2008 Act does not apply to bills for legal costs the subject of the agreement or the recovery of those legal costs; and
- (f) Part 10 Division 8 of 2008 Act does not apply to the assessment of legal costs the subject of the agreement.

[Regulation 123A inserted in Gazette 27 Feb 2009 p. 656-7.]

Division 7 — Interstate legal practitioners

123. Supervised legal practice

- (1) An interstate legal practitioner who immediately before the commencement day had completed supervised legal practice under a corresponding law is taken to have the required experience for the purposes of section 72 of the Act.
- (2) An interstate legal practitioner who —
 - (a) before the commencement day commenced a term of supervised legal practice under a corresponding law; and
 - (b) completes the term of supervised legal practice under a corresponding law on or after the commencement day,is taken to have the required experience for the purposes of section 72 of the Act.

Schedule 1 — Forms

Form 1

Statutory declaration to be lodged by law practice that ceases to hold trust money

[r. 71]

Legal Profession Act 2008 section 239(3)(b)

I,

[*name, address and occupation of person making the declaration*]

sincerely declare as follows —

1. I am or was a principal of a law practice that on [*insert date*] ceased to be authorised to receive trust money/ceased to be engaged in legal practice in this jurisdiction.
2. The law practice does not now hold any trust money, all such trust money having been applied in accordance with the *Legal Profession Act 2008*.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* at [*place*] on [*date*] by —

[*Signature of person making the declaration*]

in the presence of —

[*Signature of authorised witness*]

[*Name of authorised witness and qualification as such a witness*]

Form 2

Form of disclosure of costs to clients

[r. 80(1)]

Legal Profession Act 2008 section 260(5)

Legal costs — your right to know

You have the right to —

- negotiate a costs agreement with us
- receive a bill of costs from us
- request an itemised bill of costs after you receive a lump sum bill from us
- request written reports about the progress of your matter and the costs incurred in your matter (at no cost to you)
- apply for costs to be assessed within 12 months if you are unhappy with our costs
- apply for the costs agreement to be set aside
- accept or reject any offer we make for an interstate costs law to apply to your matter
- notify us that you require an interstate costs law to apply to your matter

For more information about your rights, please read the fact sheet titled *Legal costs — your right to know*. You can ask us for a copy, or obtain it from the Legal Practice Board (or download it from the website of the Legal Practice Board or the Law Society of Western Australia).

Form 3

Form of notification of client's rights

[r. 82(1)]

Legal Profession Act 2008 section 291(3)

Your rights in relation to legal costs

The following avenues are available to you if you are not happy with this bill —

- requesting an itemised bill
- discussing your concerns with us
- having our costs assessed
- applying to set aside our costs agreement

For more information about your rights, please read the fact sheet titled *Your right to challenge legal costs*. You can ask us for a copy, or obtain it from the Legal Practice Board (or download it from the website of the Legal Practice Board or the Law Society of Western Australia).

Schedule 2 — Prescribed bodies

[r. 110]

Peak organisations

Federation of Community Legal Centres (Western Australia)
Incorporated

Community legal centres

Albany Community Legal Centre Inc

Armadale Information and Referral Service Inc

Boogurlarri Community House Association Inc

Bunbury Community Legal Centre Incorporated

Citizens Advice Bureau of Western Australia Incorporated

City of Fremantle (trading as Community Legal & Advocacy Centre)

Consumer Credit Legal Service (WA) Inc

Environmental Defender's Office (WA) Inc

Geraldton Resource Centre

Goldfields Community Legal Centre Incorporated

Gosnells Community Legal Centre (Inc)

Kimberley Community Legal Services Inc

Lockridge Community Group

Mental Health Law Centre (WA) Inc

North Perth Migrant Resource Centre Inc

Northern Suburbs Community Legal Centre Inc

Peak organisations

Parkway Legal Advice Centre

People With Disabilities (WA) Inc

Pilbara Community Legal Service

Rural Community Legal Service (Inc)

Southern Communities Advocacy, Legal and Education Service Inc

Sussex Street Community Law Service Inc

Tenants Advice Service (Inc)

TLC Emergency Welfare Foundation (WA) Inc (trading as Welfare Rights & Advocacy Service (WA))

Women's Legal Services Inc (WA)

Women's Refuges Multicultural Service Incorporated

Youth Legal Service (Inc)

Notes

¹ This is a compilation of the *Legal Profession Regulations 2009* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Legal Profession Regulations 2009</i>	27 Feb 2009 p. 545-653	r. 1 and 2: 27 Feb 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Mar 2009 (see r. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Legal Profession Amendment Regulations 2009</i>	27 Feb 2009 p. 655-7	r. 1 and 2: 27 Feb 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Mar 2009 (see r. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 555 and 511)
<i>Public Sector Reform (Consequential Amendments) Regulations 2011 Pt. 4</i>	11 Feb 2011 p. 502-7	12 Feb 2011 (see r. 2(d))
<i>Legal Profession Amendment Regulations (No. 3) 2011</i>	3 Jun 2011 p. 1981-2	r. 1 and 2: 3 Jun 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 4 Jun 2011 (see r. 2(b))
<i>Legal Profession Amendment Regulations (No. 2) 2011</i>	22 Jul 2011 p. 3018-19	r. 1 and 2: 22 Jul 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Jul 2011 (see r. 2(b))
<i>Legal Profession Amendment Regulations (No. 4) 2011</i>	30 Aug 2011 p. 3507-8	r. 1 and 2: 30 Aug 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 31 Aug 2011 (see r. 2(b))
<i>Legal Profession Amendment Regulations 2012</i>	6 Mar 2012 p. 894	r. 1 and 2: 6 Mar 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 7 Mar 2012 (see r. 2(b))