



Western Australia

## **Legal Profession Act 2008**

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# Legal Profession Act 2008

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**Defined terms**

Western Australia

## **Legal Profession Act 2008**

**An Act —**

- **to provide for the regulation of legal practice in Western Australia; and**
- **to facilitate the regulation of legal practice on a national basis; and**
- **for other related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Legal Profession Act 2008*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation as follows:

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation and different days may be fixed for different provisions<sup>1</sup>.



## Part 2 — Interpretation

### 3. Terms used

In this Act —

**accountant** means a member of —

- (a) The Institute of Chartered Accountants in Australia (AR643BN 084 642 571); or
- (b) CPA Australia (ACN 008 392 452); or
- (c) the Institute of Public Accountants (ACN 004 130 643);

**ADI** means an authorised deposit-taking institution as defined in the *Banking Act 1959* of the Commonwealth;

**admission rules** means rules relating to the admission of lawyers and associated matters made under section 575;

**admission to the legal profession** means admission by a Supreme Court as —

- (a) a lawyer; or
- (b) a legal practitioner; or
- (c) a barrister; or
- (d) a solicitor; or
- (e) a barrister and solicitor; or
- (f) a solicitor and barrister,

under this Act or a corresponding law but does not include the grant of a practising certificate under this Act or a corresponding law and **admitted to the legal profession** has a corresponding meaning;

**affairs** of a law practice include the following —

- (a) all accounts and records required under this Act to be maintained by the practice or an associate or former associate of the practice;
- (b) other records of the practice or an associate or former associate of the practice;

- (c) any transaction —
  - (i) to which the practice or an associate or former associate of the practice was or is a party; or
  - (ii) in which the practice or an associate or former associate of the practice has acted for a party;

**amend** includes —

- (a) in relation to a practising certificate —
    - (i) impose a condition on the certificate; and
    - (ii) vary or revoke a condition already imposed on the certificate;
- and
- (b) in relation to registration as a foreign lawyer —
    - (i) amend the lawyer's registration certificate; and
    - (ii) impose a condition on the registration; and
    - (iii) vary or revoke a condition already imposed on the registration;

**approved form** means a form approved by the Board;

**associate** has the meaning given in section 6(1);

**Australian lawyer** has the meaning given in section 4(a);

**Australian legal practitioner** has the meaning given in section 5(a) as affected by section 36(3);

**Australian practising certificate** means a local practising certificate or an interstate practising certificate;

**Australian-registered foreign lawyer** means a locally registered foreign lawyer or an interstate-registered foreign lawyer;

**Australian roll** means the local roll or an interstate roll;

**barrister** means an Australian legal practitioner who engages in legal practice solely as a barrister;

**Board** means the Legal Practice Board established under section 534;

**client** includes a person to whom or for whom legal services are provided;

**compensation order** means an order referred to in section 448;

**complaint** means a complaint under Part 13;

**Complaints Committee** means the committee established under section 555;

**compliance certificate** has the meaning given in section 31;

**condition** means condition, limitation or restriction;

**conduct** means conduct whether consisting of an act or omission;

**conviction** has the meaning given in section 10;

**corporation** means —

- (a) a company as defined in the Corporations Act section 9;  
or
- (b) any other body corporate, or body corporate of a kind, prescribed by the regulations;

**Corporations Act** means the *Corporations Act 2001* of the Commonwealth;

**corresponding authority** means —

- (a) a person or body having functions under a corresponding law; or
- (b) when used in the context of a person or body having functions under this Act (the **local authority**) —
  - (i) a person or body having corresponding functions under a corresponding law; and
  - (ii) without limiting subparagraph (i), if the functions of the local authority relate to local lawyers or local legal practitioners generally or are limited to any particular class of local lawyers or local legal practitioners — a person or body having corresponding functions under a corresponding law regardless of whether they relate to interstate lawyers or interstate legal practitioners generally

or are limited to any particular class of interstate lawyers or interstate legal practitioners;

***corresponding disciplinary body*** means —

- (a) a body having functions under a corresponding law that correspond to any of the functions of the Complaints Committee; or
- (b) a court or tribunal having functions under a corresponding law that correspond to any of the functions of the Complaints Committee, State Administrative Tribunal or Supreme Court in relation to the control and discipline of any Australian lawyers; or
- (c) the Supreme Court of another jurisdiction exercising —
  - (i) its inherent jurisdiction or powers in relation to the control and discipline of any Australian lawyers; or
  - (ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction in relation to any Australian lawyers;

***corresponding foreign law*** means —

- (a) a law of a foreign country that corresponds to the relevant provisions of this Act or, if a regulation is made declaring a law of the foreign country to be a law that corresponds to this Act, the law declared under that regulation for the foreign country; or
- (b) if the term is used in relation to a matter that happened before the commencement of the law of a foreign country that, under paragraph (a), is the corresponding law for the foreign country, a previous law applying to legal practice in the foreign country;

***corresponding law*** means —

- (a) a law of another jurisdiction that corresponds to the relevant provisions of this Act or, if a regulation is made declaring a law of another jurisdiction to be a law that

corresponds to this Act, the law declared under that regulation for the other jurisdiction; or

- (b) if the term is used in relation to a matter that happened before the commencement of the law of another jurisdiction that, under paragraph (a), is the corresponding law for the other jurisdiction, a previous law applying to legal practice in the other jurisdiction;

**director** means —

- (a) in relation to a company within the meaning given in the Corporations Act — a director as defined in section 9 of that Act; or
- (b) in relation to any other body corporate, or body corporate of a kind, prescribed by the regulations — a person specified or described in the regulations;

**disqualified person** means any of the following persons, whether the thing that has happened to the person happened before or after the commencement of this definition —

- (a) a person whose name has (whether or not at his or her own request) been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession under this Act or a corresponding law;
- (b) a person whose Australian practising certificate has been suspended or cancelled under this Act or a corresponding law and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom that suspension has not finished;
- (c) a person who has been refused a renewal of an Australian practising certificate under this Act or a corresponding law, and to whom an Australian practising certificate has not been granted at a later time;
- (d) a person who is the subject of an order under this Act or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice;

- (e) a person who is the subject of an order under this Act or a corresponding law prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the practitioner's practice;
- (f) a person who is subject to an order under section 120 or 145 or under provisions of a corresponding law that correspond to section 120 or 145;

**document** means any record of information, and includes —

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

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

includes a reference to —

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

**engage in legal practice** includes practise law;

**external examination** means an external examination under Part 9 Division 4 of a law practice's trust records;

**external examiner** means a person holding an appointment as an external examiner under Part 9 Division 4;

**external territory** means a Territory of the Commonwealth (not being the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory of Australia) for the government of which as a Territory provision is made by a Commonwealth Act;

**foreign country** means —

- (a) a country other than Australia; or
- (b) a state, province or other part of a country other than Australia;

**foreign regulatory action** taken in relation to a person means —

- (a) removal of the person's name from a foreign roll for disciplinary reasons; or
- (b) suspension or cancellation of, or refusal to renew, the person's right to engage in legal practice in a foreign country;

**foreign roll** means an official roll of lawyers (whether admitted, practising or otherwise) kept in a foreign country, but does not include a roll prescribed by the regulations or a kind of roll prescribed by the regulations;

**grant** of a practising certificate includes the issue of a practising certificate;

**Guarantee Fund** means the Solicitor's Guarantee Fund established under section 336;

**home jurisdiction** has the meaning given in section 7;

**incorporated legal practice** has the meaning given in Part 7 Division 2;

**information notice** has the meaning given in section 9;

**insolvent under administration** means —

- (a) a person who is an undischarged bankrupt under the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory); or
- (b) a person who has executed a deed of arrangement under Part X of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory) if the terms of the deed have not been fully complied with; or
- (c) a person whose creditors have accepted a composition under Part X of the *Bankruptcy Act 1966* of the

Commonwealth (or the corresponding provisions of the law of a foreign country or external territory) if a final payment has not been made under that composition; or

- (d) a person for whom a debt agreement has been made under Part IX of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory) if the debt agreement has not ended or has not been terminated; or
- (e) a person who has executed a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory) but not if the agreement has been set aside or terminated or all of the obligations that the agreement created have been discharged;

***interstate government lawyer*** has the meaning given in section 79(1);

***interstate lawyer*** has the meaning given in section 4(c);

***interstate legal practitioner*** has the meaning given in section 5(c);

***interstate practising certificate*** means a current practising certificate granted under a corresponding law;

***interstate-registered foreign lawyer*** means a person who is registered as a foreign lawyer under a corresponding law;

***interstate regulatory authority*** means, in relation to another jurisdiction —

- (a) if there is only one regulatory authority for the jurisdiction — that regulatory authority unless subparagraph (c) applies; or
- (b) if there are separate regulatory authorities for the jurisdiction for different branches of the legal profession or for persons who practise in a particular style of legal practice — the regulatory authority relevant to the



branch or style concerned unless subparagraph (c) applies; or

- (c) if the regulations specify or provide for the determination of one or more regulatory authorities for the jurisdiction either generally or for particular purposes — the regulatory authority or authorities specified in or determined in accordance with the regulations;

***interstate roll*** means a roll of lawyers maintained under a corresponding law;

***jurisdiction*** means a State or Territory of the Commonwealth;

***Law Complaints Officer*** means the person holding the office of that name under section 572;

***law firm*** means a partnership consisting only of —

- (a) Australian legal practitioners; or
- (b) one or more Australian legal practitioners and one or more Australian-registered foreign lawyers;

***law practice*** means —

- (a) an Australian legal practitioner who is a sole practitioner; or
- (b) a law firm; or
- (c) a multi-disciplinary partnership; or
- (d) an incorporated legal practice;

***Law Society*** means the Law Society of Western Australia (Inc.);

***lay associate*** has the meaning given in section 6(2)(b);

***legal costs*** means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including disbursements but not including interest;

***legal practitioner associate*** has the meaning given in section 6(2)(a);

**legal practitioner director**, in relation to an incorporated legal practice, has the meaning given in Part 7 Division 1;

**legal practitioner partner**, in relation to a multi-disciplinary partnership, has the meaning given in Part 7 Division 1;

**legal profession rules** means rules relating to legal practice made under this Act;

**legal services** means work done, or business transacted, in the ordinary course of legal practice;

**local lawyer** has the meaning given in section 4(b);

**local legal practitioner** has the meaning given in section 5(b) as affected by section 36(3);

**local practising certificate** means a practising certificate granted under this Act;

**local regulatory authority** means —

- (a) an authority having functions under this Act; or
- (b) a person or body prescribed by the regulations as a local regulatory authority;

**local roll** has the meaning given in section 28(1);

**locally registered foreign lawyer** means a person who is registered as a foreign lawyer under Part 8;

**managed investment scheme** has the same meaning as in the Corporations Act Chapter 5C;

**modifications** includes modifications by way of alteration, omission, addition or substitution;

**mortgage** means an instrument under which an interest in real property is charged, encumbered or transferred as security for the payment or repayment of money, and includes —

- (a) any instrument of a kind that is prescribed by the regulations as being a mortgage; and
- (b) a proposed mortgage;

**mortgage financing** means facilitating a loan secured or intended to be secured by mortgage by —

- (a) acting as an intermediary to match a prospective lender and borrower; or
- (b) arranging the loan; or
- (c) receiving or dealing with payments for the purposes of, or under, the loan,

but does not include providing legal advice or preparing an instrument for the loan;

**multi-disciplinary partnership** has the meaning given in Part 7 Division 3;

**practical legal training** means either, or a combination of both, of the following —

- (a) legal training by participation in course work;
- (b) supervised legal training, whether involving articles of clerkship or otherwise;

**previous Act** means —

- (a) the *Legal Practice Act 2003*;
- (b) the *Legal Practitioners Act 1893*;

**principal** has the meaning given in section 6(3);

**Principal Registrar** has the meaning given in the *Supreme Court Act 1935* section 4(1);

**professional misconduct** has the meaning given in section 403;

**serious offence** means an offence (whether committed in or outside this jurisdiction) that is —

- (a) an indictable offence against a law of the Commonwealth or any jurisdiction (whether or not the offence is or may be dealt with summarily); or
- (b) an offence against the law of another jurisdiction that would be an indictable offence against a law of this jurisdiction if committed in this jurisdiction (whether or

not the offence could be dealt with summarily if committed in this jurisdiction); or

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

**show cause event**, in relation to a person, means —

- (a) the person becoming bankrupt or being served with notice of a creditor's petition presented to the Court under the *Bankruptcy Act 1966* of the Commonwealth section 43; or
- (b) the presentation by the person (as a debtor) of a declaration to the Official Receiver under the *Bankruptcy Act 1966* of the Commonwealth section 54A of his or her intention to present a debtor's petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act; or
- (c) the application by the person to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit; or
- (d) the conviction of the person for a serious offence or a tax offence, whether or not —
  - (i) the offence was committed in or outside this jurisdiction; or
  - (ii) the offence was committed while the person was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer, as the case requires; or
  - (iii) other persons are prohibited from disclosing the identity of the offender;

***sole practitioner*** means an Australian lawyer who engages in legal practice on his or her own account;

***suitability matter*** has the meaning given in section 8;

***supervised legal practice*** means legal practice by a person who is an Australian legal practitioner —

- (a) as an employee of a law practice if —
  - (i) at least one partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and
  - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i);

or

- (b) as a partner in a law firm if —
  - (i) at least one other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and
  - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i);

or

- (c) as a WA government lawyer if the person engages in legal practice under the supervision of —
  - (i) the State Solicitor; or
  - (ii) the Director of Legal Aid appointed under the *Legal Aid Commission Act 1976* section 18; or
  - (iii) the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991* section 5; or
  - (iv) the holder of an office prescribed by regulations for the purposes of this paragraph;

or

- (d) as an interstate government lawyer if the person engages in legal practice under the supervision of —
  - (i) a person acting as a Director of the Australian Government Solicitor established under Part VIII B Division 2 of the *Judiciary Act 1903* of the Commonwealth; or
  - (ii) a General Counsel or Regional General Counsel of the Australian Securities and Investments Commission; or
  - (iii) the holder of an office prescribed by regulations for the purposes of this paragraph;

or

- (e) as an employee of a body that carries on a business other than the practice of law if the person engages in legal practice under the supervision of an Australian legal practitioner who holds an unrestricted practising certificate; or
- (f) in a capacity approved for the purposes of this paragraph under a legal profession rule;

**Supreme Court (full bench)** means the Supreme Court constituted by at least 3 judges;

**tax offence** means an offence under the *Taxation Administration Act 1953* of the Commonwealth, whether committed in or outside this jurisdiction;

**taxing officer** means a taxing officer of the Supreme Court;

**this jurisdiction** means this State;

**Trust** means the Legal Contribution Trust established under section 391;

**trust account** has the meaning given in section 205(1);

**trust money** has the meaning given in section 205(1);

**trust property** means property entrusted to a law practice in the course of or in connection with the provision of legal services

by the practice, but does not include trust money or money referred to in section 206;

**trust records** has the meaning given in section 205(1);

**unrestricted practising certificate** means an Australian practising certificate that is not subject to any condition under this Act or a corresponding law requiring the holder to engage in supervised legal practice or restricting the holder to practise as or in the manner of a barrister;

**unsatisfactory professional conduct** has the meaning given in section 402;

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

[Section 3 amended by No. 17 of 2014 s. 15.]

#### 4. Terms relating to lawyers

For the purposes of this Act —

- (a) an **Australian lawyer** is a person who is admitted to the legal profession under this Act or a corresponding law; and
- (b) a **local lawyer** is a person who is admitted to the legal profession under this Act (whether or not the person is also admitted under a corresponding law); and
- (c) an **interstate lawyer** is a person who is admitted to the legal profession under a corresponding law, but not under this Act.

#### 5. Terms relating to legal practitioners

For the purposes of this Act —

- (a) an **Australian legal practitioner** is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate; and
- (b) a **local legal practitioner** is an Australian lawyer who holds a current local practising certificate; and

- (c) an *interstate legal practitioner* is an Australian lawyer who holds a current interstate practising certificate, but not a local practising certificate.

**6. Terms relating to associates and principals of law practices**

(1) For the purposes of this Act, an *associate* of a law practice is —

- (a) an Australian legal practitioner who is —
  - (i) a sole practitioner (in the case of a law practice constituted by the practitioner); or
  - (ii) a partner in the law practice (in the case of a law firm); or
  - (iii) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
  - (iv) a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership); or
  - (v) an employee of, or consultant to, the law practice;

or

- (b) an agent of the law practice who is not an Australian legal practitioner; or
  - (c) an employee of the law practice who is not an Australian legal practitioner; or
  - (d) an Australian-registered foreign lawyer who is a partner in the law practice; or
  - (e) a person (not being an Australian legal practitioner) who is a partner in a multi-disciplinary partnership; or
  - (f) an Australian-registered foreign lawyer who has a relationship with the law practice, being a relationship that is of a class prescribed by the regulations; or
  - (g) a person (not being an Australian legal practitioner) who is a partner in a business that includes the law practice;
- or



- (h) a person (not being an Australian legal practitioner) who shares the receipts, revenue or other income arising from the law practice.
- (2) For the purposes of this Act —
  - (a) a *legal practitioner associate* of a law practice is an associate of the practice who is an Australian legal practitioner; and
  - (b) a *lay associate* of a law practice is an associate of the practice who is not an Australian legal practitioner.
- (3) For the purposes of this Act, a *principal* of a law practice is an Australian legal practitioner who is —
  - (a) a sole practitioner (in the case of a law practice constituted by the practitioner); or
  - (b) a partner in the law practice (in the case of a law firm); or
  - (c) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
  - (d) a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership).

## 7. Home jurisdiction

- (1) This section has effect for the purposes of this Act.
- (2) The *home jurisdiction* for an Australian legal practitioner is the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted.
- (3) The *home jurisdiction* for an Australian-registered foreign lawyer is the jurisdiction in which the lawyer's only or most recent current registration was granted.

- (4) The **home jurisdiction** for an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer is —
- (a) where only one jurisdiction is the home jurisdiction for the only associate of the practice who is an Australian legal practitioner or for all the associates of the practice who are Australian legal practitioners — that jurisdiction; or
  - (b) where no one jurisdiction is the home jurisdiction for all the associates of the practice who are Australian legal practitioners —
    - (i) the jurisdiction in which the office is situated at which the associate performs most of the associate's duties for the law practice; or
    - (ii) if a jurisdiction cannot be determined under subparagraph (i) — the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at elections for the jurisdiction; or
    - (iii) if a jurisdiction can be determined under neither subparagraph (i) nor subparagraph (ii) — the jurisdiction determined in accordance with criteria specified or referred to in the regulations.

**8. Suitability matters**

- (1) Each of the following is a **suitability matter** in relation to an individual —
- (a) whether the person is currently of good fame and character;
  - (b) whether the person is or has been an insolvent under administration;
  - (c) whether the person has been convicted of an offence in Australia or a foreign country, and if so —
    - (i) the nature of the offence; and

- (ii) how long ago the offence was committed; and
  - (iii) the person's age when the offence was committed;
- (d) whether the person has engaged in legal practice in Australia —
  - (i) unlawfully; or
  - (ii) when not admitted, or not holding a practising certificate, as required under this Act or a previous law of this jurisdiction that corresponds to this Act or under a corresponding law; or
  - (iii) if holding an Australian practising certificate, in contravention of a condition of the certificate or while the certificate was suspended;
- (e) whether the person has practised law in a foreign country —
  - (i) when not permitted under a law of that country to do so; or
  - (ii) if permitted to do so, in contravention of a condition applicable to the permission;
- (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following —
  - (i) this Act or a previous Act;
  - (ii) a corresponding law or corresponding foreign law;
- (g) whether the person —
  - (i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or
  - (ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt;
- (h) whether the person's name has been removed from —

- (i) the local roll, and has not since been restored to or entered on a local roll; or
  - (ii) an interstate roll, and has not since been restored to or entered on an interstate roll; or
  - (iii) a foreign roll;
- (i) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;
  - (j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;
  - (k) whether, under this Act, a previous Act, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;
  - (l) whether the person is or has been subject to an order under this Act, a previous Act, a law of the Commonwealth or a corresponding law, disqualifying the applicant from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;
  - (m) whether the person is currently unable to carry out the inherent requirements of practice as an Australian legal practitioner.
- (2) A matter mentioned in subsection (1) is a suitability matter even if it happened before the commencement of this section.

**9. Information notices**

For the purposes of this Act, an *information notice* is a written notice to a person about a decision stating —

- (a) the decision; and
- (b) the reasons for the decision; and

- (c) the rights of appeal or review available to the person in respect of the decision and the period within which any such appeal or review must be made or applied for.

**10. References to conviction and quashing conviction**

- (1) A reference in this Act to a conviction includes a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded.
- (2) Without limiting subsection (1), a reference in this Act to the quashing of a conviction for an offence includes a reference to the quashing of —
  - (a) a finding of guilt in relation to the offence; or
  - (b) the acceptance of a guilty plea in relation to the offence.
- (3) However, a reference in this Act to the quashing of a conviction for an offence does not include a reference to the quashing of a conviction where —
  - (a) a finding of guilt in relation to the offence; or
  - (b) the acceptance of a guilty plea in relation to the offence,remains unaffected.
- (4) A conviction includes a conviction before the commencement of this section.

## **Part 3 — Reservation of legal work and related matters**

### **Division 1 — Preliminary**

#### **11. Purposes**

The purposes of this Part are as follows —

- (a) to protect the public interest in the proper administration of justice by ensuring that legal work is carried out only by those who are properly qualified to do so;
- (b) to protect consumers by ensuring that persons carrying out legal work are entitled to do so.

### **Division 2 — General prohibitions on unqualified practice**

#### **12. Prohibition on engaging in legal practice when not entitled**

- (1) In this section —

***legal work*** means —

- (a) any work in connection with the administration of law; or
- (b) drawing or preparing any deed, instrument or writing relating to or in any manner dealing with or affecting —
  - (i) real or personal estate or any interest in real or personal estate; or
  - (ii) any proceedings at law, civil or criminal, or in equity;

***public officer*** has the meaning given in *The Criminal Code*.

- (2) A person must not engage in legal practice in this jurisdiction unless the person is an Australian legal practitioner.

Penalty: a fine of \$20 000.

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- (3) Subsection (2) does not apply to engaging in legal practice of the following kinds —
- (a) legal practice engaged in under the authority of a law of this jurisdiction or of the Commonwealth;
  - (b) legal practice engaged in by an incorporated legal practice in accordance with Part 7 Division 2;
  - (c) the practice of foreign law by an Australian-registered foreign lawyer in accordance with Part 8;
  - (d) appearing or defending in person in a court;
  - (e) drawing or preparing a transfer under the *Transfer of Land Act 1893*;
  - (f) a public officer doing legal work in the course of his or her duties;
  - (g) a person doing legal work under the supervision of an Australian legal practitioner, as a paid employee of a law practice or in the course of approved legal training;
  - (h) legal practice of a kind prescribed by the regulations.
- (4) It is a defence to a prosecution for an offence against subsection (2) in relation to the doing of legal work to show that the person who did the legal work has not directly or indirectly been paid or remunerated or promised or expected pay or remuneration for the work so done (the ***unpaid work***).
- (5) Subsection (4) does not apply if the person directly or indirectly receives, expects or is promised, pay or remuneration for or in respect of other work or services relating to, connected with or arising out of the same transaction or subject matter as that to which the unpaid work relates.
- (6) A person is not entitled to recover any amount in respect of anything the person did in contravention of subsection (2).
- (7) A person may recover from another person in a court of competent jurisdiction, as a debt due to the person, any amount the person paid to the other person in respect of anything the other person did in contravention of subsection (2).

- (8) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act to persons engaged in legal practice of a kind referred to in subsection (3) (other than subsection (3)(a) and (b)).

**13. Prohibition on representing or advertising entitlement to engage in legal practice when not entitled**

- (1) A person must not represent or advertise that the person is entitled to engage in legal practice unless the person is an Australian legal practitioner.  
Penalty: a fine of \$20 000.
- (2) A director, officer, employee or agent of a body corporate must not represent or advertise that the body corporate is entitled to engage in legal practice unless the body corporate is an incorporated legal practice.  
Penalty: a fine of \$20 000.
- (3) Subsections (1) and (2) do not apply to a representation or advertisement about being entitled to engage in legal practice of a kind referred to in section 12(3).
- (4) A reference in this section to a person —
- (a) representing or advertising that the person is entitled to engage in legal practice; or
  - (b) representing or advertising that a body corporate is entitled to engage in legal practice,

includes a reference to the person doing anything that states or implies that the person or the body corporate is entitled to engage in legal practice.



**14. Presumptions about taking or using name, title or description specified in regulations**

- (1) This section applies to the following names, titles and descriptions —
  - (a) lawyer;
  - (b) legal practitioner;
  - (c) barrister;
  - (d) solicitor;
  - (e) attorney;
  - (f) counsel;
  - (g) Queen’s Counsel;
  - (h) King’s Counsel;
  - (i) Her Majesty’s Counsel;
  - (j) His Majesty’s Counsel;
  - (k) Senior Counsel.
- (2) The regulations may specify the kind of persons who are entitled, and the circumstances in which they are entitled, to take or use a name, title or description to which this section applies.
- (3) For the purposes of section 13(1), the taking or using of a name, title or description to which this section applies by a person who is not entitled to take or use that name, title or description gives rise to a rebuttable presumption that the person represented that the person is entitled to engage in legal practice.
- (4) For the purposes of section 13(2), the taking or using of a name, title or description to which this section applies by a person in relation to a body corporate, of which the person is a director, officer, employee or agent, gives rise to a rebuttable presumption that the person represented that the body corporate is entitled to engage in legal practice.

**15. Associates who are disqualified or convicted persons**

(1) In this section —

*lay associate* of a law practice has the meaning given in section 6(2)(b) and includes a consultant to the law practice (however described) who —

- (a) is not an Australian legal practitioner; and
- (b) provides legal or related services to the law practice, other than services of a kind prescribed by the regulations.

(2) A law practice must not have a lay associate whom any principal or other legal practitioner associate of the practice knows to be —

- (a) an Australian lawyer; or
- (b) a disqualified person; or
- (c) a person who has been convicted of a serious offence,

unless the lay associate is approved by the Board under subsection (3).

(3) The Board may, on application by a law practice or the lay associate, approve a lay associate for the purposes of this section.

(4) An approval under this section may be subject to specified conditions.

(5) If the Board decides to refuse an application for approval, or to grant the approval subject to conditions, the applicant may apply to the State Administrative Tribunal for a review of the decision.

(6) A disqualified person, or a person convicted of a serious offence, must not become or seek to become a lay associate of a law practice unless the person first informs the law practice of the disqualification or conviction.

Penalty: a fine of \$10 000.

- (7) Proceedings for an offence under subsection (6) may only be brought within 6 months after discovery of the offence by the Board.
- (8) This section does not apply in circumstances prescribed by the regulations.

**16. Sharing income with unqualified persons**

Without limiting sections 116 and 143, an Australian legal practitioner may share with any other person the receipts, revenue or other income arising from the provision of legal services by the practitioner, except to the extent (if any) that the regulations or legal profession rules otherwise provide.

**17. Permitting or assisting unqualified persons to practise**

An Australian legal practitioner must not permit or assist a person who is not an Australian legal practitioner to engage in legal practice in this jurisdiction in contravention of this Act.  
Penalty: a fine of \$10 000.

**Division 3 — General**

**18. Prohibited person must not act as executor or trustee**

- (1) In this section —

*prohibited person* means either of the following persons, whether the thing that has happened to the person happened before or after the commencement of this section —

- (a) a person whose name has (whether or not at his or her own request) been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession under this Act or a corresponding law;
- (b) a person whose Australian practising certificate has been suspended or cancelled under this Act or a corresponding law and who, because of the cancellation,

is not an Australian legal practitioner or in relation to whom that suspension has not finished.

- (2) A prohibited person must not hold or obtain the office of executor or trustee of any will or trust without the leave of the Supreme Court.
- (3) Nothing in subsection (2) —
  - (a) operates in respect of a person holding the office of executor pursuant to probate granted by the Supreme Court before the coming into operation of this section; or
  - (b) affects or invalidates any act by a person purporting to act as the holder of an office of executor or trustee when prohibited from so acting under subsection (2).

**19. Professional discipline**

- (1) A contravention of this Part by an Australian lawyer who is not an Australian legal practitioner is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (2) Nothing in this Part affects any liability that a person who is an Australian lawyer (but not an Australian legal practitioner) may have under Part 13, and the person may be punished for an offence under this Part as well as being dealt with under Part 13 in relation to the same matter.

## **Part 4 — Admission of local lawyers**

### **Division 1 — Preliminary**

#### **20. Purposes**

The purposes of this Part are as follows —

- (a) in the interests of the administration of justice and for the protection of consumers of legal services, to provide a system under which only applicants who have appropriate academic qualifications and practical legal training and who are otherwise fit and proper persons to be admitted are qualified for admission to the legal profession in this jurisdiction;
- (b) to provide for the recognition of equivalent qualifications and training that make applicants eligible for admission to the legal profession in other jurisdictions.

### **Division 2 — Eligibility and suitability for admission**

#### **21. Eligibility for admission**

- (1) In this section —

*approved academic qualifications* means academic qualifications that are approved, under the admission rules, for admission to the legal profession in this jurisdiction;

*approved practical legal training requirements* means legal training requirements that are approved, under the admission rules, for admission to the legal profession in this jurisdiction;

*corresponding academic qualifications* means academic qualifications that would qualify the person for admission to the legal profession in another jurisdiction if the Board is satisfied that substantially the same minimum criteria apply for the approval of academic qualifications for admission in the other jurisdiction as apply in this jurisdiction;

***corresponding practical legal training requirements*** means legal training requirements that would qualify the person for admission to the legal profession in another jurisdiction if the Board is satisfied that substantially the same minimum criteria apply for the approval of legal training requirements for admission in the other jurisdiction as apply in this jurisdiction.

- (2) A person is eligible for admission to the legal profession under this Act only if the person —
- (a) is an individual aged 18 years or more; and
  - (b) has attained approved academic qualifications or corresponding academic qualifications; and
  - (c) has satisfactorily completed approved practical legal training requirements or corresponding practical legal training requirements.

*[Section 21 amended by No. 47 of 2011 s. 27.]*

**22. Suitability for admission**

- (1) The Supreme Court or Board must, in deciding if a person is a fit and proper person to be admitted to the legal profession, consider —
- (a) each of the suitability matters in relation to the person to the extent that a suitability matter is appropriate; and
  - (b) any other matter it considers relevant.
- (2) However, the Supreme Court or Board may consider a person to be a fit and proper person to be admitted despite a suitability matter because of the circumstances relating to that matter.

**23. Early consideration of suitability**

- (1) In this section —
- applicant for admission*** means an applicant for admission to the legal profession under this Act;

***prospective applicant for admission*** means a person who is undertaking or is eligible to undertake or has completed a course of legal studies but who is not an applicant for admission;

***relevant person*** means —

- (a) an applicant for admission; or
  - (b) a prospective applicant for admission; or
  - (c) another person who has a sufficient interest in applying for a declaration under this section.
- (2) A relevant person may apply to the Board for a declaration that a matter disclosed (including, for example, a suitability matter) either in —
- (a) the application for the declaration; or
  - (b) an undecided application for admission to the legal profession under this Act,

will not, without more, adversely affect an assessment by the Board as to whether the person is a fit and proper person to be admitted.

- (3) The Board must consider each application under this section and, subject to section 24, make the declaration sought or refuse to do so.
- (4) A declaration made under this section is binding on the Board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.
- (5) Any costs of the Board under this section are to be borne by the person who made the application for the declaration.
- (6) If the Board refuses to make the declaration sought, the applicant for the declaration may apply to the State Administrative Tribunal for a review of the decision.

#### **24. Referral of matters to SAT**

- (1) The Board may refer to the State Administrative Tribunal any application for a declaration under section 23 if, in the opinion

of the Board, it would be appropriate for the Tribunal to consider the application having regard to the seriousness of matters disclosed by or ascertained about the applicant for admission or prospective applicant for admission.

- (2) Without limiting the powers of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*, the Tribunal may exercise any of the powers of the Board when dealing with an application referred to it under this section.
- (3) A decision by the Tribunal is binding on the Board and the Tribunal unless the applicant failed to make a full and fair disclosure of all matters relevant to the decision.
- (4) Any costs of the Board, and the costs of a proceeding in the Tribunal, under this section are to be borne by the person who made the application for the declaration under section 23.

### **Division 3 — Admission to the legal profession**

#### **25. Application for admission**

- (1) A person may apply to the Supreme Court (full bench) to be admitted to the legal profession.
- (2) An application must be made in accordance with the admission rules.

#### **26. Admission by Supreme Court**

- (1) The Supreme Court (full bench) may admit a person as a lawyer if —
  - (a) the Supreme Court (full bench) is satisfied that the person —
    - (i) is eligible for admission to the legal profession;  
and
    - (ii) is a fit and proper person to be admitted to the legal profession;and



- (b) the person takes an oath of office, or an affirmation of office, in the form required by the Supreme Court.
- (2) For the purposes of subsection (1)(a), the Supreme Court (full bench) may rely on the advice of the Board.
- (3) The advice of the Board may be contained in a compliance certificate.
- (4) The Supreme Court (full bench) may refuse —
  - (a) to consider an application for admission if it is not made in accordance with the admission rules; or
  - (b) to admit the person if the person has not complied with the admission rules.

**27. Objection to admission**

- (1) Any person who has reasonable grounds to do so may object to the admission of a person to the legal profession.
- (2) A notice stating the grounds of the objection must be lodged in the Supreme Court not less than 7 days before the day on which the application for admission is to be heard.
- (3) A person who lodges a notice of objection is entitled to appear at any hearing held to determine the objection.

**28. Roll of persons admitted to legal profession**

- (1) The Supreme Court must maintain a roll of persons admitted to the legal profession under this Act (the *local roll*).
- (2) When a person is admitted under this Act, the person's name must be entered on the local roll.
- (3) A person admitted to the legal profession under this Act must sign the local roll.
- (4) The admission of a person under this Act is effective from the time the person signs the local roll.

- (5) The Principal Registrar must forward to the Board the name, date of birth and date of admission of each person admitted under this Act as soon as practicable after the person has signed the local roll.

**29. Local lawyer is an officer of Supreme Court**

- (1) A person becomes an officer of the Supreme Court on being admitted to the legal profession under this Act.
- (2) A person ceases to be an officer of the Supreme Court under subsection (1) if the person's name is removed from the local roll.

**Division 4 — Functions of Legal Practice Board in relation to admissions**

**30. Board to advise on applications for admission**

The Board must —

- (a) consider applications by persons for admission to the legal profession under this Act; and
- (b) advise the Supreme Court as to whether it considers that —
- (i) the applicant is eligible for admission; and
  - (ii) the applicant is a fit and proper person to be admitted; and
  - (iii) the application is in accordance with the admission rules.

**31. Compliance certificates**

- (1) If, after considering an application for admission to the legal profession, the Board considers that —
- (a) the applicant is —
- (i) eligible for admission; and

- (ii) a fit and proper person to be admitted;
- and
- (b) the application is in accordance with the admission rules; and
- (c) there are no grounds for refusing to give a certificate of the matters mentioned in paragraphs (a) and (b) (*a compliance certificate*),

the Board must, within the time specified in or determined in accordance with the admission rules, advise the Supreme Court to that effect by filing a compliance certificate.

- (2) If the Board refuses to give a compliance certificate to an applicant, the Board must, within the time specified in or determined in accordance with the admission rules, give the Supreme Court and the applicant an information notice about the refusal.
- (3) An applicant may apply to the State Administrative Tribunal for a review of a decision of the Board to refuse to give the applicant a compliance certificate.
- (4) The Board is taken to have refused to give a compliance certificate if a compliance certificate has neither been given to the applicant nor refused within 6 months after —
  - (a) if the Board has given the applicant a notice under section 32 — the applicant has complied with the notice to the Board's satisfaction; or
  - (b) if paragraph (a) does not apply — the application for admission was lodged.

**32. Consideration of applicant's eligibility and suitability**

- (1) To help the Board consider the matters referred to in section 31(1), the Board may, by notice to the applicant, require —
  - (a) the applicant to give the Board specified documents or information; or

- (b) the applicant to cooperate with any inquiries by the Board that it considers appropriate.
- (2) An applicant's failure to comply with a notice under subsection (1) by the date specified in the notice and in the way required by the notice is a ground for refusing to give a compliance certificate for the applicant.
- (3) The Board may refer a matter to the State Administrative Tribunal for directions.

### **Division 5 — Miscellaneous**

#### **33. Board is respondent to application under this Part**

The Board is taken to be a respondent to every application under this Part not made by it.

## **Part 5 — Legal practice by Australian legal practitioners**

### **Division 1 — Preliminary**

#### **34. Purposes**

The purposes of this Part are as follows —

- (a) to facilitate the national practice of law by ensuring that Australian legal practitioners can engage in legal practice in this jurisdiction;
- (b) to provide a system for the granting and renewing of local practising certificates.

### **Division 2 — Legal practice in this jurisdiction by Australian legal practitioners**

#### **35. Entitlement of Australian legal practitioner to practise in this jurisdiction**

An Australian legal practitioner is, subject to this Act, entitled to engage in legal practice in this jurisdiction.

#### **36. WA government lawyers taken to be local legal practitioners**

- (1) In this section —

***employing authority*** of a WA government lawyer means —

- (a) the employing authority of the lawyer under the *Public Sector Management Act 1994*; or
- (b) if the lawyer does not have an employing authority under that Act, the employing authority of the lawyer specified in the regulations for the purposes of this definition;

***government agency*** means —

- (a) a body, whether corporate or unincorporate, or the holder of an office, established under a law of this

jurisdiction for a public purpose or to exercise governmental functions; or

- (b) a person or body (or a class of persons or bodies) prescribed by the regulations as being within this definition;

**WA government lawyer** means an Australian lawyer employed in —

- (a) the State Solicitor's Office; or
  - (b) the Parliamentary Counsel's Office; or
  - (c) the Office of the Director of Public Prosecutions; or
  - (d) a government agency prescribed by the regulations for the purposes of this definition.
- (2) A WA government lawyer is engaged in government work when the lawyer is engaged in legal practice in the course of the lawyer's duties in relation to the entity in which the lawyer is employed.
- (3) A WA government lawyer engaged in government work is taken to be a local legal practitioner and an Australian legal practitioner.
- (4) The regulations may make provision for —
- (a) arrangements to be made by employing authorities of WA government lawyers for the continuing professional development of those lawyers; and
  - (b) the submission of those arrangements for approval by the Attorney General; and
  - (c) the information to be given to the Board by an employing authority or former employing authority of a WA government lawyer in relation to that lawyer; and
  - (d) the manner and form in which the information is to be given.

### **Division 3 — Local practising certificates generally**

#### **37. Local practising certificates**

- (1) Practising certificates may be granted by the Board under this Part.
- (2) The Board may determine the categories of local practising certificates.
- (3) The holder of a local practising certificate must not hold another local practising certificate, or an interstate practising certificate, that is in force during the currency of the first-mentioned local practising certificate.
- (4) A person contravening subsection (3) is taken to contravene a condition of the person's practising certificate.

#### **38. Suitability to hold local practising certificate**

- (1) This section has effect for the purposes of section 45 or any other provision of this Act where the question of whether or not a person is a fit and proper person to hold a local practising certificate is relevant.
- (2) The Board may, in considering whether or not the person is a fit and proper person to hold a local practising certificate, take into account any suitability matter relating to the person, and any of the following, whether happening before or after the commencement of this section —
  - (a) whether the person obtained an Australian practising certificate because of incorrect or misleading information;
  - (b) whether the person has contravened a condition of an Australian practising certificate held by the person;
  - (c) whether the person has contravened this Act, a previous Act or a corresponding law or the regulations or legal profession rules under this Act or a corresponding law;

- (d) whether the person has contravened —
    - (i) an order of the Complaints Committee or the State Administrative Tribunal or Supreme Court (full bench) exercising jurisdiction under this Act or a previous Act; or
    - (ii) an order of a corresponding disciplinary body or of another court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a corresponding disciplinary body;
  - (e) without limiting any other paragraph —
    - (i) whether the person has failed to pay a required contribution or levy to the Guarantee Fund; or
    - (ii) whether the person has contravened a requirement imposed under this Act about professional indemnity insurance; or
    - (iii) whether the person has failed to pay other costs, expenses or fines for which the person is liable under this Act or a previous Act;
  - (f) any other matters relating to the person the Board considers are appropriate.
- (3) A person may be considered a fit and proper person to hold a local practising certificate even though the person is within any of the categories of the matters referred to in subsection (2), if the Board consider that the circumstances warrant the determination.
- (4) If a matter was —
- (a) disclosed in an application for admission to the legal profession in this or another jurisdiction; and
  - (b) determined by the Supreme Court or by the Board or a corresponding authority not to be sufficient for refusing admission,



the matter cannot be taken into account as a ground for refusing to grant or renew or for cancelling a local practising certificate, but the matter may be taken into account when considering other matters in relation to the person concerned.

**39. Duration of local practising certificate**

- (1) A local practising certificate granted under this Act is in force from the date specified in it until the end of the financial year in which it is granted, unless —
  - (a) the certificate is sooner suspended or cancelled; or
  - (b) an earlier date is specified in the local practising certificate as the date on which it ceases to be in force.
- (2) A local practising certificate renewed under this Act is in force until the end of the financial year following its previous period of currency, unless —
  - (a) the certificate is sooner suspended or cancelled; or
  - (b) an earlier date is specified in the local practising certificate as the date on which it ceases to be in force.
- (3) If an application accepted by the Board for the renewal of a local practising certificate that ceases to be in force at the end of a financial year has not been finally determined by the following 1 July, the certificate —
  - (a) continues in force on and from that 1 July until the application has been finally determined or the holder withdraws the application for renewal, unless the certificate is sooner cancelled or renewed; and
  - (b) if renewed, is to be taken to have been renewed on and from that 1 July.
- (4) For the purposes of subsection (3), an application is finally determined —
  - (a) by the renewal of the certificate; or
  - (b) by the exhaustion of all rights of review in relation to a decision to refuse to renew the certificate.

**40. Professional indemnity insurance**

- (1) The Board must not grant or renew a local practising certificate unless the applicant produces evidence to the satisfaction of the Board that the applicant is, or will be, covered by professional indemnity insurance that complies with the requirements imposed under this Act in relation to the applicant.
- (2) This section does not apply in relation to a person, or person of a class, exempted from the requirements of the regulations.
- (3) The Board is entitled to accept as evidence that the applicant has, or will, comply with the requirements of the regulations under Part 11 evidence that the regulations provide is acceptable evidence for the purposes of this section.

**41. Local legal practitioner is officer of Supreme Court**

A local legal practitioner is an officer of the Supreme Court.

**Division 4 — Grant or renewal of local practising certificate**

**42. Application for grant or renewal of local practising certificate**

- (1) An Australian lawyer may apply to the Board for the grant or renewal of a local practising certificate if eligible to do so under this section.
- (2) An Australian lawyer is eligible to apply for the grant or renewal of a local practising certificate if the lawyer complies with any regulations and legal profession rules relating to eligibility for the practising certificate and if —
  - (a) in the case of a lawyer who is not an Australian legal practitioner at the time of making the application —
    - (i) the lawyer reasonably expects to be engaged in Australian legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or

- 
- (ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practicable to determine whether it applies to the lawyer — the lawyer’s place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia;
- or
- (b) in the case of a lawyer who is an Australian legal practitioner at the time of making the application —
- (i) the jurisdiction in which the lawyer engages in legal practice solely or principally is this jurisdiction; or
  - (ii) the lawyer holds a current local practising certificate and engages in legal practice in another jurisdiction under an arrangement that is of a temporary nature; or
  - (iii) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or
  - (iv) if subparagraph (i), (ii) or (iii) does not apply to the lawyer or it is not reasonably practicable to determine whether subparagraph (i), (ii) or (iii) applies to the lawyer — the lawyer’s place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia.
- (3) For the purposes of subsection (2)(b), the jurisdiction in which an Australian lawyer engages in legal practice solely or principally is to be decided by reference to the lawyer’s legal practice during the certificate period current at the time —
- (a) the application is made; or
  - (b) in the case of a late application — the application should have been made.

- (4) An Australian lawyer is not eligible to apply for the grant or renewal of a local practising certificate in respect of a financial year if the lawyer would also be the holder of another Australian practising certificate for that year, but this subsection does not limit the factors determining ineligibility to apply for the grant or renewal of a local practising certificate.
- (5) An Australian lawyer must not apply for the grant or renewal of a local practising certificate if the lawyer is not eligible to make the application.
- (6) An Australian lawyer who —
- (a) engages in legal practice solely or principally in this jurisdiction during a financial year; and
  - (b) reasonably expects to engage in legal practice solely or principally in this jurisdiction in the following financial year,
- must apply for the grant or renewal of a local practising certificate in respect of the following financial year.
- (7) Subsection (6) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that the practitioner reasonably expected to engage in legal practice solely or principally in this jurisdiction under an arrangement that is of a temporary nature.
- (8) The exemption provided by subsection (7) ceases to operate at the end of the period prescribed by the regulations for the purposes of this subsection.
- (9) A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia and, accordingly, an Australian lawyer who is engaged or expects to be engaged in legal practice principally in a foreign country is nevertheless eligible to apply for the grant or renewal of a local practising certificate if the lawyer otherwise meets the requirements of this section.

- (10) An Australian lawyer is also eligible to apply for the grant or renewal of a local practising certificate if the lawyer is of a class or description prescribed by the regulations. The regulations may provide that the Board has a discretion as to whether or not to grant or renew a local practising certificate to a person in his or her capacity as an Australian lawyer of that class or description.

*[Section 42 amended by No. 47 of 2011 s. 27.]*

**43. Manner of application and fees**

- (1) An application for the grant or renewal of a local practising certificate must be —
- (a) made in an approved form; and
  - (b) accompanied by the fees prescribed by the legal profession rules and the Guarantee Fund contribution, if any, required under this Act.
- (2) Different fees may be set for local practising certificates according to different factors as prescribed by the legal profession rules.
- (3) The approved form may require the applicant to disclose matters that may affect the applicant's eligibility for the grant or renewal of a local practising certificate or the question whether the applicant is a fit and proper person to hold a local practising certificate.
- (4) The approved form may indicate that particular kinds of matters previously disclosed in a particular manner need not be disclosed for the purposes of the current application.

**44. Timing of application for renewal of local practising certificate**

- (1) An application for the renewal of a local practising certificate must be made within —
- (a) the period prescribed by the legal profession rules as the standard renewal period; or

- (b) the later period prescribed by the legal profession rules as the late fee period.
- (2) Those periods must be within the currency of the local practising certificate being sought to be renewed.
- (3) The Board may reject an application for renewal made during the late fee period, and must reject an application for renewal made outside those periods unless the Board accepts the application under subsection (4).
- (4) The Board may accept an application made within 6 months after the late fee period (even after the expiry of the local practising certificate being sought to be renewed) if satisfied the delay was caused by reasons beyond the control of the applicant or other special circumstances warranting acceptance of the application.
- (5) For an application accepted under subsection (4) after the expiry of the local practising certificate on 30 June in the year concerned, the certificate —
  - (a) is taken to have continued in force on and from the 1 July immediately following its expiry until the Board renews or refuses to renew the certificate or the holder withdraws the application for renewal, unless the certificate is sooner suspended or cancelled; and
  - (b) if renewed, is taken to have been renewed on and from that 1 July.
- (6) Subsection (7) applies if an application for renewal of a local practising certificate is made during or after the late fee period prescribed by the legal profession rules.
- (7) Payment of a late fee prescribed by or determined under the legal profession rules may, if the Board thinks fit, be required as a condition of acceptance of the application.

**45. Grant or renewal of local practising certificate**

- (1) The Board must consider an application that has been made to it for the grant or renewal of a local practising certificate and may —
  - (a) grant or refuse to grant the certificate; or
  - (b) renew or refuse to renew the certificate.
- (2) The Board may, when granting or renewing the certificate, impose conditions as referred to in section 47.
- (3) The Board may refuse —
  - (a) to consider an application if —
    - (i) it is not made in accordance with this Act; or
    - (ii) the required fees and costs have not been paid;or
  - (b) to grant or renew a local practising certificate if the applicant has not complied with this Act in relation to the application.
- (4) The Board must not grant a local practising certificate unless it is satisfied that the applicant —
  - (a) was eligible to apply for the grant when the application was made; and
  - (b) is a fit and proper person to hold the certificate.
- (5) The Board must not renew a local practising certificate if it is satisfied that the applicant —
  - (a) was not eligible to apply for the renewal when the application was made; or
  - (b) is not a fit and proper person to continue to hold the certificate.
- (6) The Board must not grant or renew a local practising certificate if it considers the applicant's circumstances have changed since the application was made and the applicant would (having regard to information that has come to the Board's attention) not

have been eligible to make the application when the application is being considered.

- (7) If the Board grants or renews a local practising certificate, the Board must, as soon as practicable, give the applicant —
- (a) for the grant of a certificate — a local practising certificate; or
  - (b) for the renewal of a certificate — a new local practising certificate.
- (8) If the Board —
- (a) refuses to grant or renew a local practising certificate; or
  - (b) imposes a condition on the certificate and the applicant does not agree to the condition,

the Board must, as soon as practicable, give the applicant an information notice.

- (9) The Board is taken to have refused to grant a local practising certificate if the certificate has neither been granted nor refused within 6 months after —
- (a) if the Board has given the applicant a notice under section 75 — the applicant has complied with the notice to the Board's satisfaction; or
  - (b) if paragraph (a) does not apply — the application was lodged.

### **Division 5 — Conditions on local practising certificates**

#### **46. Conditions generally**

- (1) A local practising certificate is subject to —
- (a) any conditions imposed by the Board under this Act; and
  - (b) any conditions imposed under section 48; and
  - (c) any conditions imposed under the legal profession rules; and



- (d) any conditions imposed under Part 13 or under provisions of a corresponding law that correspond to Part 13; and
  - (e) any other conditions imposed under this or any other Act.
- (2) If a condition is imposed, varied or revoked under this Act during the currency of the local practising certificate concerned, the certificate must be amended by the Board, or a new certificate must be issued by the Board, to reflect on its face the imposition, variation or revocation.

**47. Conditions imposed by Board**

- (1) The Board may impose conditions on a local practising certificate —
- (a) when it is granted or renewed; or
  - (b) during its currency.
- (2) A condition imposed under this section must be reasonable and relevant.
- (3) A condition imposed under this section may be about any of the following —
- (a) requiring the holder of the practising certificate to undertake and complete —
    - (i) continuing legal education; or
    - (ii) specific legal education or training; or
    - (iii) a period of supervised legal practice;
  - (b) restricting the areas of law practised;
  - (c) controlling, restricting or prohibiting the operation of a trust account;
  - (d) controlling, restricting or prohibiting the receipt of trust money;
  - (e) restricting the holder to particular conditions concerning employment or supervision;

- (f) requiring the holder of the practising certificate to undergo counselling or medical treatment or to act in accordance with medical advice given to the holder;
  - (g) requiring the holder of the practising certificate to use the services of an accountant or other financial specialist in connection with the holder's practice;
  - (h) requiring the holder of the practising certificate to provide the Board with evidence as to any outstanding tax obligations of the holder and as to provision made by the holder to satisfy any such outstanding obligations;
  - (i) a matter agreed by the holder.
- (4) Subsection (3) does not limit the matters about which a condition may be imposed under this section.
- (5) The Board must not impose a condition requiring the holder to undertake and complete specific legal education or training unless —
- (a) the Board is satisfied, having regard to —
    - (i) the nature and currency of the holder's academic studies, legal training or experience; or
    - (ii) the holder's conduct,that it is reasonable to require the specific legal education or training to be undertaken; or
  - (b) the condition is one that is imposed generally on holders of local practising certificates or any class of holders of local practising certificates.
- (6) The Board may vary or revoke conditions imposed under this section.
- (7) If the Board imposes a condition on, or varies or revokes a condition during the currency of the local practising certificate concerned, the imposition, variation or revocation takes effect when the holder has been notified of it or at a later time specified by the Board.

- (8) This section has effect subject to section 56 in relation to the imposition of a condition on a local practising certificate during its currency.

**48. Imposition or variation of conditions pending criminal proceedings**

- (1) If a local legal practitioner has been charged with an offence but the charge has not been determined, the Board may apply to the State Administrative Tribunal for an order under this section.
- (2) On application under subsection (1), the State Administrative Tribunal may make either or both of the following orders —
- (a) an order varying the conditions on the practitioner's local practising certificate;
  - (b) an order imposing conditions or further conditions on the practitioner's local practising certificate.
- (3) The State Administrative Tribunal may make an order under this section only if the Tribunal considers it appropriate to do so, having regard to —
- (a) the seriousness of the offence; and
  - (b) the public interest.
- (4) An order under this section has effect until the sooner of —
- (a) the end of the period specified by the State Administrative Tribunal; or
  - (b) if the practitioner is convicted of the offence — 28 days after the day of the conviction; or
  - (c) if the charge is dismissed — the day of the dismissal.
- (5) The State Administrative Tribunal, on application by any party, may vary or revoke an order under this section at any time.

**49. Conditions imposed on interstate admission**

- (1) A local legal practitioner must not contravene a condition that was imposed on the admission of a person to the legal

profession under a corresponding law (with any variations of the condition made from time to time) and that is still in force.

- (2) A person contravening a condition referred to in subsection (1) is taken to contravene a condition of the person's local practising certificate.

**50. Restricted legal practice**

- (1) In this section –

*required experience* means —

- (a) 18 months supervised legal practice, in the case of a person who, to qualify for admission to the legal profession, completed practical legal training —
- (i) principally under the supervision of an Australian legal practitioner, whether involving articles of clerkship or otherwise; or
  - (ii) involving articles of clerkship principally under the supervision of a person other than an Australian legal practitioner in accordance with the admission rules;

or

- (b) 2 years supervised legal practice, in the case of a person who, to qualify for admission to the legal profession in this or another jurisdiction, completed other practical legal training;

*restricted legal practice* means legal practice by a person who is an Australian legal practitioner —

- (a) as an employee of a law practice if —
- (i) at least one partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and

- (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i);
  - or
  - (b) as a partner in a law firm if —
    - (i) at least one other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and
    - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i);
  - or
  - (c) as a WA government lawyer; or
  - (d) as an interstate government lawyer; or
  - (e) as an employee of a body that carries on a business other than the practice of law if the person engages in legal practice under the supervision of an Australian legal practitioner who holds an unrestricted practising certificate; or
  - (f) in a capacity approved for the purposes of this paragraph under a legal profession rule.
- (2) In determining whether a person has the required experience regard can only be had to a period of supervised legal practice that the regulations permit to be taken into account for the purposes of this section.
- (3) The required experience may be made up of separate periods of supervised legal practice.
- (4) A local legal practitioner who does not have the required experience must engage in restricted legal practice only.
- (5) A person contravening subsection (4) is taken to contravene a condition of the person's local practising certificate.

- (6) A condition of a local practising certificate may require the holder to engage in supervised legal practice even though the holder has the required experience.
- (7) The Board may exempt a person or class of persons from the requirement of subsection (4) or may reduce the required experience for the person or class of persons, if satisfied that the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to —
  - (a) the length and nature of any legal practice previously engaged in by the person or persons; and
  - (b) the length and nature of any legal practice engaged in by the supervisors (if any) who previously supervised the legal practice engaged in by the person or persons.
- (8) An exemption under subsection (7) may be given unconditionally or subject to such conditions as the Board thinks appropriate.

**51. Notification of offence**

- (1) A local legal practitioner must give notice in an approved form to the Board if the holder is —
  - (a) convicted of an offence that would have to be disclosed under the admission rules in relation to an application to admission; or
  - (b) charged with a serious offence.
- (2) The notice must be given to the Board within 7 days after conviction or charge.
- (3) This section does not apply to an offence to which Division 7 applies.
- (4) A person contravening subsection (1) is taken to contravene a condition of the person's local practising certificate.

**52. Conditions imposed by legal profession rules**

- (1) The legal profession rules may —
  - (a) impose conditions on local practising certificates or any class of local practising certificates; and
  - (b) authorise conditions to be imposed on local practising certificates or any class of local practising certificates.
- (2) Without limiting subsection (1), conditions on local practising certificates or any class of local practising certificates may be imposed under the legal profession rules about any matter referred to in section 47(3)(a)(i), (c) or (d).

*[Section 52 amended by No. 47 of 2011 s. 27.]*

**53. Compliance with conditions**

The holder of a current local practising certificate must not contravene (in this jurisdiction or elsewhere) a condition to which the certificate is subject.

**Division 6 — Amendment, suspension or cancellation of local practising certificates**

**54. Application of this Division**

This Division does not apply in relation to matters referred to in Division 7.

**55. Grounds for amending, suspending or cancelling local practising certificate**

Each of the following is a ground for amending, suspending or cancelling a local practising certificate —

- (a) the holder is no longer a fit and proper person to hold the certificate;
- (b) the holder is not, or is no longer, covered by professional indemnity insurance that complies with requirements imposed under this Act;

- (c) if a condition of the certificate is that the holder is limited to legal practice specified in the certificate — the holder is or has been engaging in legal practice that the holder is not entitled to engage in under this Act.

**56. Amending, suspending or cancelling local practising certificate**

- (1) In this section —  
*amend*, in relation to a certificate, means amend the certificate under section 47 during its currency, otherwise than at the request of the holder of the certificate.
- (2) If the Board believes a ground exists to amend, suspend or cancel a local practising certificate (the *proposed action*), the Board must give the holder a notice that —
  - (a) states the proposed action and —
    - (i) if the proposed action is to amend the certificate — states the proposed amendment; and
    - (ii) if the proposed action is to suspend the certificate — states the proposed suspension period;
  - and
  - (b) states the grounds for proposing to take the proposed action; and
  - (c) outlines the facts and circumstances that form the basis for the Board's belief; and
  - (d) invites the holder to make written representations to the Board within a specified time of not less than 7 days and not more than 28 days, as to why the proposed action should not be taken.



- (3) If, after considering all written representations made within the specified time and, in its discretion, written representations made after the specified time, the Board still believes a ground exists to take the proposed action, the Board may —
- (a) if the notice under subsection (2) stated the proposed action was to amend the practising certificate — amend the certificate in the way stated or in a less onerous way the Board considers appropriate because of the representations; or
  - (b) if the notice stated the proposed action was to suspend the practising certificate for a specified period —
    - (i) suspend the certificate for a period no longer than the specified period; or
    - (ii) amend the certificate in a less onerous way the Board considers appropriate because of the representations;
- or
- (c) if the notice stated the proposed action was to cancel the practising certificate —
    - (i) cancel the certificate; or
    - (ii) suspend the certificate for a period; or
    - (iii) amend the certificate in a less onerous way the Board considers appropriate because of the representations.
- (4) If the Board decides to amend, suspend or cancel the practising certificate, the Board must give the holder an information notice about the decision.

**57. Operation of amendment, suspension or cancellation of local practising certificate**

- (1) This section applies if a decision is made to amend, suspend or cancel a local practising certificate under section 56.

- (2) Subject to subsections (3) and (4), the amendment, suspension or cancellation of the practising certificate takes effect on the later of the following —
- (a) the day notice of the decision is given to the holder;
  - (b) the day specified in the information notice.
- (3) If the practising certificate is amended, suspended or cancelled because the holder has been convicted of an offence —
- (a) the State Administrative Tribunal may, on the application of the holder, order that the operation of the amendment, suspension or cancellation of the practising certificate be stayed until —
    - (i) the end of the time to appeal against the conviction; and
    - (ii) if an appeal is made against the conviction — the appeal is finally decided, lapses or otherwise ends;
- and
- (b) the amendment, suspension or cancellation does not have effect during any period in respect of which the stay is in force.
- (4) If the practising certificate is amended, suspended or cancelled because the holder has been convicted of an offence and the conviction is quashed —
- (a) the amendment or suspension ceases to have effect when the conviction is quashed; or
  - (b) the cancellation ceases to have effect when the conviction is quashed and the certificate is restored as if it had merely been suspended.

**58. Immediate suspension of local practising certificate**

- (1) This section applies, despite section 56 and Division 7, if the Board considers it necessary in the public interest to immediately suspend a local practising certificate on —
  - (a) any of the grounds on which the certificate could be suspended or cancelled under section 56; or
  - (b) the ground of the happening of a show cause event in relation to the holder; or
  - (c) any other ground that the Board considers warrants suspension of the certificate in the public interest,whether or not any action has been taken or commenced under section 56 or Division 7 in relation to the holder.
- (2) The Board may, by written notice given to the holder, immediately suspend the practising certificate until the earlier of the following —
  - (a) the time at which the Board informs the holder of the Board's decision by notice under section 56;
  - (b) the end of the period of 56 days after the notice is given to the holder under this section.
- (3) The notice under this section must —
  - (a) include an information notice about the suspension; and
  - (b) state that the holder may make written representations to the Board about the suspension.
- (4) The holder may make written representations to the Board about the suspension, and the Board must consider the representations.
- (5) The Board may revoke the suspension at any time, whether or not in response to any written representations made to it by the holder.

**59. Other ways of amending, suspending or cancelling local practising certificate**

- (1) The Board may —
  - (a) amend a local practising certificate if the holder requests the Board to do so; or
  - (b) suspend a local practising certificate for a specified period if the holder requests the Board to do so or agrees to the Board doing so; or
  - (c) cancel a local practising certificate if the holder requests the Board to do so or surrenders the certificate to the Board.
- (2) The Board may amend a local practising certificate —
  - (a) for a formal or clerical reason; or
  - (b) in another way that does not adversely affect the holder's interests.
- (3) A local practising certificate is automatically cancelled when the holder's name is removed from the local roll or the holder ceases to be an Australian lawyer.
- (4) The amendment, suspension or cancellation of a local practising certificate under subsection (1) or (2) is effected by written notice given to the holder.
- (5) Section 56 does not apply in the case of an amendment, suspension or cancellation under this section.
- (6) If the Board decides to refuse a request referred to in subsection (1), the Board must give the holder an information notice about the decision.

**60. Relationship of this Division with Part 13**

Nothing in this Division prevents a complaint from being made, or an investigation being initiated, under Part 13 about a matter to which this Division relates.

**Division 7 — Special powers in relation to local practising certificates — show cause events**

**61. Applicant for local practising certificate — show cause event**

- (1) This section applies if —
  - (a) a person (the *applicant*) is applying for the grant of a local practising certificate; and
  - (b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person was first admitted to the legal profession in this or another jurisdiction, however the admission was expressed at the time of the admission.
- (2) As part of the application, the applicant must provide to the Board a written statement —
  - (a) about the show cause event; and
  - (b) explaining why, despite the show cause event, the applicant considers himself or herself to be a fit and proper person to hold a local practising certificate.
- (3) However, the applicant need not provide a statement under subsection (2) if the applicant (as a previous applicant for a local practising certificate or as the holder of a local practising certificate previously in force) has previously provided to the Board —
  - (a) a statement under this section; or
  - (b) a notice and statement under section 62,  
explaining why, despite the show cause event, the applicant considers himself or herself to be a fit and proper person to hold a local practising certificate.

**62. Holder of local practising certificate — show cause event**

- (1) This section applies to a show cause event that happens in relation to the holder of a local practising certificate.

- (2) The holder must provide to the Board both of the following —
  - (a) within 7 days after the happening of the event — notice, in the approved form, that the event happened;
  - (b) within 28 days after the happening of the event — a written statement explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to hold a local practising certificate.
- (3) If a written statement is provided after the 28 days mentioned in subsection (2)(b), the Board may accept the statement and take it into account.

**63. Refusal, amendment, suspension or cancellation of local practising certificate — failure to show cause**

- (1) The Board may refuse to grant or renew, or may amend, suspend or cancel, a local practising certificate if the applicant or holder —
  - (a) is required by section 61 or 62 to provide a written statement relating to a matter and has failed to provide a written statement in accordance with that requirement; or
  - (b) has provided a written statement in accordance with section 61 or 62, but the Board does not consider that the applicant or holder has shown in the statement that, despite the show cause event concerned, the applicant or holder is a fit and proper person to hold a local practising certificate.
- (2) For the purposes of this section only, a written statement accepted by the Board under section 62(3) is taken to have been provided in accordance with section 62.
- (3) The Board must give the applicant or holder an information notice about the decision to refuse to grant or renew, or to amend, suspend or cancel, the certificate.

**64. Restriction on making further applications**

- (1) This section applies if the Board decides under section 63 to refuse to grant or renew a local practising certificate to a person or to cancel a person's local practising certificate.
- (2) The Board may also decide that the person is not entitled to apply for the grant of a local practising certificate for a specified period not exceeding 5 years.
- (3) If the Board makes a decision under subsection (2), the Board must include the decision in the information notice required under section 63(3).
- (4) A person in respect of whom a decision has been made under this section, or under a provision of a corresponding law, is not entitled to apply for the grant of a local practising certificate during the period specified in the decision.

**65. Power to renew practising certificate or defer action in special circumstances**

- (1) Despite any other provision of this Division, the Board may renew a holder's local practising certificate if the end of the financial year for which the holder's current practising certificate is in force is imminent and the Board has not made a determination under section 63 in relation to the holder.
- (2) The renewal of a practising certificate in the circumstances referred to in subsection (1) does not prevent a determination from subsequently being made and action taken under this Division to cancel, suspend or amend the holder's local practising certificate.
- (3) Despite any other provision of this Act, where the Board is required to determine a matter under section 63 in relation to a holder, it may, for the purpose of enabling the proper arrangement of the affairs of the holder —
  - (a) renew the holder's local practising certificate for such period, specified in the local practising certificate, as the Board considers necessary to achieve that purpose; or

- (b) defer cancelling or suspending the holder's local practising certificate for such period as the Board considers necessary to achieve that purpose.

**66. Relationship of this Division with Part 13**

Nothing in this Division prevents a complaint from being made, or an investigation from being initiated, under Part 13 about a matter to which this Division relates.

**Division 8 — Further provisions relating to local practising certificates**

**67. Return of local practising certificate**

- (1) This section applies if a local practising certificate granted to an Australian legal practitioner —
  - (a) is amended, cancelled or suspended by the Board or because of an order under Part 13; or
  - (b) is replaced by another certificate.
- (2) The Board may give the practitioner a notice requiring the practitioner to return the certificate to the Board in the way specified in the notice within a specified period of not less than 14 days.
- (3) The practitioner must comply with a notice, unless the practitioner has a reasonable excuse.  
Penalty: a fine of \$2 000.
- (4) The Board must return the practising certificate to the practitioner as soon as practicable —
  - (a) if the certificate is amended — after amending it; or
  - (b) if the certificate is suspended and is still current at the end of the suspension period — at the end of the suspension period.



### **Division 9 — Interstate legal practitioners**

#### **68. Requirement for professional indemnity insurance**

- (1) An interstate legal practitioner must not engage in legal practice in this jurisdiction, or represent or advertise that the practitioner is entitled to engage in legal practice in this jurisdiction, unless the practitioner —
- (a) is covered by professional indemnity insurance that —
    - (i) covers legal practice in this jurisdiction; and
    - (ii) has been approved under or complies with the requirements of the corresponding law of the practitioner's home jurisdiction; and
    - (iii) is for at least \$1.5 million (inclusive of defence costs), unless (without affecting subparagraph (i) or (ii)) the practitioner engages in legal practice solely as or in the manner of a barrister;

or

  - (b) is employed by a corporation, other than an incorporated legal practice, and the only legal services provided by the practitioner in this jurisdiction are in-house legal services.

Penalty: a fine of \$10 000.

- (2) Subsection (1) does not apply to an interstate legal practitioner who —
- (a) is an interstate government lawyer; and
  - (b) is engaged in legal practice in this jurisdiction only to the extent that the practitioner is engaged in government work.

#### **69. Extent of entitlement of interstate legal practitioner to practise in this jurisdiction**

- (1) This Part does not authorise an interstate legal practitioner to engage in legal practice in this jurisdiction to a greater extent

than a local legal practitioner could be authorised under a local practising certificate.

- (2) Also, an interstate legal practitioner's right to engage in legal practice in this jurisdiction —
  - (a) is subject to —
    - (i) any conditions imposed by the Board under section 70 in relation to the interstate legal practitioner; and
    - (ii) any conditions imposed under the legal profession rules as referred to in that section;and
  - (b) is, to the greatest practicable extent and with all necessary changes —
    - (i) the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and
    - (ii) subject to any condition on the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on the practitioner's admission to the legal profession in this or another jurisdiction.
- (3) If there is an inconsistency between conditions mentioned in subsection (2)(a) and conditions mentioned in subsection (2)(b), the conditions that are, in the opinion of the Board, more onerous prevail to the extent of the inconsistency.
- (4) An interstate legal practitioner must not engage in legal practice in this jurisdiction in a way that is not authorised under this Act or in contravention of any condition referred to in this section.

**70. Additional conditions on practice of interstate legal practitioners**

- (1) The Board may, by written notice to an interstate legal practitioner engaged in legal practice in this jurisdiction, impose

any condition on the practitioner's practice that the Board may impose under this Act on a local practising certificate.

- (2) The legal profession rules may impose, or provide for the imposition of, conditions on an interstate legal practitioner's right to engage in legal practice.
- (3) Conditions imposed under or referred to in this section must not be more onerous than conditions applying to local legal practitioners.
- (4) A notice under this section must include an information notice about the decision to impose a condition.
- (5) An interstate legal practitioner must not contravene a condition imposed under this section.
- (6) An interstate legal practitioner may apply to the State Administrative Tribunal for review of a decision of the Board to impose a condition on the practitioner's practice under this section.

**71. Notification requirements for interstate legal practitioners**

- (1) An interstate legal practitioner who establishes an office in this jurisdiction must give written notice to the Board in accordance with this section within 28 days after establishing the office.  
Penalty: a fine of \$5 000.
- (2) The notice must contain —
  - (a) the practitioner's name, date of birth and date of admission to the legal profession; and
  - (b) the name of any law practice of which the practitioner is a principal or employee, or any other person or body of which the practitioner is an employee; and
  - (c) if the practitioner is a sole practitioner, any business names under which the practitioner engages in legal practice; and

- (d) any condition to which the practitioner is subject in respect of his or her legal practice in his or her home jurisdiction or elsewhere; and
  - (e) an address in this jurisdiction for service of notices and other documents on the practitioner; and
  - (f) a statement as to whether the practitioner has established, or intends to establish, an office in this jurisdiction; and
  - (g) a statement as to whether the practitioner is entitled to receive trust money, or to withdraw trust money from a trust account; and
  - (h) the information prescribed by the regulations (if any).
- (3) A notice under this section must be accompanied by —
- (a) satisfactory evidence, in an approved form, that the interstate legal practitioner has professional indemnity insurance that complies with the requirements under this Act; and
  - (b) the required contribution to the Guarantee Fund under section 338, if any.
- (4) If an interstate legal practitioner who has indicated that he or she does not intend to establish an office in this jurisdiction subsequently establishes an office in this jurisdiction, the practitioner must give notice to the Board within 14 days.
- (5) For the purposes of this section, an interstate legal practitioner establishes an office in this jurisdiction when the practitioner first offers or provides legal services to the public in this jurisdiction from an office maintained by the practitioner, or by a principal of a law practice of which the practitioner is an associate, for that purpose in this jurisdiction.

**72. Special provisions about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction**

(1) In this section —

***required experience*** means —

- (a) 18 months supervised legal practice, in the case of a person who, to qualify for admission to the legal profession, completed practical legal training —
  - (i) principally under the supervision of an Australian legal practitioner, whether involving articles of clerkship or otherwise; or
  - (ii) involving articles of clerkship principally under the supervision of a person other than an Australian legal practitioner in accordance with the admission rules;

or

- (b) 2 years supervised legal practice, in the case of a person who, to qualify for admission to the legal profession in this or another jurisdiction, completed other practical legal training;

***restricted legal practice*** means legal practice by a person who is an Australian legal practitioner —

- (a) as an employee of a law practice if —
  - (i) at least one partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and
  - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i);

or

- (b) as a partner in a law firm if—
    - (i) at least one other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and
    - (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i);or
  - (c) as a WA government lawyer; or
  - (d) as an interstate government lawyer; or
  - (e) as an employee of a body that carries on a business other than the practice of law if the person engages in legal practice under the supervision of an Australian legal practitioner who holds an unrestricted practising certificate; or
  - (f) in a capacity approved for the purposes of this paragraph under a legal profession rule.
- (2) In determining whether a person has the required experience regard can only be had to a period of supervised legal practice that the regulations permit to be taken into account for the purposes of this section.
- (3) The required experience may be made up of separate periods of supervised legal practice.
- (4) An interstate legal practitioner who does not have the required experience must engage in restricted legal practice only.
- (5) Subsection (4) —
- (a) does not apply if the interstate legal practitioner is exempt from the requirement for required experience in the practitioner's home jurisdiction; or
  - (b) applies only to the extent of a shorter period if the required period of required experience has been reduced

for the interstate legal practitioner in the practitioner's home jurisdiction.

**73. Interstate legal practitioner is officer of Supreme Court**

An interstate legal practitioner engaged in legal practice in this jurisdiction has all the duties and obligations of an officer of the Supreme Court, and is subject to the jurisdiction of the Supreme Court in respect of those duties and obligations.

**Division 10 — Miscellaneous provisions relating to practice**

**74. Jurisdiction protocols**

- (1) The Board may enter into arrangements (*jurisdiction protocols*) with regulatory authorities of other jurisdictions about determining —
  - (a) the jurisdiction in which an Australian lawyer engages in legal practice principally or can reasonably expect to engage in legal practice principally; or
  - (b) the circumstances in which an arrangement under which an Australian legal practitioner practises in a jurisdiction —
    - (i) can be regarded as being of a temporary nature; or
    - (ii) ceases to be of a temporary nature;
  - (c) the circumstances in which an Australian legal practitioner can reasonably expect to engage in legal practice principally in a jurisdiction during the currency of an Australian practising certificate.
- (2) For the purposes of this Act, and to the extent that the jurisdiction protocols are relevant, a matter referred to in subsection (1)(a), (b) or (c) is to be determined in accordance with the protocols.

- (3) The Board may enter into arrangements that amend, revoke or replace a jurisdiction protocol.
- (4) A jurisdiction protocol does not have effect in this jurisdiction unless it is embodied or identified in the regulations.

**75. Consideration and investigation of applicants or holders**

- (1) To help it consider whether or not to grant, renew, amend, suspend or cancel a local practising certificate the Board may, by notice to the applicant or holder, require the applicant or holder —
  - (a) to give the Board specified documents or information; or
  - (b) to be medically examined by a registered medical practitioner nominated by the Board and to provide to the Board a report of that examination, at the applicant's or holder's expense; or
  - (c) to obtain, at the applicant's or holder's expense, a criminal record check for the applicant or holder and to provide it to the Board; or
  - (d) to cooperate with any inquiries by the Board that the Board considers appropriate.
- (2) In subsection (1)(c) —

***criminal record check*** means a document issued by the Australian Federal Police, the Police Force of a State or Territory, or another body or agency approved by the Board regarding the criminal convictions of a person for offences under the law of this or any other jurisdiction or the Commonwealth.
- (3) The Board may require the applicant or holder to verify information or documents by statutory declaration or in another manner specified by the Board.
- (4) A failure to comply with a notice under subsection (1) by the date specified in the notice and in the way required by the notice



is a ground for making an adverse decision in relation to the action being considered by the Board.

- (5) Without limiting subsection (4), a failure to comply with a requirement under subsection (1)(b) or (c) may be accepted by the Board as evidence of the unfitness of the person to engage in legal practice.
- (6) A report of the medical examination of an applicant or holder is not admissible in any proceeding, and a person cannot be compelled to produce the report or to give evidence about the report or its contents in any proceeding.
- (7) Subsection (6) does not apply in relation to a proceeding for review of a decision of the Board —
  - (a) refusing to grant or renew a local practising certificate; or
  - (b) amending, suspending or cancelling a local practising certificate.
- (8) Subsection (6) does not apply if the report is admitted or produced, or evidence about the report or its contents is given in a proceeding with the consent of the applicant or holder to whom the report relates.

**76. Register of local practising certificates**

- (1) The Board must keep a register of the names of Australian lawyers to whom it grants local practising certificates.
- (2) The register must —
  - (a) state the conditions (if any) imposed on a local practising certificate in relation to engaging in legal practice; and
  - (b) include any other particulars prescribed by the regulations.
- (3) If a condition is imposed on a local practising certificate because of the infirmity, injury or mental or physical illness of

the holder of the practising certificate, the Board may omit from the register any part of the condition that includes the reason for the imposition of the condition or other information in relation to the infirmity, injury or mental or physical illness.

- (4) The register may be kept in the way the Board decides.
- (5) The register must be available for inspection, without charge, at the Board's principal place of business during normal business hours.

**77. Orders about conditions**

The Board may apply to the State Administrative Tribunal for an order that an Australian lawyer not contravene a condition imposed under this Part.

**78. Review of decisions of Board**

A person may apply to the State Administrative Tribunal for a review of —

- (a) a decision of the Board —
  - (i) to refuse to grant or renew a local practising certificate; or
  - (ii) to amend, suspend or cancel a local practising certificate;
- or
- (b) a decision of the Board refusing a request to amend a local practising certificate under section 59(1); or
- (c) a decision of the Board under section 64 that the person is not entitled to apply for the grant of a local practising certificate for a specified period.

**79. Interstate government lawyers**

- (1) In this section —

***another jurisdiction*** means —

  - (a) another State or Territory of the Commonwealth; or

(b) the Commonwealth;

**government agency** of another jurisdiction means —

- (a) a body or organisation that is established under the law of that jurisdiction for a public purpose or to exercise governmental functions; or
- (b) a body or organisation (or a class of bodies or organisations) prescribed by the regulations as being within this definition;

**interstate government lawyer** means an Australian lawyer, or a person eligible for admission to the legal profession, employed by another jurisdiction or a government agency of another jurisdiction.

- (2) An interstate government lawyer is not subject to —
  - (a) any prohibition under this Act about —
    - (i) engaging in legal practice in this jurisdiction; or
    - (ii) making representations about engaging in legal practice in this jurisdiction;
  - or
  - (b) conditions imposed on a local practising certificate, in respect of the performance of the lawyer's official duties or functions as an interstate government lawyer of the other jurisdiction to the extent that the lawyer is exempt from matters of the same kind under a law of the other jurisdiction.
- (3) Contributions and levies are not payable to the Guarantee Fund by or in respect of an interstate government lawyer in his or her capacity as an interstate government lawyer.
- (4) Without affecting the generality of subsection (2), that subsection extends to prohibitions under section 68 relating to professional indemnity insurance.
- (5) Without affecting subsections (2), (3) and (4), nothing in this section prevents an interstate government lawyer from being granted or holding a local practising certificate.

**80. Fees**

- (1) The Board may charge fees for the services that it provides.
- (2) The fees set by the Board may be included in the legal profession or admission rules.

## **Part 6 — Inter-jurisdictional provisions regarding admission and practising certificates**

### **Division 1 — Preliminary**

**81. Purpose**

The purpose of this Part is to provide a nationally consistent scheme for the notification of and response to action taken by courts and other authorities in relation to the admission of persons to the legal profession and their right to engage in legal practice in Australia.

**82. Other requirements not affected**

This Division does not affect any functions under Part 13.

### **Division 2 — Notifications to be given by local authorities to interstate authorities**

**83. Official notification to other jurisdictions of applications for admission and associated matters**

- (1) This section applies if an application for admission to the legal profession is made under this Act.
- (2) The Board may give the corresponding authority for another jurisdiction written notice of any of the following (as relevant) —
  - (a) the making of the application;
  - (b) the refusal to issue a compliance certificate in relation to the application;
  - (c) the withdrawal of the application after an inquiry is proposed or commenced in relation to the application;
  - (d) the refusal of the Supreme Court to admit the applicant to the legal profession under this Act.

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- (3) The notice must state the applicant's name and address as last known to the Board and may contain other relevant information.

**84. Official notification to other jurisdictions of removals from local roll**

- (1) This section applies if a person's name is removed from the local roll, except where the removal occurs under section 90.
- (2) The Principal Registrar must, as soon as practicable, give written notice of the removal to —
- (a) the corresponding authority of every other jurisdiction; and
  - (b) the registrar or other proper officer of the High Court.
- (3) The notice must state —
- (a) the person's name and address as last known to the Principal Registrar; and
  - (b) the date the person's name was removed from the roll; and
  - (c) the reason for removing the person's name.
- (4) The notice may contain other relevant information.

**85. Board to notify other jurisdictions of certain matters**

- (1) This section applies if —
- (a) the Board takes any of the following actions —
    - (i) a refusal to grant an Australian lawyer a local practising certificate;
    - (ii) a suspension or cancellation or, or refusal to renew, an Australian lawyer's local practising certificate;
- or
- (b) the decision of the Board to take the action is varied or set aside on review by the State Administrative Tribunal.

- (2) The Board must, as soon as practicable, give the corresponding authorities of other jurisdictions written notice of the action taken or the result of the review.
- (3) The notice must state —
  - (a) the lawyer's name and address as last known to the Board; and
  - (b) particulars of —
    - (i) the action taken and the reasons for it; or
    - (ii) the result of the review.
- (4) The notice may contain other relevant information.
- (5) The Board may give corresponding authorities written notice of a condition imposed on an Australian lawyer's local practising certificate.

**Division 3 — Notifications to be given by lawyers to  
local authorities**

**86. Lawyer to give notice of removal of name from interstate roll**

- (1) If the name of a local lawyer or a local legal practitioner has been removed from an interstate roll, the lawyer or practitioner must, as soon as practicable after becoming aware of the removal, give the Principal Registrar and the Board a written notice of the removal.  
Penalty: a fine of \$5 000.
- (2) This section does not apply where the name has been removed from an interstate roll under a provision that corresponds to section 90.

**87. Lawyer to give notice of interstate orders**

- (1) If an order is made under a corresponding law recommending that the name of a local lawyer be removed from the local roll,

the lawyer must, as soon as practicable after becoming aware of the order, give the Board written notice of the order.

Penalty: a fine of \$5 000.

- (2) If an order is made under a corresponding law in relation to a local legal practitioner that —
- (a) the practitioner's local practising certificate be suspended or cancelled; or
  - (b) a local practising certificate not be granted to the practitioner for a period; or
  - (c) conditions be imposed on the practitioner's local practising certificate,

the practitioner must, as soon as practicable after becoming aware of the order, give the Board written notice of the order.

Penalty: a fine of \$5 000.

**88. Lawyer to give notice of foreign regulatory action**

If foreign regulatory action has been taken in relation to a local lawyer or a local legal practitioner, the lawyer or practitioner must, as soon as practicable, give the Board written notice of the action taken.

Penalty: a fine of \$5 000.

**89. Provisions relating to requirement to notify**

A notice to be given under this Division by a person must —

- (a) state the person's name and address; and
- (b) disclose full details of the action to which the notice relates, including the date on which that action was taken; and
- (c) be accompanied by a copy of any official notification provided to the person in connection with that action.



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**Division 4 — Taking of action by local authorities in response  
to notifications received**

**90. Peremptory removal of local lawyer's name from local roll  
following removal in another jurisdiction**

- (1) This section applies if the Principal Registrar is satisfied that —
  - (a) a local lawyer's name has been removed from an interstate roll; and
  - (b) no order referred to in section 94(1) is, at the time of that removal, in force in relation to it.
- (2) The Principal Registrar must remove the lawyer's name from the local roll.
- (3) The Principal Registrar may, but need not, give the lawyer notice of the date on which the Principal Registrar proposes to remove the name from the local roll.
- (4) The Principal Registrar must, as soon as practicable, give the former local lawyer notice of the removal of the name from the local roll, unless notice of the date of the proposed removal was previously given.
- (5) The name of the former local lawyer is, on the application of the lawyer to the Principal Registrar or on the Principal Registrar's own initiative, to be restored to the local roll if the name is restored to the interstate roll.
- (6) Nothing in this section prevents the former local lawyer from afterwards applying for admission under Part 4.

**91. Peremptory cancellation of local practising certificate  
following removal of name from interstate roll**

- (1) This section applies if —
  - (a) a person's name is removed from an interstate roll but the person remains an Australian lawyer; and

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- (b) the person is the holder of a local practising certificate; and
  - (c) no order referred to in section 95(1) is, at the time of that removal, in force in relation to it.
- (2) The Board must cancel the local practising certificate as soon as practicable after receiving official written notification of the removal.
  - (3) The Board may, but need not, give the person notice of the date on which the Board proposes to cancel the local practising certificate.
  - (4) The Board must, as soon as practicable, give the person notice of the cancellation, unless notice of the date of the proposed cancellation was previously given.
  - (5) Nothing in this section prevents the former local lawyer from afterwards applying for a local practising certificate.

**92. Show cause procedure for removal of lawyer's name from local roll following foreign regulatory action**

- (1) The section applies if the Board is satisfied that —
  - (a) foreign regulatory action has been taken in relation to a local lawyer, whether before or after the commencement of this section; and
  - (b) no order referred to in section 94(1) is in force in relation to the action taken.
- (2) The Board may serve on the lawyer a notice stating that the Board will apply to the Supreme Court (full bench) for an order that the lawyer's name be removed from the local roll unless the lawyer shows cause to the Board why the lawyer's name should not be removed.

- (3) If the lawyer does not satisfy the Board that the lawyer's name should not be removed from the local roll, the Board may apply to the Supreme Court (full bench) for an order that the lawyer's name be removed from the local roll.
- (4) Before applying for an order that the lawyer's name be removed, the Board must afford the lawyer a reasonable opportunity to show cause why the lawyer's name should not be removed.
- (5) The Supreme Court (full bench) may, on application made under this section, order that the lawyer's name be removed from the local roll, or may refuse to do so.
- (6) The lawyer is entitled to appear before and be heard by the Supreme Court at a hearing in respect of an application under this section.

**93. Show cause procedure for cancellation of local practising certificate following foreign regulatory action**

- (1) The section applies if the Board is satisfied that —
  - (a) foreign regulatory action has been taken in relation to a local legal practitioner, whether before or after the commencement of this section; and
  - (b) no order referred to in section 95(1) is in force in relation to the action taken.
- (2) The Board may serve on the practitioner a notice stating that the Board proposes to cancel the practitioner's local practising certificate unless the practitioner shows cause to the Board why the practising certificate should not be cancelled.
- (3) The Board must afford the practitioner a reasonable opportunity to show cause why the practitioner's practising certificate should not be cancelled.

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- (4) If the practitioner does not satisfy the Board that the practising certificate should not be cancelled, the Board may cancel the certificate.
- (5) The Board must, as soon as practicable, give the practitioner an information notice about its decision to cancel the practising certificate.
- (6) The practitioner may apply to the State Administrative Tribunal for a review of the decision of the Board to cancel the practising certificate.

**94. Order for non-removal of name**

- (1) If an Australian lawyer reasonably expects that the lawyer's name will be removed from an interstate roll or that foreign regulatory action will be taken against the lawyer, the lawyer may apply to the Supreme Court for an order that the lawyer's name not be removed from the local roll under section 90 or 92.
- (2) The Supreme Court may make the order applied for if satisfied that —
  - (a) the lawyer's name is likely to be removed from the interstate roll or the foreign regulatory action is likely to be taken; and
  - (b) the reason for the removal of the name or the taking of the foreign regulatory action will not involve disciplinary action or the possibility of disciplinary action,or may refuse to make an order.
- (3) An order under this section may be made subject to any conditions the Supreme Court considers appropriate, and remains in force for the period specified in it.
- (4) The Supreme Court may revoke an order made under this section, and sections 90 and 92 then apply as if the lawyer's

name were removed from the interstate roll or the foreign regulatory action were taken when the revocation takes effect.

- (5) Nothing in this section affects action being taken in relation to the lawyer under other provisions of this Act.

**95. Order for non-cancellation of local practising certificate**

- (1) If an Australian lawyer reasonably expects that the lawyer's name will be removed from an interstate roll or that foreign regulatory action will be taken against the lawyer, the lawyer may apply to the State Administrative Tribunal for an order that the lawyer's local practising certificate not be cancelled under section 91 or 93.
- (2) The State Administrative Tribunal may make the order applied for if satisfied that —
- (a) the lawyer's name is likely to be removed from the interstate roll or the foreign regulatory action is likely to be taken; and
  - (b) the reason for the removal of the name or the taking of the foreign regulatory action will not involve disciplinary action or the possibility of disciplinary action,

or may refuse to make an order.

- (3) An order under this section may be made subject to any conditions the State Administrative Tribunal considers appropriate, and remains in force for the period specified in it.
- (4) The State Administrative Tribunal may revoke an order made under this section, and sections 91 and 93 then apply as if the lawyer's name were removed from the interstate roll or the foreign regulatory action were taken when the revocation takes effect.
- (5) Nothing in this section affects action being taken in relation to the lawyer under other provisions of this Act.

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**96. Local authority may give information to other local authorities**

An authority of this jurisdiction that receives information from an authority of another jurisdiction under provisions of a corresponding law that correspond to this Part may give the information to other authorities of this jurisdiction that have functions under this Act.

## Part 7 — Incorporated legal practices and multi-disciplinary partnerships

### Division 1 — Preliminary

#### 97. Purposes

The purposes of this Part are as follows: —

- (a) to regulate the provision of legal services by corporations in this jurisdiction; and
- (b) to regulate the provision of legal services in this jurisdiction in conjunction with the provision of other services (whether by a corporation or persons acting in partnership with each other).

#### 98. Terms used

In this Part —

**legal practitioner director** means a director of an incorporated legal practice who is an Australian legal practitioner holding an unrestricted practising certificate;

**legal practitioner partner** means a partner of a multi-disciplinary partnership who is an Australian legal practitioner holding an unrestricted practising certificate;

**officer** means —

- (a) in relation to a company within the meaning given in the Corporations Act — an officer within the meaning given in section 9 of that Act; or
- (b) in relation to any other body corporate, or body corporate of a kind, prescribed by the regulations — a person specified or described in the regulations;

**professional obligations** of an Australian legal practitioner include —

- (a) duties to the Supreme Court; and
- (b) obligations in connection with conflicts of interest; and

- (c) duties to clients, including disclosure; and
- (d) ethical rules required to be observed by the practitioner;

***related body corporate*** means —

- (a) in relation to a company within the meaning given in the Corporations Act — a related body corporate within the meaning given in section 50 of that Act; or
- (b) in relation to any other body corporate, or body corporate of a kind, prescribed by the regulations — a person specified or described in the regulations.

### **Division 2 — Incorporated legal practices providing legal services**

#### **99. Nature of incorporated legal practice**

- (1) An incorporated legal practice is a corporation that engages in legal practice in this jurisdiction, whether or not it also provides services that are not legal services.
- (2) However, a corporation is not an incorporated legal practice if —
  - (a) the corporation does not receive any form of, or have an expectation of, a fee, gain or reward for the legal services it provides; or
  - (b) the only legal services that the corporation provides are any or all of the following services —
    - (i) in-house legal services, namely, legal services provided to the corporation concerning a proceeding or transaction to which the corporation (or a related body corporate) is a party;
    - (ii) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or an employee who is not an Australian legal practitioner;



or

(c) this Part or the regulations so provide.

- (3) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act to corporations that are not incorporated legal practices because of the operation of subsection (2).
- (4) Nothing in this Part affects or applies to the provision by an incorporated legal practice of legal services in one or more other jurisdictions.

**100. Non-legal services and businesses of incorporated legal practices**

- (1) An incorporated legal practice may provide any service and conduct any business that the corporation may lawfully provide or conduct, except as provided by this section.
- (2) An incorporated legal practice or a related body corporate of an incorporated legal practice must not conduct a managed investment scheme.
- (3) The regulations may prohibit an incorporated legal practice or a related body corporate of the practice from providing a service or conducting a business of a kind specified by the regulations.

**101. Corporations eligible to be incorporated legal practice**

- (1) Any corporation is, subject to this Part, eligible to be an incorporated legal practice.
- (2) This section does not authorise a corporation to provide legal services if the corporation is prohibited from doing so under any Act or law (whether of this jurisdiction, the Commonwealth or any other jurisdiction) under which it is incorporated or its affairs are regulated.
- (3) An incorporated legal practice is not itself required to hold an Australian practising certificate.

**102. Notice of intention to start providing legal services**

- (1) Before a corporation starts to engage in legal practice in this jurisdiction, the corporation must give the Board written notice, in the approved form, of its intention to do so.
- (2) A corporation must not engage in legal practice in this jurisdiction if it is in default of this section.  
Penalty: a fine of \$25 000.
- (3) A corporation that starts to engage in legal practice in this jurisdiction without giving a notice under subsection (1) is in default of this section until it gives the Board written notice, in the approved form, of the failure to comply with that subsection and the fact that it has started to engage in legal practice.
- (4) The giving of a notice under subsection (3) does not affect a corporation's liability under subsection (1) or (2).
- (5) A corporation is not entitled to recover any amount for anything the corporation did in contravention of subsection (2).
- (6) A person may recover from a corporation or a legal practitioner associate of the corporation, as a debt due to the person, any amount the person paid to or at the direction of the corporation for anything the corporation did in contravention of subsection (2).
- (7) This section does not apply to a corporation that is not an incorporated legal practice because of section 99(2).

**103. Prohibition on representations that corporation is incorporated legal practice**

- (1) A corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under section 102.  
Penalty: a fine of \$50 000.

- (2) A director, officer, employee or agent of a corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under section 102.  
Penalty: a fine of \$10 000.
- (3) A reference in this section to a corporation representing or advertising that the corporation is an incorporated legal practice includes a reference to the corporation doing anything that states or implies that the corporation is entitled to engage in legal practice.
- (4) A reference in this section to director, officer, employee or agent of a corporation representing or advertising that the corporation is an incorporated legal practice includes a reference to the director, officer, employee or agent doing anything that states or implies that the corporation is entitled to engage in legal practice.

**104. Notice of corporation ceasing to engage in legal practice**

- (1) A corporation must, within the period prescribed by the regulations after it ceases to engage in legal practice in this jurisdiction as an incorporated legal practice, give the Board a written notice, in the approved form, of that fact.  
Penalty: a fine of \$5 000.
- (2) The regulations may make provision for or with respect to determining whether and when a corporation ceases to engage in legal practice in this jurisdiction.

**105. Incorporated legal practice must have legal practitioner director**

- (1) An incorporated legal practice is required to have at least one legal practitioner director.

- (2) Each legal practitioner director of an incorporated legal practice is, for the purposes only of this Act, responsible for the management of the legal services provided in this jurisdiction by the incorporated legal practice.
- (3) Each legal practitioner director of an incorporated legal practice must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the incorporated legal practice —
  - (a) in accordance with the professional obligations of Australian legal practitioners and other obligations imposed under this Act; and
  - (b) so that those obligations of Australian legal practitioners who are officers or employees of the practice are not affected by other officers or employees of the practice.
- (4) If it ought reasonably to be apparent to a legal practitioner director of an incorporated legal practice that the provision of legal services by the practice will result in breaches of the professional obligations of an Australian legal practitioner or other obligations imposed under this Act, the director must take all reasonable action available to the director to ensure that —
  - (a) the breaches do not occur; and
  - (b) appropriate remedial action is taken in relation to the breaches that do occur.
- (5) Nothing in this Part derogates from the obligations or liabilities of a director of an incorporated legal practice under any other law.
- (6) The reference in subsection (1) to a legal practitioner director does not include a reference to a person who is not validly appointed as a director, but this subsection does not affect the meaning of the expression ***legal practitioner director*** in other provisions of this Act.

**106. Obligations of legal practitioner director relating to misconduct**

- (1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director —
  - (a) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the incorporated legal practice;
  - (b) conduct of any other director (not being an Australian legal practitioner) of the incorporated legal practice that adversely affects the provision of legal services by the practice;
  - (c) the unsuitability of any other director (not being an Australian legal practitioner) of the incorporated legal practice to be a director of a corporation that provides legal services.
- (2) A legal practitioner director is not guilty of unsatisfactory professional conduct or professional misconduct under subsection (1) if the director establishes that the director took all reasonable steps to ensure that —
  - (a) Australian legal practitioners employed by the incorporated legal practice did not engage in conduct or misconduct referred to in subsection (1)(a); or
  - (b) directors (not being Australian legal practitioners) of the incorporated legal practice did not engage in conduct referred to in subsection (1)(b); or
  - (c) unsuitable directors (not being Australian legal practitioners) of the incorporated legal practice were not appointed or holding office as referred to in subsection (1)(c),as the case requires.
- (3) A legal practitioner director of an incorporated legal practice must ensure that all reasonable action available to the legal

practitioner director is taken to deal with any unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the practice.

**107. Incorporated legal practice without legal practitioner director**

- (1) An incorporated legal practice contravenes this subsection if it does not have any legal practitioner directors for a period exceeding 7 days.  
Penalty: a fine of \$50 000.
- (2) If an incorporated legal practice ceases to have any legal practitioner directors, the practice must notify the Board as soon as possible.  
Penalty: a fine of \$50 000.
- (3) An incorporated legal practice must not provide legal services in this jurisdiction during any period it is in default of director requirements under this section.  
Penalty: a fine of \$25 000.
- (4) An incorporated legal practice that contravenes subsection (1) is taken to be in default of director requirements under this section for the period from the end of the period of 7 days until —
  - (a) it has at least one legal practitioner director; or
  - (b) a person is appointed under this section or a corresponding law in relation to the practice.
- (5) The Board may, if it thinks it appropriate, appoint an Australian legal practitioner who is an employee of the incorporated legal practice or another Australian legal practitioner nominated by the Board, in the absence of a legal practitioner director, to exercise the functions conferred or imposed on a legal practitioner director under this Part.

- (6) An Australian legal practitioner is not eligible to be appointed under this section unless the practitioner holds an unrestricted practising certificate.
- (7) The appointment under this section of a person to exercise the functions of a legal practitioner director does not, for any other purpose, confer or impose on the person any of the other functions or duties of a director of the incorporated legal practice.
- (8) An incorporated legal practice does not contravene subsection (1) during any period during which a person holds an appointment under this section in relation to the practice.
- (9) A reference in this section to a legal practitioner director does not include a reference to a person who is not validly appointed as a director, but this subsection does not affect the meaning of the expression *legal practitioner director* in other provisions of this Act.

**108. Obligations and privileges of practitioners who are officers or employees**

- (1) An Australian legal practitioner who provides legal services for an incorporated legal practice in the capacity of an officer or employee of the incorporated legal practice —
  - (a) is not excused from compliance with the professional obligations, or any obligations under any law, of an Australian legal practitioner; and
  - (b) does not lose the professional privileges of an Australian legal practitioner.
- (2) For the purposes only of subsection (1), the professional obligations and professional privileges of an Australian legal practitioner apply as if —
  - (a) where there are 2 or more legal practitioner directors of an incorporated legal practice — the practice were a partnership of the legal practitioner directors and the

employees of the practice were employees of the legal practitioner directors; or

- (b) where there is only one legal practitioner director of an incorporated legal practice — the practice were a sole practitioner and the employees of the practice were employees of the legal practitioner director.
- (3) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of an officer or employee of an incorporated legal practice.
- (4) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by an Australian legal practitioner employed by the practice.

**109. Professional indemnity insurance**

- (1) An incorporated legal practice must comply with the obligations of an incorporated legal practice under this Act relating to professional indemnity insurance.
- (2) Subsection (1) does not affect an obligation of an Australian legal practitioner who is a legal practitioner director or an officer or employee of an incorporated legal practice to comply with the obligations of an Australian legal practitioner under this Act relating to professional indemnity insurance, and the Australian legal practitioner must comply with those requirements accordingly.
- (3) If subsection (1) or (2) is not complied with the Board may —
  - (a) for a legal practitioner director who holds a local practising certificate — suspend the director's practising certificate while the failure continues; or
  - (b) for a legal practitioner director who is an interstate legal practitioner —



- (i) suspend the director's entitlement under Part 5 to practise in this jurisdiction while the failure to comply continues; and
- (ii) ask the corresponding authority in the practitioner's home jurisdiction to suspend the director's interstate practising certificate until the Board tells the corresponding authority that this section has been complied with.

**110. Conflicts of interest**

- (1) For the purposes of the application of any law (including the common law) or legal profession rule relating to conflicts of interest to the conduct of an Australian legal practitioner who is —
  - (a) a legal practitioner director of an incorporated legal practice; or
  - (b) an officer or employee of an incorporated legal practice,the interests of the incorporated legal practice or any related body corporate are also taken to be those of the practitioner (in addition to any interests that the practitioner has apart from this subsection).
- (2) Legal profession rules may be made for or with respect to additional duties and obligations in connection with conflicts of interest arising out of the conduct of an incorporated legal practice.

**111. Disclosure obligations**

- (1) This section applies if a person engages an incorporated legal practice to provide services that the person might reasonably assume to be legal services, but does not apply if the practice provides only legal services in this jurisdiction.
- (2) Each legal practitioner director of the incorporated legal practice, and any employee who is an Australian legal practitioner and who provides the services on behalf of the

practice, must ensure that a disclosure, complying with the requirements of this section and the regulations made for the purposes of this section, is made to the person in connection with the provision of the services.

Penalty: a fine of \$10 000.

- (3) The disclosure must be made by giving the person a notice in writing —
  - (a) setting out the services to be provided; and
  - (b) stating whether or not all the legal services to be provided will be provided by an Australian legal practitioner; and
  - (c) if some or all of the legal services will not be provided by an Australian legal practitioner — identifying those services and indicating the status or qualifications of the person or persons who will provide the services; and
  - (d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.
- (4) The regulations may make provision for or with respect to the following matters —
  - (a) the manner in which disclosure is to be made;
  - (b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by an incorporated legal practice.
- (5) Without limiting subsection (4), the additional matters may include the kind of services provided by the incorporated legal practice and whether those services are or are not covered by the insurance or other provisions of this Act.
- (6) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on one occasion or on more than one occasion or on an ongoing basis.

**112. Effect of non-disclosure on provision of certain services**

- (1) This section applies if —
  - (a) section 111 applies in relation to a service that is provided to a person who has engaged an incorporated legal practice to provide the service and that the person might reasonably assume to be a legal service; and
  - (b) a disclosure has not been made under that section about that service.
- (2) The standard of care owed by the practice in relation to the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

**113. Application of legal profession rules**

Legal profession rules, so far as they apply to Australian legal practitioners, also apply to Australian legal practitioners who are officers or employees of an incorporated legal practice, unless the rules otherwise provide.

**114. Requirements relating to advertising**

- (1) Any restriction imposed under this Act or another Act in connection with advertising by Australian legal practitioners applies to advertising by an incorporated legal practice with respect to the provision of legal services.
- (2) If a restriction mentioned in subsection (1) is limited to a particular branch of the legal profession or persons who practise in a particular style of legal practice, the restriction applies only to the extent that the incorporated legal practice carries on the business of that branch of the legal profession or in that particular style of legal practice.
- (3) Any advertisement of the kind referred to in this section is, for the purposes of disciplinary proceedings taken against an Australian legal practitioner, taken to have been authorised by each legal practitioner director of the incorporated legal practice.

- (4) This section does not apply if the provision by which the restriction is imposed expressly excludes its application to incorporated legal practices.

**115. Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices**

- (1) This section applies to any of the following proceedings (being proceedings based on the vicarious liability of an incorporated legal practice) —
- (a) civil proceedings relating to a failure to account for, pay or deliver money or property received by, or entrusted to, the practice (or to any officer or employee of the practice) in the course of the provision of legal services by the practice, being money or property under the direct or indirect control of the practice;
  - (b) civil proceedings for any other debt owed, or damages payable, to a client as a result of a dishonest act or omission by an Australian legal practitioner who is an employee of the practice in connection with the provision of legal services to the client.
- (2) If the incorporated legal practice would not (but for this section) be vicariously liable for any acts or omissions of its officers and employees in those proceedings, but would be liable for those acts or omissions if the practice and those officers and employees were carrying on business in partnership, the practice is taken to be vicariously liable for those acts or omissions.

**116. Sharing of receipts, revenue or other income**

- (1) Nothing under this Act prevents an Australian legal practitioner from sharing with an incorporated legal practice receipts, revenue or other income arising from the provision of legal services by the practitioner.
- (2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 117.

**117. Disqualified persons**

- (1) An incorporated legal practice commits an offence if a disqualified person —
- (a) is an officer or employee of the incorporated legal practice (whether or not the person provides legal services) or is an officer or employee of a related body corporate; or
  - (b) is a partner of the incorporated legal practice in a business that includes the provision of legal services; or
  - (c) shares the receipts, revenue or other income arising from the provision of legal services by the incorporated legal practice; or
  - (d) is engaged or paid in connection with the provision of legal services by the incorporated legal practice.

Penalty: a fine of \$15 000.

- (2) The failure of a legal practitioner director of an incorporated legal practice to ensure that the practice complies with subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.

**118. Audit of incorporated legal practice**

- (1) The Board or the Complaints Committee may conduct an audit of —
- (a) the compliance of an incorporated legal practice (and of its officers and employees) with the requirements of —
    - (i) this Part; or
    - (ii) the regulations or the legal profession rules, so far as they relate specifically to incorporated legal practices;
- and
- (b) the management of the provision of legal services by the incorporated legal practice (including the supervision of officers and employees providing the services).

- (2) The Board or the Complaints Committee may, in writing, appoint a suitably qualified person to conduct an audit under this section.
- (3) The appointment may be made generally, or in relation to a particular incorporated legal practice, or in relation to a particular audit.
- (4) An audit may be conducted whether or not a complaint has been made against an Australian lawyer with respect to the provision of legal services by the incorporated legal practice.
- (5) A report of an audit —
  - (a) must be provided to the incorporated legal practice concerned; and
  - (b) may be provided by the Board to the Complaints Committee or by the Complaints Committee to the Board; and
  - (c) may be provided by the Board or the Complaints Committee to a corresponding authority; and
  - (d) may be taken into account in connection with any disciplinary proceedings taken against legal practitioner directors or other persons or in connection with the grant, amendment, suspension or cancellation of Australian practising certificates.
- (6) The Board must notify the Complaints Committee, and the Complaints Committee must notify the Board, when it commences an audit.
- (7) Part 15 applies to an audit under this section.

**119. Banning of incorporated legal practices**

- (1) The State Administrative Tribunal may, on the application of the Board or the Complaints Committee, make an order disqualifying a corporation from providing legal services in this

jurisdiction for the period the Tribunal considers appropriate if satisfied that —

- (a) a ground for disqualifying the corporation under this section has been established; and
  - (b) the disqualification is justified.
- (2) An order under this section may, if the State Administrative Tribunal thinks it appropriate, be made —
- (a) subject to conditions as to the conduct of the incorporated legal practice; or
  - (b) subject to conditions as to when or in what circumstances the order is to take effect; or
  - (c) together with orders to safeguard the interests of clients of the incorporated legal practice who have been or are to be provided with legal services by the practice, and the employees or officers of the incorporated legal practice.
- (3) Action may be taken against an incorporated legal practice on any of the following grounds —
- (a) that a legal practitioner director or an Australian legal practitioner who is an officer or employee of the corporation is found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction;
  - (b) that the Board or the Complaints Committee is satisfied, after conducting an audit of the incorporated legal practice, that the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services;
  - (c) that the incorporated legal practice (or a related body corporate) has contravened section 100 or a regulation made under that section;
  - (d) that the incorporated legal practice has contravened section 117;

- (e) that a person who is an officer of the incorporated legal practice and who is the subject of an order under —
  - (i) section 120 or under provisions of a corresponding law that correspond to that section; or
  - (ii) section 145 or under provisions of a corresponding law that correspond to that section,is acting in the management of the incorporated legal practice.
- (4) If a corporation is disqualified under this section, the Board must, as soon as practicable, notify the corresponding authority of every other jurisdiction.
- (5) If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the Board may determine that the corporation is taken to be disqualified from providing legal services in this jurisdiction for the same period, but nothing in this subsection prevents the Board from instead applying for an order under this section.
- (6) A corporation that provides legal services in contravention of a disqualification under this section commits an offence.  
Penalty: a fine of \$50 000.
- (7) A corporation that is disqualified under this section ceases to be an incorporated legal practice.
- (8) Conduct of an Australian legal practitioner who provides legal services on behalf of a corporation in the capacity of an officer or employee of the corporation is capable of constituting unsatisfactory professional conduct or professional misconduct if the practitioner ought reasonably to have known that the corporation is disqualified under this section.
- (9) The regulations may make provision for or with respect to the publication and notification of orders made under this section,



including notification of corresponding authorities of other jurisdictions.

**120. Disqualification from managing incorporated legal practice**

- (1) The State Administrative Tribunal may, on the application of the Board, make an order disqualifying a person from managing a corporation that is an incorporated legal practice for the period the Tribunal considers appropriate if satisfied that —
  - (a) the person is a person who could be disqualified under section 206C, 206D, 206E or 206F of the Corporations Act from managing corporations; and
  - (b) the disqualification is justified.
- (2) The State Administrative Tribunal may, on the application of a person subject to a disqualification order under this section, revoke the order.
- (3) A disqualification order made under this section has effect for the purposes only of this Act and does not affect the application or operation of the Corporations Act.
- (4) The regulations may make provision for or with respect to the publication and notification of orders made under this section.
- (5) A person who is disqualified from managing a corporation under provisions of a corresponding law that correspond to this section is taken to be disqualified from managing a corporation under this section.

**121. Disclosure of information to Australian Securities and Investments Commission**

- (1) In this section —

*authorised person* means —

  - (a) the Board; or
  - (b) the Complaints Committee; or
  - (c) the Law Complaints Officer; or

- (d) the President of the State Administrative Tribunal or a member of staff of the Tribunal.
- (2) This section applies if an authorised person, in connection with performing functions under this Act, acquired information concerning a corporation that is or was an incorporated legal practice.
- (3) The authorised person may disclose to the Australian Securities and Investments Commission information concerning the corporation that is relevant to the Commission's functions.
- (4) Information may be provided under subsection (3) despite any law relating to secrecy or confidentiality, including any provisions of this Act.

**122. External administration proceedings under Corporations Act**

- (1) This section applies to proceedings in any court under the Corporations Act Chapter 5 —
  - (a) relating to a corporation that is an externally-administered body corporate under that Act and that is or was an incorporated legal practice; or
  - (b) relating to a corporation that is or was an incorporated legal practice becoming an externally-administered body corporate under that Act.
- (2) The Board is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice.
- (4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of the Corporations Act.

- (5) The provisions of subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act section 5G in relation to the provisions of Chapter 5 of that Act.

**123. External administration proceedings under other legislation**

- (1) This section applies to proceedings for the external administration (however expressed) of an incorporated legal practice, but does not apply to proceedings to which section 122 applies.
- (2) The Board is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice.
- (4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of any legislation applicable to the incorporated legal practice.

**124. Incorporated legal practice is subject to receivership under this Act and external administration under Corporations Act**

- (1) In this section —
- Corporations Act administrator*** means —
- (a) a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed administrator appointed under the Corporations Act; or
- (b) a person who is appointed to exercise powers under the Corporations Act and who is prescribed, or of a class prescribed, by the regulations for the purposes of this definition;

***LP receiver*** means a receiver appointed under Part 14.

- (2) This section applies if a corporation that is or was an incorporated legal practice is the subject of both —
  - (a) the appointment of an LP receiver; and
  - (b) the appointment of a Corporations Act administrator.
- (3) The LP receiver is under a duty to tell the Corporations Act administrator of the appointment of the LP receiver, whether the appointment precedes, follows or happens at the same time as the appointment of the Corporations Act administrator.
- (4) The LP receiver or the Corporations Act administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in relation to the dual appointments and their respective powers, except if proceedings mentioned in section 122 have been started.
- (5) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the LP receiver or the Corporations Act administrator for any act or omission done by the receiver or administrator in good faith for the purposes of carrying out or acting in accordance with the orders.
- (6) The Board is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern or affect the provision of legal services by the incorporated legal practice.
- (7) The provisions of subsections (4) and (5) are declared to be Corporations legislation displacement provisions for section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

**125. Incorporated legal practice that is subject to receivership under this Act and external administration under other legislation**

- (1) In this section —

*external administrator* means a person who is appointed to exercise powers under other legislation (whether or not legislation of this jurisdiction) and who is prescribed, or of a

class prescribed, by the regulations for the purposes of this definition;

***LP receiver*** means a receiver appointed under Part 14.

- (2) This section applies if an incorporated legal practice is the subject of both —
  - (a) the appointment of an LP receiver; and
  - (b) the appointment of an external administrator.
- (3) The LP receiver is under a duty to tell the external administrator of the appointment of the LP receiver, whether the appointment precedes, follows or happens at the same time as the appointment of the external administrator.
- (4) The LP receiver or the external administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in relation to the dual appointments and their respective powers.
- (5) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the LP receiver or the external administrator for any act or omission done by the receiver or administrator in good faith for the purposes of carrying out or acting in accordance with the orders.
- (6) The Board is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern or affect the provision of legal services by the incorporated legal practice.

**126. Cooperation between courts**

Courts and tribunals of this jurisdiction may make arrangements for communicating and cooperating with other courts and tribunals in connection with the exercise of powers under this Part.

**127. Relationship of Act to constitution of incorporated legal practice**

The provisions of this Act that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over the constitution or other constituent documents of the practice.

**128. Relationship of Act to legislation establishing incorporated legal practice**

- (1) This section applies to a corporation, established by or under a law (whether or not of this jurisdiction), that is an incorporated legal practice but is not a company under the Corporations Act.
- (2) The provisions of this Act that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over provisions of the legislation under which the corporation is established or regulated that are specified or described in the regulations.

**129. Relationship of Act to Corporations legislation**

- (1) In this section —  
*matter* includes act, omission, body, person or thing.
- (2) The regulations may declare any provision of this Act that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of the Corporations Act section 5G.
- (3) The regulations may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted under this Act to be an excluded matter for the purposes of the Corporations Act section 5F in relation to —
  - (a) the whole of the Corporations legislation; or
  - (b) a specified provision of the Corporations legislation; or
  - (c) the Corporations legislation other than a specified provision; or

- (d) the Corporations legislation other than to a specified extent.

**130. Undue influence**

A person (whether or not an officer or employee of an incorporated legal practice) must not cause or induce or attempt to cause or induce —

- (a) a legal practitioner director; or
- (b) another Australian legal practitioner who provides legal services on behalf of an incorporated legal practice,

to contravene this Act or his or her professional obligations as an Australian legal practitioner.

Penalty: a fine of \$25 000.

**Division 3 — Multi-disciplinary partnerships**

**131. Nature of multi-disciplinary partnership**

- (1) A multi-disciplinary partnership is a partnership between one or more Australian legal practitioners and one or more other persons who are not Australian legal practitioners, where the business of the partnership includes the provision of legal services in this jurisdiction as well as other services.
- (2) However, a partnership consisting only of one or more Australian legal practitioners and one or more Australian-registered foreign lawyers is not a multi-disciplinary partnership.
- (3) Nothing in this Division affects or applies to the provision by a multi-disciplinary partnership of legal services in one or more other jurisdictions.

**132. Conduct of multi-disciplinary partnership**

- (1) An Australian legal practitioner may be in partnership with a person who is not an Australian legal practitioner, where the

business of the partnership includes the provision of legal services.

- (2) Subsection (1) does not prevent an Australian legal practitioner from being in partnership with a person who is not an Australian legal practitioner, where the business of the partnership does not include the provision of legal services.
- (3) The regulations may prohibit an Australian legal practitioner from being in partnership with a person providing a service or conducting a business of a kind specified by the regulations, where the business of the partnership includes the provision of legal services.

**133. Notice of intention to start practice in multi-disciplinary partnership**

A legal practitioner partner must, before starting to provide legal services in this jurisdiction as a member of a multi-disciplinary partnership, give the Board written notice, in the approved form, of the partner's intention to do so.

Penalty: a fine of \$5 000.

**134. General obligations of legal practitioner partners**

- (1) Each legal practitioner partner of a multi-disciplinary partnership is, for the purposes only of this Act, responsible for the management of the legal services provided in this jurisdiction by the partnership.
- (2) Each legal practitioner partner must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the multi-disciplinary partnership —
  - (a) in accordance with the professional obligations of Australian legal practitioners and other obligations imposed by this Act; and
  - (b) so that the professional obligations of legal practitioner partners and employees who are Australian legal



practitioners are not affected by other partners and employees of the partnership.

**135. Obligations of legal practitioner partner relating to misconduct**

- (1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner partner —
  - (a) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the multi-disciplinary partnership;
  - (b) conduct of any other partner (not being an Australian legal practitioner) of the multi-disciplinary partnership that adversely affects the provision of legal services by the partnership;
  - (c) the unsuitability of any other partner (not being an Australian legal practitioner) of the multi-disciplinary partnership to be a member of a partnership that provides legal services.
- (2) A legal practitioner partner of a multi-disciplinary partnership must ensure that all reasonable action available to the legal practitioner partner is taken to deal with any unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the partnership.

**136. Actions of partner who is not Australian legal practitioner**

A partner of a multi-disciplinary partnership who is not an Australian legal practitioner does not contravene a provision of this Act merely because of any of the following —

- (a) the partner is a member of a partnership and the partnership business includes the provision of legal services;
- (b) the partner receives any fee, gain or reward for business of the partnership that is the business of an Australian legal practitioner;

- (c) the partner holds out, advertises or represents himself or herself as a member of a partnership where the business of the partnership includes the provision of legal services;
- (d) the partner shares with any other partner the receipts, revenue or other income of business of the partnership that is the business of an Australian legal practitioner,

unless the provision expressly applies to a partner of a multi-disciplinary partnership who is not an Australian legal practitioner.

**137. Obligations and privileges of practitioners who are partners or employees**

- (1) An Australian legal practitioner who provides legal services in the capacity of a partner or an employee of a multi-disciplinary partnership —
  - (a) is not excused from compliance with the professional obligations, or any obligations under any law, of an Australian legal practitioner; and
  - (b) does not lose the professional privileges of an Australian legal practitioner.
- (2) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of a partner or an employee of a multi-disciplinary partnership.

**138. Conflicts of interest**

- (1) For the purposes of the application of any law (including the common law) or legal profession rule relating to conflicts of interest to the conduct of an Australian legal practitioner who is —
  - (a) a legal practitioner partner of a multi-disciplinary partnership; or

- (b) an employee of a multi-disciplinary partnership, the interests of the partnership, or any partner of the multi-disciplinary partnership, are also taken to be those of the practitioner concerned (in addition to any interests that the practitioner has apart from this subsection).
- (2) Legal profession rules may be made for or with respect to additional duties and obligations in connection with conflicts of interest arising out of the conduct of a multi-disciplinary partnership.

**139. Disclosure obligations**

- (1) This section applies if a person engages a multi-disciplinary partnership to provide services that the person might reasonably assume to be legal services.
- (2) Each legal practitioner partner of the multi-disciplinary partnership, and any employee of the partnership who is an Australian legal practitioner and who provides the services on behalf of the practice, must ensure that a disclosure, complying with the requirements of this section and the regulations made for the purposes of this section, is made to the person in connection with the provision of the services.  
Penalty: a fine of \$10 000.
- (3) The disclosure must be made by giving the person a notice in writing —
- (a) setting out the services to be provided; and
  - (b) stating whether or not all the legal services to be provided will be provided by an Australian legal practitioner; and
  - (c) if some or all of the legal services will not be provided by an Australian legal practitioner — identifying those services and indicating the status or qualifications of the person or persons who will provide the services; and

- (d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.
- (4) The regulations may make provision for or with respect to the following matters —
  - (a) the manner in which disclosure is to be made;
  - (b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by a multi-disciplinary partnership.
- (5) Without limiting subsection (4), the additional matters may include the kind of services provided by the multi-disciplinary partnership and whether those services are or are not covered by the insurance or other provisions of this Act.
- (6) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on one occasion or on more than one occasion or on an on-going basis.

**140. Effect of non-disclosure on provision of certain services**

- (1) This section applies if —
  - (a) section 139 applies to a service that is provided to a person who has engaged a multi-disciplinary partnership to provide the service and that the person might reasonably assume to be a legal service; and
  - (b) a disclosure has not been made under that section about that service.
- (2) The standard of care owed by the multi-disciplinary partnership in relation to the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

**141. Application of legal profession rules**

Legal profession rules, so far as they apply to Australian legal practitioners, also apply to Australian legal practitioners who are legal practitioner partners or employees of a multi-disciplinary partnership, unless the rules otherwise provide.

**142. Requirements relating to advertising**

- (1) Any restriction imposed under this Act or another Act in connection with advertising by Australian legal practitioners applies to advertising by a multi-disciplinary partnership with respect to the provision of legal services.
- (2) If a restriction referred to in subsection (1) is limited to a particular branch of the legal profession or for persons who practise in a particular style of legal practice, the restriction applies only to the extent that the multi-disciplinary partnership carries on the business of that branch of the legal profession or in that particular style of legal practice.
- (3) An advertisement of the kind referred to in this section is, for the purposes of disciplinary proceedings taken against an Australian legal practitioner, taken to have been authorised by each legal practitioner partner of the multi-disciplinary partnership.
- (4) This section does not apply if the provision by which the restriction is imposed expressly excludes its application to multi-disciplinary partnerships.

**143. Sharing of receipts, revenue or other income**

- (1) Nothing under this Act prevents a legal practitioner partner, or an Australian legal practitioner who is an employee of a multi-disciplinary partnership, from sharing receipts, revenue or other income arising from the provision of legal services by the partner or practitioner with a partner who is not an Australian legal practitioner.
- (2) This section does not extend to the sharing of receipts in contravention of section 144.

**144. Disqualified persons**

A legal practitioner partner of a multi-disciplinary partnership must not knowingly —

- (a) be a partner of a disqualified person in the multi-disciplinary partnership; or
- (b) share with a disqualified person the receipts, revenue or other income arising from the provision of legal services by the multi-disciplinary partnership; or
- (c) employ or pay a disqualified person in connection with the provision of legal services by the multi-disciplinary partnership.

Penalty: a fine of \$15 000.

**145. Prohibition on partnerships with certain partners who are not Australian legal practitioners**

- (1) This section applies to a person who —
  - (a) is not an Australian legal practitioner; and
  - (b) is or was the partner of an Australian legal practitioner.
- (2) On application by the Board, the State Administrative Tribunal may make an order prohibiting any Australian legal practitioner from being a partner, in a business that includes the provision of legal services, of a specified person to whom this section applies if —
  - (a) the Tribunal is satisfied that the person is not a fit and proper person to be a partner; or
  - (b) the Tribunal is satisfied that the person has been guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct; or
  - (c) in the case of a corporation, if the Tribunal is satisfied that the corporation has been disqualified from providing legal services in this jurisdiction or there are

grounds for disqualifying the corporation from providing legal services in this jurisdiction.

- (3) An order made under this section may be revoked by the State Administrative Tribunal on application by the Board or by the person against whom the order was made.
- (4) The death of an Australian legal practitioner does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the practitioner.
- (5) The regulations may make provision for or with respect to the publication and notification of orders made under this section.

**146. Undue influence**

A person (whether or not a partner or employee of a multi-disciplinary partnership) must not cause or induce or attempt to cause or induce —

- (a) a legal practitioner partner; or
- (b) an employee of a multi-disciplinary partnership who provides legal services and who is an Australian legal practitioner,

to contravene this Act or his or her professional obligations as an Australian legal practitioner.

Penalty: a fine of \$25 000.

**Division 4 — Miscellaneous**

**147. Obligations of individual practitioners not affected**

Except as provided by this Part, nothing in this Part affects any obligation imposed on —

- (a) a legal practitioner director or an Australian legal practitioner who is an employee of an incorporated legal practice; or

- (b) a legal practitioner partner of, or an Australian legal practitioner who is an employee of, a multi-disciplinary partnership,

under this Act or another Act in his or her capacity as an Australian legal practitioner.

**148. Regulations**

- (1) The regulations may make provision for or with respect to the following matters —
  - (a) the legal services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships;
  - (b) other services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships in circumstances in which a conflict of interest relating to the provision of legal services may arise.
- (2) A regulation prevails over any inconsistent provision of the legal profession rules.
- (3) A regulation may provide that a breach of the regulations is capable of constituting unsatisfactory professional conduct or professional misconduct —
  - (a) in the case of an incorporated legal practice — by a legal practitioner director, or by an Australian legal practitioner responsible for the breach, or both; or
  - (b) in the case of a multi-disciplinary partnership — by a legal practitioner partner, or by an Australian legal practitioner responsible for the breach, or both.



## Part 8 — Legal practice by foreign lawyers

### Division 1 — Preliminary

**149. Purpose**

The purpose of this Part is to encourage and facilitate the internationalisation of legal services and the legal service sector by providing a framework for the regulation of the practice of foreign law in this jurisdiction by foreign lawyers as a recognised aspect of legal practice in this jurisdiction.

**150. Terms used**

In this Part —

*Australia* includes the external territories;

*Australian law* means law of the Commonwealth or of a jurisdiction;

*foreign law* means law of a foreign country;

*foreign law practice* means a partnership or corporate entity that is entitled to engage in legal practice in a foreign country;

*foreign registration authority* means an entity in a foreign country having the function, conferred by the law of the foreign country, of registering persons to engage in legal practice in the foreign country;

*local registration certificate* means a registration certificate given under this Part;

*overseas-registered foreign lawyer* means a natural person who is properly registered to engage in legal practice in a foreign country by the foreign registration authority for the country;

*practise foreign law* means do work, or transact business, in this jurisdiction concerning foreign law, being work or business of a kind that, if it concerned the law of this jurisdiction, would ordinarily be done or transacted by an Australian legal practitioner;

*registered*, when used in connection with a foreign country, means having all necessary licences, approvals, admissions, certificates or other forms of authorisation (including practising certificates) required under legislation for engaging in legal practice in that country.

**151. This Part does not apply to Australian legal practitioners**

- (1) This Part does not apply to an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer).
- (2) Accordingly, nothing in this Part requires or enables an Australian legal practitioner (including an Australian legal practitioner who is also an overseas-registered foreign lawyer) to be registered as a foreign lawyer under this Act in order to practise foreign law in this jurisdiction.

**Division 2 — Practice of foreign law**

**152. Requirement for registration**

- (1) A person must not practise foreign law in this jurisdiction unless the person is —
  - (a) an Australian-registered foreign lawyer; or
  - (b) an Australian legal practitioner.Penalty: a fine of \$25 000.
- (2) However, a person does not contravene subsection (1) if the person is an overseas-registered foreign lawyer —
  - (a) who —
    - (i) practises foreign law in this jurisdiction for one or more periods that do not in aggregate exceed 90 days in any period of 12 months; or
    - (ii) is subject to a restriction imposed under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which

work may be done, or business transacted, in  
Australia by the person;

and

- (b) who —
  - (i) does not maintain an office for the purpose of practising foreign law in this jurisdiction; or
  - (ii) does not become a partner or director of a law practice.

**153. Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction**

An Australian-registered foreign lawyer is, subject to this Act, entitled to practise foreign law in this jurisdiction.

**154. Scope of practice**

- (1) An Australian-registered foreign lawyer may provide only the following legal services in this jurisdiction —
  - (a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is registered by the foreign registration authority for the country;
  - (b) legal services (including appearances) in relation to arbitration proceedings of a kind prescribed under the regulations;
  - (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the bodies concerned are not required to apply the rules of evidence and in which knowledge of the foreign law of a country referred to in paragraph (a) is essential;
  - (d) legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed under the regulations.

- (2) Nothing in this Act authorises an Australian-registered foreign lawyer to appear in any court (except on the lawyer's own behalf) or to practise Australian law in this jurisdiction.
- (3) Despite subsection (2), an Australian-registered foreign lawyer may advise on the effect of an Australian law if —
  - (a) the giving of advice on Australian law is necessarily incidental to the practice of foreign law; and
  - (b) the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

**155. Form of practice**

- (1) An Australian-registered foreign lawyer may (subject to any conditions attaching to the foreign lawyer's registration) practise foreign law —
  - (a) on the foreign lawyer's own account; or
  - (b) in partnership with one or more Australian-registered foreign lawyers or one or more Australian legal practitioners, or both, in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under a law of this jurisdiction; or
  - (c) as a director or employee of an incorporated legal practice or a partner or employee of a multi-disciplinary partnership that is permitted by a law of this jurisdiction; or
  - (d) as an employee of an Australian legal practitioner or law firm in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the employment would be permitted under a law of this jurisdiction; or
  - (e) as an employee of an Australian-registered foreign lawyer.

- (2) An affiliation referred to in subsection (1)(b) to (e) does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

**156. Application of Australian professional ethical and practice standards**

- (1) An Australian-registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by an Australian legal practitioner in practising Australian law in this jurisdiction, be capable of constituting professional misconduct or unsatisfactory professional conduct.
- (2) Part 13 applies to a person who —
- (a) is an Australian-registered foreign lawyer; or
  - (b) was an Australian-registered foreign lawyer when the relevant conduct allegedly occurred, but is no longer an Australian-registered foreign lawyer (in which case Part 13 applies as if the person were an Australian-registered foreign lawyer),
- and so applies as if references in Part 13 to an Australian legal practitioner were references to a person of that kind.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of Part 13 for the purposes of this section.
- (4) Without limiting the matters that may be taken into account in deciding whether a person should be disciplined for a contravention of subsection (1), the following matters may be taken into account —
- (a) whether the conduct of the person was consistent with the standard of professional conduct of the legal profession in any foreign country where the person is registered;
  - (b) whether the person contravened the subsection wilfully or without reasonable excuse.

- (5) Without limiting any other provision of this section or the orders that may be made under Part 13 as applied by this section, the following orders may be made under that Part as applied by this section —
- (a) an order that a person's registration under this Act as a foreign lawyer be cancelled;
  - (b) an order that a person's registration under a corresponding law as a foreign lawyer be cancelled.

**157. Designation**

- (1) An Australian-registered foreign lawyer may use only the following designations —
- (a) the lawyer's own name;
  - (b) a title or business name the lawyer is authorised by law to use in a foreign country where the lawyer is registered by a foreign registration authority;
  - (c) subject to this section, the name of a foreign law practice with which the lawyer is affiliated or associated (whether as a partner, director, employee or otherwise);
  - (d) if the lawyer is a principal of any law practice in Australia whose principals include both one or more Australian-registered foreign lawyers and one or more Australian legal practitioners — a description of the practice that includes references to both Australian legal practitioners and Australian-registered foreign lawyers (for example: "Solicitors and locally registered foreign lawyers" or "Australian solicitors and US attorneys").
- (2) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the practice's name in or in connection with practising foreign law in this jurisdiction only if —
- (a) the lawyer indicates, on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as an overseas-registered foreign lawyer, that the

foreign law practice practises only foreign law in this jurisdiction; and

- (b) the lawyer has provided the Board with acceptable evidence that the lawyer is a principal of the foreign law practice.
- (3) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the name of the practice as mentioned in this section whether or not other principals of the practice are Australian-registered foreign lawyers.
- (4) This section does not authorise the use of a name or other designation that contravenes any requirements of the law applicable in this jurisdiction concerning the use of business names or that is likely to lead to any confusion with the name of any established domestic law practice or foreign law practice in this jurisdiction.

*[Section 157 amended by No. 6 of 2012 s. 41.]*

#### **158. Letterhead and other identifying documents**

- (1) In this section —  
**public document** includes any business letter, statement of account, invoice, business card, and promotional and advertising material.
- (2) An Australian-registered foreign lawyer must indicate, in each public document distributed by the lawyer in connection with the lawyer's practice of foreign law, the fact that the lawyer is an Australian-registered foreign lawyer and is restricted to the practice of foreign law.
- (3) Subsection (2) is satisfied if the lawyer includes in the public document the words —
  - (a) “registered foreign lawyer” or “registered foreign practitioner”; and
  - (b) “entitled to practise foreign law only”.

- (4) An Australian-registered foreign lawyer may (but need not) include any or all of the following on any public document —
- (a) an indication of all foreign countries in which the lawyer is registered to engage in legal practice;
  - (b) a description of himself or herself, and any law practice with which the lawyer is affiliated or associated in any of the ways designated in section 157.

**159. Advertising**

- (1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the Board or by law on the legal practice engaged in by an Australian legal practitioner that are relevant to the practice of law in this jurisdiction.
- (2) Without limiting subsection (1), an Australian-registered foreign lawyer must not advertise (or use any description on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as a lawyer) in any way that —
- (a) might reasonably be regarded as —
    - (i) false, misleading or deceptive; or
    - (ii) suggesting that the Australian-registered foreign lawyer is an Australian legal practitioner;
- or
- (b) contravenes any requirement of the regulations.

**160. Foreign lawyer employing Australian legal practitioner**

- (1) An Australian-registered foreign lawyer may employ one or more Australian legal practitioners.
- (2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign lawyer to practise Australian law in this jurisdiction.



- (3) An Australian legal practitioner employed by an Australian-registered foreign lawyer may practise foreign law.
- (4) An Australian legal practitioner employed by an Australian-registered foreign lawyer must not —
  - (a) provide advice on Australian law to, or for use by, the Australian-registered foreign lawyer; or
  - (b) otherwise practise Australian law in this jurisdiction in the course of that employment.
- (5) Subsection (4) does not apply to an Australian legal practitioner employed by a law firm a partner of which is an Australian-registered foreign lawyer, if at least one other partner is an Australian legal practitioner.
- (6) Any period of employment of an Australian legal practitioner by an Australian-registered foreign lawyer cannot be used to satisfy a requirement imposed by a condition on a local practising certificate to complete a period of supervised legal practice.

**161. Trust money and trust accounts**

- (1) The provisions of Part 9, and any other provisions of this Act relating to requirements for trust money and trust accounts apply (subject to this section) to Australian-registered foreign lawyers in the same way as they apply to law practices and Australian legal practitioners.
- (2) In this section, a reference to money is not limited to a reference to money in this jurisdiction.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of this Act relating to trust money and trust accounts for the purposes of this section.

**162. Professional indemnity insurance**

- (1) An Australian-registered foreign lawyer must, at all times while practising foreign law in this jurisdiction, comply with one of the following —
  - (a) the foreign lawyer must have professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian legal practitioners in any jurisdiction;
  - (b) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) — the foreign lawyer —
    - (i) must have 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; and
    - (ii) if the insurance is for less than \$1.5 million (inclusive of defence costs) — must provide a disclosure statement to each client disclosing the level of cover;
  - (c) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) or (b) — the foreign lawyer must provide a disclosure statement to each client stating that the lawyer does not have complying professional indemnity insurance.
- (2) A disclosure statement must be made in writing before, or as soon as practicable after, the foreign lawyer is retained in the matter.
- (3) A disclosure statement provided to a person before the foreign lawyer is retained in a matter is taken to be provided to the person as a client for the purposes of this section.

- (4) A disclosure statement is not valid unless it is given in accordance with, and otherwise complies with, any applicable requirements of the regulations.

**163. Fidelity cover**

The regulations may provide that the provisions of Part 12 apply to classes of Australian-registered foreign lawyers prescribed by the regulations and so apply with any modifications specified in the regulations.

**Division 3 — Local registration of foreign lawyers generally**

**164. Local registration of foreign lawyers**

Overseas-registered foreign lawyers may be registered as foreign lawyers under this Act.

**165. Duration of registration**

- (1) Registration as a locally registered foreign lawyer granted under this Act is in force from the day specified in the local registration certificate until the end of the financial year in which it is granted, unless the registration is sooner suspended or cancelled.
- (2) Registration as a foreign lawyer renewed under this Act is in force until the end of the financial year following its previous period of currency, unless the registration is sooner suspended or cancelled.
- (3) If an application for the renewal of registration as a foreign lawyer has not been determined by the following 1 July, the registration —
- (a) continues in force on and from that 1 July until the Board renews or refuses to renew the registration or the holder withdraws the application for renewal, unless the registration is sooner suspended or cancelled; and

- (b) if renewed, is taken to have been renewed on and from that 1 July.

**166. Locally registered foreign lawyer is not officer of Supreme Court**

A locally registered foreign lawyer is not an officer of the Supreme Court.

**Division 4 — Application for grant or renewal of local registration**

**167. Application for grant or renewal of registration**

An overseas-registered foreign lawyer may apply to the Board for the grant or renewal of registration as a foreign lawyer under this Act.

**168. Manner of application**

- (1) An application for the grant or renewal of registration as a foreign lawyer must be —
  - (a) made in the approved form; and
  - (b) accompanied by the fees determined by the Board.
- (2) Different fees may be set according to different factors determined by the Board.
- (3) The fees are not to be greater than the maximum fees for a local practising certificate.
- (4) The Board may also require the applicant to pay any reasonable costs and expenses incurred by the Board in considering the application, including (for example) costs and expenses of making inquiries and obtaining information or documents about whether the applicant meets the criteria for registration.
- (5) The fees and costs must not include any component for compulsory membership of any professional association.

- (6) The approved form may require the applicant to disclose —
  - (a) matters that may affect the Board's consideration of the application for the grant or renewal of registration; and
  - (b) particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section.
- (7) The approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.
- (8) The approved form may indicate that specified kinds of matters or particulars previously disclosed in a particular manner need not be disclosed for the purposes of the current application.

**169. Requirements regarding applications for grant or renewal of registration**

- (1) An application for the grant of registration must state the applicant's educational and professional qualifications.
- (2) An application for the grant or renewal of registration must —
  - (a) state that the applicant is registered to engage in legal practice by one or more specified foreign registration authorities in one or more foreign countries; and
  - (b) state that the applicant is not an Australian legal practitioner; and
  - (c) state that the applicant is not the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in the applicant's capacity as —
    - (i) an overseas-registered foreign lawyer; or
    - (ii) an Australian-registered foreign lawyer; or

- (iii) an Australian lawyer;
- and
- (d) state whether the applicant has been convicted of an offence in Australia or a foreign country, and if so —
  - (i) the nature of the offence; and
  - (ii) how long ago the offence was committed; and
  - (iii) the applicant's age when the offence was committed;
- and
- (e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country; and
- (f) state —
  - (i) that the applicant is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place; and
  - (ii) whether or not the applicant is subject to any special conditions in engaging in legal practice in any place,as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country; and
- (g) specify any special conditions imposed in Australia or a foreign country as a restriction on the legal practice engaged in by the applicant or any undertaking given by the applicant restricting the applicant's practice of law; and
- (h) give consent to the making of inquiries of, and the exchange of information with, any foreign registration authorities the Board considers appropriate regarding the applicant's activities in engaging in legal practice in the places concerned or otherwise regarding matters relevant to the application; and

- (i) specify which of the paragraphs of section 162(1) the applicant proposes to rely on and be accompanied by supporting proof of the relevant matters; and
  - (j) provide the information or be accompanied by other information or documents (or both) that is specified in the application form or in material accompanying the application form as provided by the Board.
- (3) The application must (if the Board so requires) be accompanied by an original instrument, or a copy of an original instrument, from each foreign registration authority specified in the application that —
  - (a) verifies the applicant's educational and professional qualifications; and
  - (b) verifies the applicant's registration by the authority to engage in legal practice in the foreign country concerned, and the date of registration; and
  - (c) describes anything done by the applicant in engaging in legal practice in that foreign country of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place.
- (4) The applicant must (if the Board so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.
- (5) The Board may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the Board.
- (6) If the accompanying instrument is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the Board.

**Division 5 — Grant or renewal of registration**

**170. Grant or renewal of registration**

- (1) The Board must consider an application that has been made for the grant or renewal of registration as a locally registered foreign lawyer and may —
  - (a) grant or refuse to grant the registration; and
  - (b) renew or refuse to renew the registration.
- (2) The Board may, when granting or renewing registration, impose conditions as referred to in section 189.
- (3) If the Board grants or renews the registration, the Board must give the applicant a registration certificate or a notice of renewal.
- (4) If the Board —
  - (a) refuses to grant or renew registration; or
  - (b) imposes a condition on the registration and the applicant does not agree to the condition,the Board must, as soon as practicable, give the applicant an information notice.
- (5) A notice of renewal may be in the form of a new registration certificate or another form the Board considers appropriate.

**171. Requirement to grant or renew registration if criteria satisfied**

- (1) The Board must grant an application for registration as a foreign lawyer if the Board —
  - (a) is satisfied the applicant is registered to engage in legal practice in one or more foreign countries and is not an Australian legal practitioner; and



- (b) considers an effective system exists for regulating engaging in legal practice in one or more of the foreign countries; and
- (c) considers the applicant is not, as a result of criminal, civil or disciplinary proceedings in any of the foreign countries, subject to —
  - (i) any special conditions in engaging in legal practice in any of the foreign countries; or
  - (ii) any undertakings concerning engaging in legal practice in any of the foreign countries,that would make it inappropriate to register the person; and
- (d) is satisfied that the applicant demonstrates an intention to commence practising foreign law in this jurisdiction within a reasonable period if registration were to be granted,

unless the Board refuses the application under this Part.

- (2) The Board must grant an application for renewal of a person's registration, unless the Board refuses the renewal under this Part.
- (3) Residence or domicile in this jurisdiction is not to be a prerequisite for or a factor in entitlement to the grant or renewal of registration.

**172. Refusal to grant or renew registration**

- (1) The Board may refuse to consider an application for registration as a foreign lawyer if it is not made in accordance with this Act.
- (2) The Board may refuse to grant or renew registration if —
  - (a) the application is not accompanied by, or does not contain, the information required under this Part or prescribed by the regulations; or

- (b) the applicant has contravened this Act or a corresponding law; or
  - (c) the applicant has contravened an order of the Complaints Committee, the State Administrative Tribunal or the Supreme Court exercising jurisdiction under this Act or a corresponding disciplinary body, including but not limited to an order to pay any fine or costs; or
  - (d) the applicant has contravened an order of a local regulatory authority or interstate regulatory authority to pay any fine or costs; or
  - (e) the applicant has failed to comply with a requirement under this Act to pay a contribution or levy to the Guarantee Fund; or
  - (f) the applicant has contravened a requirement under this Act about professional indemnity insurance; or
  - (g) the applicant has failed to pay any expenses of receivership payable under this Act; or
  - (h) the applicant's foreign legal practice is in receivership (however described).
- (3) The Board may refuse to grant or renew registration if an authority of another jurisdiction has under a corresponding law —
- (a) refused to grant or renew registration for the applicant; or
  - (b) suspended or cancelled the applicant's registration.
- (4) The Board may refuse to grant registration if the Board is satisfied that the applicant is not a fit and proper person to be registered after considering —
- (a) the nature of any offence of which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section; and
  - (b) how long ago the offence was committed; and

- (c) the person's age when the offence was committed.
- (5) The Board may refuse to renew registration if the Board is satisfied that the applicant is not a fit and proper person to continue to be registered after considering —
  - (a) the nature of any offence of which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section, other than an offence disclosed in a previous application to the Board; and
  - (b) how long ago the offence was committed; and
  - (c) the person's age when the offence was committed.
- (6) The Board may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.
- (7) If the Board refuses to grant or renew registration, the Board must, as soon as practicable, give the applicant an information notice.
- (8) Nothing in this section affects the operation of Division 7.

**Division 6 — Amendment, suspension or cancellation of local registration**

**173. Application of this Division**

This Division does not apply in relation to matters referred to in Division 7.

**174. Grounds for amending, suspending or cancelling local registration**

- (1) Each of the following is a ground for amending, suspending or cancelling a person's registration as a foreign lawyer —
  - (a) the registration was obtained because of incorrect or misleading information;
  - (b) the person contravenes a requirement of this Part;

- (c) the person contravenes a condition imposed on the person's registration;
  - (d) the person becomes the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in the person's capacity as —
    - (i) an overseas-registered foreign lawyer; or
    - (ii) an Australian-registered foreign lawyer; or
    - (iii) an Australian lawyer;
  - (e) the person has been convicted of an offence in Australia or a foreign country;
  - (f) the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country;
  - (g) the person does not meet the requirements of section 162;
  - (h) another ground the Board considers sufficient.
- (2) Subsection (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under section 189.

**175. Amending, suspending or cancelling registration**

- (1) In this section —
- amend*, in relation to registration, means amend the registration under section 189 during its currency, otherwise than at the request of the foreign lawyer concerned.
- (2) If the Board believes a ground exists to amend, suspend or cancel a person's registration by it as a foreign lawyer (the *action*), the Board must give the person a notice that —
- (a) states the action proposed and —

- (i) if the proposed action is to amend the registration in any way — states the proposed amendment; and
    - (ii) if the proposed action is to suspend the registration — states the proposed suspension period;
  - and
  - (b) states the grounds for proposing to take the action; and
  - (c) outlines the facts and circumstances that form the basis for the Board's belief; and
  - (d) invites the person to make written representations to the Board, within a specified time not less than 7 days and not more than 28 days, as to why the action proposed should not be taken.
- (3) If, after considering all written submissions made within the specified time, the Board still believes a ground exists to take the action, the Board may —
- (a) if the notice under subsection (2) stated the action proposed was to amend the person's registration — amend the registration in the way stated, or in another way the Board considers appropriate because of the representations; or
  - (b) if the notice stated the action proposed was to suspend the registration for a specified period — suspend the registration for a period no longer than the specified period; or
  - (c) if the notice stated the action proposed was to cancel the registration —
    - (i) cancel the registration; or
    - (ii) suspend the registration for a period; or
    - (iii) amend the registration in a less onerous way the Board considers appropriate because of the representations.

- (4) The Board may, in its discretion, consider representations made after the specified time.
- (5) If the Board decides to amend, suspend or cancel the registration, the Board must give the person an information notice about the decision.

**176. Operation of amendment, suspension or cancellation of registration**

- (1) This section applies if a decision is made under section 175 to amend, suspend or cancel a person's registration.
- (2) Subject to subsections (3) and (4), the amendment, cancellation or suspension of the person's registration takes effect on the later of the following —
  - (a) the day notice of the decision is given to the person;
  - (b) the day specified in the notice.
- (3) If the registration is amended, cancelled or suspended because the person has been convicted of an offence —
  - (a) the State Administrative Tribunal may, on the application of the person, order that the amendment, cancellation or suspension be stayed until —
    - (i) the end of the time to appeal against the conviction; or
    - (ii) if an appeal is made against the conviction — the appeal is finally decided, lapses or otherwise ends;
  - and
  - (b) the amendment, cancellation or suspension does not have effect during any period for which the stay is in force.
- (4) If the registration is amended, suspended or cancelled because the person has been convicted of an offence and the conviction is quashed —

- (a) the amendment or suspension ceases to have effect when the conviction is quashed; or
- (b) the cancellation ceases to have effect when the conviction is quashed and the registration is restored as if it had merely been suspended.

**177. Other ways of amending or cancelling registration**

- (1) The Board may —
  - (a) amend the registration of a locally registered foreign lawyer if the lawyer requests the Board to do so; or
  - (b) suspend the registration of a locally registered foreign lawyer for a specified period if the lawyer requests the Board to do so or agrees to the Board doing so; or
  - (c) cancel the registration of a locally registered foreign lawyer if the lawyer requests the Board to do so or surrenders the lawyer's local registration certificate to the Board.
- (2) The Board may amend a locally registered foreign lawyer's registration —
  - (a) for a formal or clerical reason; or
  - (b) in another way that does not adversely affect the lawyer's interests.
- (3) The amendment, suspension or cancellation of registration under this section is effected by written notice given to the lawyer.
- (4) Section 175 does not apply in the case of an amendment, suspension or cancellation under this section.

**178. Relationship of this Division with Part 13**

Nothing in this Division prevents a complaint from being made, or an investigation from being initiated, under Part 13 about a matter to which this Division relates.

**Division 7 — Special powers in relation to local registration — show cause events**

**179. Applicant for local registration — show cause event**

- (1) This section applies if —
  - (a) a person is applying for registration as a foreign lawyer under this Act; and
  - (b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person first became an overseas-registered foreign lawyer.
- (2) As part of the application, the person must provide to the Board a written statement, in accordance with the regulations —
  - (a) about the show cause event; and
  - (b) explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally registered foreign lawyer.
- (3) However, a person need not provide a statement under subsection (2) if the person has previously provided to the Board a statement under this section, or a notice and statement under section 180, explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally registered foreign lawyer.

**180. Locally registered foreign lawyer — show cause event**

- (1) This section applies to a show cause event that happens in relation to a locally registered foreign lawyer.
- (2) The locally registered foreign lawyer must provide to the Board both of the following —
  - (a) within 7 days after the happening of the event — notice, in the approved form, that the event happened;



- (b) within 28 days after the happening of the event — a written statement explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally registered foreign lawyer.
- (3) If a written statement is provided after the 28 days mentioned in subsection (2)(b), the Board may accept the statement and take it into consideration.

**181. Refusal, amendment, suspension or cancellation of local registration — failure to show cause**

- (1) The Board may refuse to grant or renew, or may amend, suspend or cancel, local registration if the applicant for registration or the locally registered foreign lawyer —
  - (a) is required under section 179 or 180 to provide a written statement relating to a matter and has failed to provide a written statement in accordance with that requirement; or
  - (b) has provided a written statement in accordance with section 179 or 180, but the Board does not consider that the applicant or foreign lawyer has shown in the statement that, despite the show cause event concerned, he or she is a fit and proper person to be a locally registered foreign lawyer.
- (2) For the purposes of this section only, a written statement accepted by the Board under section 180(3) is taken to have been provided in accordance with section 180.
- (3) The Board must give the applicant or foreign lawyer an information notice about the decision to refuse to grant or renew, or to suspend or cancel, the registration.

**182. Restriction on making further applications**

- (1) If the Board determines under this Division to cancel a person's registration, the Board may also determine that the person is not

entitled to apply for registration under this Part for a specified period not exceeding 5 years.

- (2) A person in respect of whom a determination has been made under this section, or under a provision of a corresponding law that corresponds to this section, is not entitled to apply for registration under this Part during the period specified in the decision.
- (3) If the Board makes a determination under this section, the Board must give the person an information notice about the determination.

**183. Relationship of this Division with Part 13**

Nothing in this Division prevents a complaint from being made, or an investigation from being initiated, under Part 13 about a matter to which this Division relates.

**Division 8 — Further provisions relating to local registration**

**184. Immediate suspension of registration**

- (1) This section applies, despite sections 175 and 176, if the Board considers it necessary in the public interest to immediately suspend a person's registration as a locally registered foreign lawyer.
- (2) The Board may, by written notice given to the person, immediately suspend the registration until the earlier of the following —
  - (a) the time at which the Board informs the person of the Board's decision by notice under section 175;
  - (b) the end of the period of 56 days after the notice is given to the person under this section.
- (3) The notice under this section must state —
  - (a) the reasons for the suspension; and

- (b) that the person may make written representations to the Board about the suspension; and
  - (c) the review rights of the person under section 203.
- (4) The person may make written representations to the Board about the suspension, and the Board must consider the representations.
- (5) The Board may revoke the suspension at any time, whether or not in response to any written representations made to it by the person.

**185. Automatic cancellation of registration on grant of practising certificate**

A person's registration as a foreign lawyer under this Part is taken to be cancelled if the person becomes an Australian legal practitioner.

**186. Suspension or cancellation of registration not to affect disciplinary processes**

The suspension or cancellation of a person's registration as a foreign lawyer under this Part does not affect any disciplinary processes in respect of matters arising before the suspension or cancellation.

**187. Return of local registration certificate on amendment, suspension or cancellation of registration**

- (1) This section applies if a person's registration under this Part as a foreign lawyer is amended, suspended or cancelled.
- (2) The Board may give the person a notice requiring the person to return the registration certificate to the Board in the way specified in the notice within a specified period of not less than 14 days.
- (3) The person must comply with the notice, unless the person has a reasonable excuse.

Penalty: a fine of \$2 000.

- (4) The Board must return the registration certificate to the person as soon as practicable —
- (a) if the certificate is amended — after amending it; or
  - (b) if the certificate is suspended and is still current at the end of the suspension period — at the end of the suspension period.

### **Division 9 — Conditions on registration**

#### **188. Conditions generally**

Registration as a foreign lawyer under this Part is subject to —

- (a) any conditions imposed by the Board; and
- (b) any conditions imposed under the legal profession rules; and
- (c) any conditions imposed under Part 13 or under any provisions of a corresponding law that correspond to Part 13; and
- (d) any other conditions imposed by this or any other Act.

#### **189. Conditions imposed by Board**

- (1) The Board may impose conditions on registration as a foreign lawyer —
- (a) when the registration is granted or renewed; or
  - (b) during the currency of the registration.
- (2) A condition imposed under this section must be reasonable and relevant.
- (3) A condition imposed under this section may be about any of the following —
- (a) any matter in respect of which a condition could be imposed on a local practising certificate;
  - (b) a matter agreed to by the foreign lawyer.

- (4) The Board must not impose a condition under subsection (3)(a) that is more onerous than a condition that it would impose on a local practising certificate of a local legal practitioner in the same or similar circumstances.
- (5) The Board may revoke or vary conditions imposed by it under this section.

**190. Imposition or variation of conditions pending criminal proceedings**

- (1) If a person registered as a foreign lawyer under this Part has been charged with an offence but the charge has not been determined, the Board may apply to the State Administrative Tribunal for an order under this section.
- (2) On application under subsection (1), the State Administrative Tribunal may make either or both of the following orders —
  - (a) an order varying the conditions on the foreign lawyer's registration;
  - (b) an order imposing further conditions on the foreign lawyer's registration.
- (3) The State Administrative Tribunal may make an order under this section only if the Tribunal considers it appropriate to do so, having regard to —
  - (a) the seriousness of the offence; and
  - (b) the public interest.
- (4) An order under this section has effect until the sooner of —
  - (a) the end of the period specified by the State Administrative Tribunal;
  - (b) if the practitioner is convicted of the offence — 28 days after the day of the conviction;
  - (c) if the charge is dismissed — the day of the dismissal.
- (5) The State Administrative Tribunal, on application by any party, may vary or revoke an order under this section at any time.

**191. Condition regarding notification of offence**

- (1) It is a condition of registration as a foreign lawyer that the lawyer —
  - (a) must notify the Board that the lawyer has been —
    - (i) convicted of an offence that would have to be disclosed in relation to an application for registration as a foreign lawyer under this Act; or
    - (ii) charged with a serious offence;
  - and
  - (b) must do so within 7 days after the event and by a written notice.
- (2) The legal profession rules may specify the form of the notice to be used and the person to whom or the address to which it is to be given.
- (3) This section does not apply to an offence to which Division 7 applies.

**192. Conditions imposed by legal profession rules**

The legal profession rules may —

- (a) impose conditions on the registration of foreign lawyers or any class of foreign lawyers; or
- (b) authorise conditions to be imposed on the registration of foreign lawyers or on the registration of any class of foreign lawyers.

**193. Compliance with conditions**

A locally registered foreign lawyer must not contravene a condition to which the registration is subject.

Penalty: a fine of \$10 000.



**195. Additional conditions on practice of interstate-registered foreign lawyers**

- (1) The Board may, by written notice to an interstate-registered foreign lawyer practising foreign law in this jurisdiction, impose any condition on the interstate-registered foreign lawyer's practice that it may impose under this Act in relation to a locally registered foreign lawyer.
- (2) The legal profession rules may impose, or provide for the imposition of, conditions on the registration of an interstate-registered foreign lawyer.
- (3) Conditions imposed under or referred to in this section must not be more onerous than conditions applying to locally registered foreign lawyers in the same or similar circumstances.
- (4) A notice under this section must include an information notice about the decision to impose a condition.
- (5) An interstate-registered foreign lawyer may apply to the State Administrative Tribunal for review of a decision of the Board to impose a condition on the lawyer's registration under this section or the legal profession rules.

**196. Notification requirements for interstate-registered foreign lawyers**

- (1) An interstate-registered foreign lawyer who establishes an office in this jurisdiction must give written notice to the Board in accordance with this section within 28 days after establishing the office.  
Penalty: a fine of \$5 000.
- (2) The notice must contain —
  - (a) the lawyer's name, date of birth and date of registration to engage in legal practice in one or more foreign countries; and



- (b) the name of any law practice of which the lawyer is a principal or employee, or any other person or body of which the lawyer is an employee; and
  - (c) if the lawyer practises on his or her own account, any business names under which the lawyer practises foreign law; and
  - (d) any condition to which the lawyer is subject in respect of his or her practice of foreign law in the lawyer's home jurisdiction or elsewhere; and
  - (e) an address in this jurisdiction for service of notices and other documents on the lawyer; and
  - (f) a statement as to whether the lawyer has established, or intends to establish, an office in this jurisdiction; and
  - (g) a statement as to whether the lawyer is entitled to receive trust money, or to withdraw trust money from a trust account; and
  - (h) the information prescribed by the regulations (if any).
- (3) A notice under this section must be accompanied by —
- (a) satisfactory evidence, in an approved form, that the interstate-registered foreign lawyer has professional indemnity insurance as required under this Act; and
  - (b) the required contribution to the Guarantee Fund under this Act, if any.
- (4) If an interstate-registered foreign lawyer who has indicated that he or she does not intend to establish an office in this jurisdiction subsequently establishes an office in this jurisdiction, the lawyer must give notice to the Board within 14 days.
- (5) For the purposes of this section, an interstate-registered foreign lawyer establishes an office in this jurisdiction when the lawyer first offers or provides legal services to the public in this jurisdiction from an office maintained by the lawyer, or by a

principal of a law practice of which the practitioner is an associate, for that purpose in this jurisdiction.

### **Division 11 — Miscellaneous**

#### **197. Consideration and investigation of applicants and locally registered foreign lawyers**

- (1) To help it consider whether or not to grant, renew, amend, suspend or cancel registration under this Part, the Board may, by notice to the applicant or locally registered foreign lawyer require the applicant or lawyer —
  - (a) to give the Board specified documents or information; or
  - (b) to cooperate with any inquiries that the Board considers appropriate.
- (2) The Board may require the applicant or locally registered foreign lawyer to verify documents or information by statutory declaration or in another manner specified by the Board.
- (3) A failure to comply with a notice under subsection (1) by the date specified in the notice and in the way required by the notice is a ground for making an adverse decision in relation to the action being considered by the Board.

#### **198. Register of locally registered foreign lawyers**

- (1) The Board must keep a register of the names of locally registered foreign lawyers.
- (2) The register must —
  - (a) state the conditions (if any) imposed on a foreign lawyer's registration; and
  - (b) include other particulars prescribed by the regulations.
- (3) The register may be kept in the way the Board decides.

- (4) The register must be available for inspection, without charge, at the Board's principal place of business during normal business hours.

**199. Publication of information about locally registered foreign lawyers**

The Board may publish, in circumstances that it considers appropriate, the names of persons registered by it as foreign lawyers under this Part and any relevant particulars concerning those persons.

**200. SAT orders about conditions**

The Board may apply to the State Administrative Tribunal for an order that an Australian-registered foreign lawyer not contravene a condition imposed under this Part.

**201. Exemption by Board**

- (1) The Board may exempt an Australian-registered foreign lawyer or class of Australian-registered foreign lawyers from compliance with a specified provision of this Act or the regulations, or from compliance with a specified rule or part of a rule, that would otherwise apply to the foreign lawyer or class of foreign lawyers.
- (2) An exemption may be granted unconditionally or subject to conditions specified in writing.
- (3) The Board may revoke or vary any conditions imposed under this section or impose new conditions.

**202. Membership of professional association**

An Australian-registered foreign lawyer is not required to join (but may, if eligible, join) any professional association.

**203. Review by SAT**

A foreign lawyer may apply to the State Administrative Tribunal for review of a decision by the Board —

- (a) to refuse to grant or renew registration under section 170, 172 or 181; or
- (b) to impose a condition on registration under section 189; or
- (c) to amend, suspend or cancel registration under section 175 or 181; or
- (d) to suspend registration under section 184; or
- (e) to impose a period under section 182 during which the lawyer is not entitled to apply for registration.

## Part 9 — Trust money and trust accounts

### Division 1 — Preliminary

#### 204. Purposes

The purposes of this Part are as follows —

- (a) to ensure trust money is held by law practices in a way that protects the interests of person for or on whose behalf money is held, both inside and outside this jurisdiction;
- (b) to minimise compliance requirement for law practices that provide legal services within and outside this jurisdiction;
- (c) to ensure the Board can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

#### 205. Terms used

- (1) In this Part —

***controlled money*** means money received or held by a law practice in respect of which the practice has a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control;

***controlled money account*** means an account maintained by a law practice with an ADI for the holding of controlled money received by the practice;

***general trust account*** means an account maintained in this jurisdiction by a law practice with an ADI for the holding of trust money received by the practice, other than controlled money or transit money;

***investigation*** means an investigation under Division 3 of the affairs of a law practice;

***investigator*** means a person holding an appointment as an investigator under Division 3;

***transit money*** means money received by a law practice subject to instructions to pay or deliver it to a third party, other than an associate of the practice;

***trust account*** means an account maintained by a law practice with an ADI to hold trust money;

***trust money*** means money entrusted to the law practice in the course of or in connection with the provision of legal services by the practice, and includes —

- (a) money received by the practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the practice; and
- (c) transit money received by the practice; and
- (d) money received by the practice that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person;

***trust records*** includes the following —

- (a) receipts;
- (b) cheque butts or cheque requisitions;
- (c) records of authorities to withdraw by electronic funds transfer;
- (d) deposit records (including deposit slips and duplicate deposit slips);
- (e) trust account ADI statements;
- (f) trust account receipts and payments cash books;
- (g) trust ledger accounts;
- (h) records of monthly trial balances;
- (i) records of monthly reconciliations;
- (j) trust transfer journals;

- (k) statements of account as required to be furnished under the regulations;
  - (l) registers required to be kept under the regulations;
  - (m) monthly statements required to be kept under the regulations;
  - (n) files relating to trust transactions or bills of costs or both;
  - (o) written directions, authorities or other documents required to be kept under this Act;
  - (p) supporting information required to be kept under the regulations in relation to powers to deal with trust money.
- (2) A reference in this Part to a law practice's trust account or trust records includes a reference to an associate's trust account or trust records.
- (3) A reference in this Part to a power given to a law practice or an associate of the practice to deal with money for or on behalf of another person is a reference to a power given to the practice or associate that is exercisable by —
- (a) the practice alone; or
  - (b) an associate of the practice alone (otherwise than in a private or personal capacity); or
  - (c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following —
    - (i) one or more associates of the practice;
    - (ii) the person or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

**206. Money involved in financial services or investments**

- (1) Money that is entrusted to or held by a law practice for or in connection with —
- (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not such a licence is held at any relevant time); or
  - (b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time),

is not trust money for the purposes of this Act.

- (2) Without limiting subsection (1), money that is entrusted to or held by a law practice for or in connection with a managed investment scheme, or mortgage financing, undertaken by the practice is not trust money for the purposes of this Act.
- (3) Without limiting subsections (1) and (2), money that is entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money for the purposes of this Act, unless —
- (a) the money was entrusted to or held by the practice —
    - (i) in the ordinary course of legal practice; and
    - (ii) primarily in connection with the provision of legal services to or at the direction of the client;and
  - (b) the investment is or is to be made —
    - (i) in the ordinary course of legal practice; and



- (ii) for the ancillary purpose of maintaining or enhancing the value of the money pending completion of the matter or further stages of the matter or pending payment or delivery of the money to or at the direction of the client.

- (4) In this section —

*Australian financial services licence, authorised representative, financial service* and *financial services business* have the meanings given in the Corporations Act Chapter 7.

**207. Determinations about status of money**

- (1) This section applies to money received by a law practice if the Board considers that there is doubt or a dispute as to whether the money is trust money.
- (2) The Board may determine that money is or is not trust money.
- (3) The Board may revoke or modify a determination under this section.
- (4) While a determination under this section is in force that money is trust money, the money is taken to be trust money for the purposes of this Act.
- (5) While a determination under this section is in force that money is not trust money, the money is taken not to be trust money for the purposes of this Act.
- (6) This section has effect subject to a decision of a court or the State Administrative Tribunal made in relation to the money concerned.

**208. Application of Part to law practices and trust money**

- (1) This Part applies to the following law practices in respect of trust money received by them in this jurisdiction —
  - (a) a law practice that has an office in this jurisdiction, whether or not the practice has an office in another jurisdiction;

- (b) a law practice that does not have an office in any jurisdiction at all.
- (2) This Part applies to the following law practices in respect of trust money received by them in another jurisdiction —
  - (a) a law practice that has an office in this jurisdiction and in no other jurisdiction;
  - (b) a law practice that has an office in this jurisdiction and in one or more other jurisdictions but not in the jurisdiction in which the trust money was received, unless the money is dealt with in accordance with the corresponding law of another jurisdiction.
- (3) However, this Part does not apply to —
  - (a) prescribed law practices or classes of law practices; or
  - (b) prescribed law practices or classes of law practices in prescribed circumstances; or
  - (c) prescribed kinds of trust money; or
  - (d) prescribed kinds of trust money in prescribed circumstances.
- (4) A reference in this section to having an office in a jurisdiction is a reference to having, or engaging in legal practice from, an office or business address in the jurisdiction.

**209. Trust money protocols**

- (1) The Board may enter into arrangements (*trust money protocols*) with corresponding authorities about any or all of the following —
  - (a) determining the jurisdiction where a law practice receives trust money;
  - (b) sharing information about whether, and (if so) how, trust money is being dealt with under this Act or a corresponding law.

- (2) For the purposes of this Act, to the extent that a trust money protocol is relevant, the jurisdiction where a law practice receives trust money is to be determined in accordance with the protocols.
- (3) The Board may enter into arrangements that amend, revoke or replace a trust money protocol.
- (4) A trust money protocol does not have effect in this jurisdiction unless it is embodied or identified in the regulations.

**210. When money is received**

- (1) For the purposes of this Act, a law practice receives money when —
  - (a) the practice obtains possession or control of it directly; or
  - (b) the practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or
  - (c) the practice, or an associate of the practice (otherwise than in a private and personal capacity), is given a power to deal with the money for or on behalf of another person.
- (2) For the purposes of this Act, a law practice or associate is taken to have received money if the money is available to the practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

**211. Discharge by legal practitioner associate of obligations of law practice**

- (1) The following actions, if taken by a legal practitioner associate of a law practice on behalf of the practice in relation to trust

money received by the practice, discharge the corresponding obligations of the practice in relation to the money —

- (a) the establishment of a trust account;
  - (b) the maintenance of a trust account;
  - (c) the payment of trust money into and out of a trust account and other dealings with trust money;
  - (d) the maintenance of trust records;
  - (e) engaging an external examiner to examine trust records;
  - (f) an action of a kind prescribed by the regulations.
- (2) If the legal practitioner associate maintains a trust account in relation to trust money received by the law practice, the provisions of this Part and the regulations made for the purposes of this Part apply to the associate in the same way as they apply to a law practice.
- (3) Subsection (1) does not apply to the extent that the associate is prevented by the regulations from taking any action referred to in that subsection.

**212. Liability of principals of law practices**

- (1) A provision of this Part or the regulations made for the purposes of this Part expressed as imposing an obligation on a law practice imposes the same obligation on the principals of the law practice jointly and severally, but discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.
- (2) References in this Part and the regulations made for the purposes of this Part to a law practice include references to the principals of the law practice.

**213. Former practices, principals and associates**

This Part applies in relation to former law practices and former principals and associates of law practices in relation to conduct occurring while they were respectively law practices, principals

and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary modifications.

**Division 2 — Trust accounts and trust money**

**214. Maintenance of general trust account**

- (1) A law practice that receives trust money to which this Part applies must maintain a general trust account in this jurisdiction.  
Penalty: a fine of \$10 000.
- (2) A law practice that is required to maintain a general trust account in this jurisdiction must establish and maintain the account in accordance with the regulations.  
Penalty: a fine of \$10 000.
- (3) Subsection (1) does not apply to a law practice in respect of any period during which the practice receives or holds only either or both of the following —
  - (a) controlled money;
  - (b) transit money received in a form other than cash.
- (4) Subject to the requirements of the regulations, a requirement of this section for a law practice to maintain, or establish and maintain, a general trust account in this jurisdiction does not prevent the practice from maintaining, or establishing and maintaining, more than one general trust account in this jurisdiction, whether during the same period or during different periods.
- (5) Without limiting the other provisions of this section, the regulations may provide that a law practice must not close a general trust account except as permitted by the regulations, either generally or in any prescribed circumstances.

**215. Certain trust money to be deposited in general trust account**

(1) In this section —

*appropriate person*, in relation to trust money, means a person legally entitled to give the law practice concerned directions in respect of dealings with the trust money.

(2) Subject to section 222, as soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice unless —

- (a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or
- (b) the money is controlled money; or
- (c) the money is transit money; or
- (d) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

Penalty: a fine of \$10 000.

(3) Subject to section 222, a law practice that has received money that is the subject of a written direction mentioned in subsection (2)(a) must deal with the money in accordance with the direction —

- (a) within the period (if any) specified in the direction; or
- (b) subject to paragraph (a), as soon as practicable after it is received.

Penalty: a fine of \$10 000.

(4) The law practice must keep a written direction mentioned in subsection (2)(a) for the period prescribed by the regulations.

Penalty: a fine of \$5 000.

**216. Holding, disbursing and accounting for trust money**

- (1) A law practice must —
- (a) hold trust money deposited in a general trust account of the practice exclusively for the person on whose behalf it is received; and
  - (b) disburse the trust money only in accordance with a direction given by the person.

Penalty: a fine of \$5 000.

- (2) Subsection (1) applies subject to an order of a court of competent jurisdiction or as authorised by law.
- (3) The law practice must account for the trust money as required by the regulations.

Penalty: a fine of \$5 000.

**217. Manner of withdrawal of trust money from general trust account**

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.

Penalty: a fine of \$10 000.

- (2) Without limiting subsection (1), the following are specifically prohibited —
- (a) cash withdrawals;
  - (b) ATM withdrawals or transfers;
  - (c) telephone banking withdrawals or transfers.

- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.

- (4) This section has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally

entitled to give the law practice directions in respect of dealings with trust money.

**218. Controlled money**

- (1) As soon as practicable after receiving controlled money, a law practice must deposit the money in the account specified in the written direction relating to the money.

Penalty: a fine of \$10 000.

- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subsection (1) exclusively for the person on whose behalf it was received.

Penalty: a fine of \$10 000.

- (3) The law practice that holds controlled money deposited in a controlled money account in accordance with subsection (1) must not disburse the money except in accordance with —

- (a) the written direction mentioned in that subsection; or
- (b) a later written direction given by or on behalf of the person on whose behalf the money was received.

Penalty: a fine of \$10 000.

- (4) The law practice must maintain the controlled money account, and account for the controlled money, as required by the regulations.

Penalty: a fine of \$5 000.

- (5) The law practice must keep a written direction mentioned in this section for the period prescribed by the regulations.

Penalty: a fine of \$5 000.

- (6) The law practice must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the person referred to in subsection (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent that the regulations otherwise permit.



Penalty: a fine of \$10 000.

- (7) Subsection (3) applies subject to an order of a court of competent jurisdiction or as authorised by law.

**219. Manner of withdrawal of controlled money from controlled money account**

- (1) A law practice must not withdraw controlled money from a controlled money account otherwise than by cheque or electronic funds transfer.

Penalty: a fine of \$10 000.

- (2) Without limiting subsection (1), the following are specifically prohibited —

- (a) cash withdrawals;
- (b) ATM withdrawals or transfers;
- (c) telephone banking withdrawals or transfers.

- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.

- (4) This section has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the controlled money.

**220. Transit money**

- (1) Subject to section 222, a law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money —

- (a) within the period (if any) specified in the instructions; or
- (b) subject to paragraph (a), as soon as practicable after it is received.

Penalty: a fine of \$10 000.

- (2) The law practice must account for the money as required by the regulations.

Penalty: a fine of \$5 000.

**221. Trust money subject to specific powers**

- (1) Subject to section 222, a law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money.

Penalty: a fine of \$10 000.

- (2) The law practice must account for the money in the way prescribed by the regulations.

Penalty: a fine of \$5 000.

**222. Trust money received in form of cash**

- (1) In this section —

***appropriate person***, in relation to trust money, means a person who is legally entitled to give the law practice concerned directions in respect of dealings with the trust money;

***general trust money*** means trust money, other than —

- (a) controlled money; and
  - (b) transit money; and
  - (c) money that is the subject of a power.
- (2) A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.
- Penalty: a fine of \$10 000.
- (3) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice —

- (a) the money must nevertheless be deposited in a general trust account of the practice in accordance with subsection (2); and
  - (b) the money is thereafter to be dealt with in accordance with any applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).
- (4) Controlled money received in the form of cash must be deposited in a controlled money account in accordance with section 218.
- (5) A law practice must deposit transit money received in the form of cash in a general trust account of the practice before the money is otherwise dealt with in accordance with the instructions relating to the money.  
Penalty: a fine of \$10 000.
- (6) A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account (or a controlled money account in the case of controlled money) of the practice before the money is otherwise dealt with in accordance with the power.  
Penalty: a fine of \$10 000.
- (7) This section has effect despite anything to the contrary in any relevant direction, instruction or power.

**223. Protection of trust money**

- (1) Money standing to the credit of a trust account maintained by a law practice is not available for the payment of debts of the practice or any of its associates.
- (2) Money standing to the credit of a trust account maintained by a law practice is not liable to be attached or taken in execution for satisfying a judgment against the practice or any of its associates.

- (3) This section does not apply to money to which a law practice or associate is entitled.

**224. Intermixing money**

- (1) A law practice must not, otherwise than as permitted by subsection (2), mix trust money with other money.  
Penalty: a fine of \$10 000.
- (2) A law practice is permitted to mix trust money with other money to the extent only that is authorised by the Board and in accordance with any conditions imposed by the Board in relation to the authorisation.

**225. Dealing with trust money: legal costs and unclaimed money**

- (1) A law practice may do any of the following, in relation to trust money held in a general trust account or controlled money account of the practice for a person —
- (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;
  - (b) withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements prescribed under this Act are complied with;
  - (c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under the *Unclaimed Money Act 1990*.
- (2) Subsection (1) applies despite any other provision of this Part (other than subsection (3)) but has effect subject to Part 10.
- (3) Subsection (1) does not apply in relation to trust money that is held by the person under another trust when it is paid into the general trust account or controlled money account.

**226. Deficiency in trust account**

- (1) An Australian legal practitioner commits an offence if the practitioner, without reasonable excuse, causes —
- (a) a deficiency in any trust account or trust ledger account; or
  - (b) a failure to pay or deliver any trust money.

Penalty: a fine of \$25 000.

- (2) A reference in subsection (1) to an account includes a reference to an account of the practitioner or of the practice of which the practitioner is an associate.

- (3) In subsection (1) —

*cause* includes to be responsible for;

*deficiency* in a trust account or trust ledger account includes the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account.

**227. Reporting certain irregularities and suspected irregularities**

- (1) As soon as practicable after a legal practitioner associate of a law practice becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts, the associate must give written notice of the irregularity to —

- (a) the Board; and
- (b) if a corresponding authority is responsible for the regulation of the accounts concerned — the corresponding authority.

Penalty: a fine of \$5 000.

- (2) If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as

practicable after forming the belief, give written notice of it to —

- (a) the Board; and
- (b) if a corresponding authority is responsible for the regulation of the accounts relating to the trust money concerned — the corresponding authority.

Penalty: a fine of \$5 000.

- (3) The validity of a requirement imposed on an Australian legal practitioner under subsection (1) or (2) is not affected, and the practitioner is not excused from complying with subsection (1) or (2), on the ground that giving the notice may tend to incriminate the practitioner.
- (4) An Australian legal practitioner is not liable for any loss or damage suffered by another person as a result of the practitioner's compliance with subsection (1) or (2).

**228. Keeping trust records**

- (1) A law practice must keep, in the form of a permanent record, trust records in relation to trust money received by the practice.

Penalty: a fine of \$5 000.

- (2) In subsection (1) —

*permanent record*, in relation to a trust record, means printed or, on request, capable of being printed, in English on paper or other material.

- (3) The law practice must keep the trust records —
  - (a) in accordance with the regulations; and
  - (b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
  - (c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and

- (d) for a period determined in accordance with the regulations.

Penalty: a fine of \$5 000.

**229. False names**

- (1) A law practice must not knowingly receive money or record receipt of money in the practice's trust records under a false name.

Penalty: a fine of \$10 000.

- (2) If a person on whose behalf trust money is received by a law practice is commonly known by more than one name, the practice must ensure that the practice's trust records record all names by which the person is known.

Penalty: a fine of \$10 000.

**Division 3 — Investigations**

**230. Appointment of investigators**

- (1) The Board, on its own initiative or at the request of the Trust, or the Complaints Committee may, in writing, appoint a suitably qualified person to investigate the affairs or specified affairs of a law practice.
- (2) The appointment may be made generally or for the law practice specified in the instrument of appointment.
- (3) The Board must notify the Complaints Committee, and the Complaints Committee must notify the Board, when an investigator it has appointed is investigating the affairs of a law practice.

**231. Investigations**

- (1) The instrument of appointment may authorise the investigator to conduct either or both of the following —
  - (a) routine investigations on a regular or other basis;

- (b) investigations in relation to particular allegations or suspicions regarding trust money, trust property, trust accounts or any other aspect of the affairs of the law practice.
- (2) The principal purposes of an investigation are to ascertain whether the law practice has complied with or is complying with the requirements of this Part and to detect and prevent fraud and defaults (as defined in section 334), but this subsection does not limit the scope of the investigation or the powers of the investigator.

**232. Application of Part 15**

Part 15 applies to an investigation under this Division.

**233. Investigator's report and confidentiality**

- (1) As soon as practicable after completing the investigation, the investigator must give a written report of the investigation to the Board or the Complaints Committee, whichever appointed the investigator.
- (2) The investigator must not disclose information included in the report or acquired in carrying out the investigation except —
  - (a) to the practice that or person who is the subject of the investigation or report; or
  - (b) as is necessary for properly conducting the investigation and making the report of the investigation; or
  - (c) as provided in section 533.

Penalty: a fine of \$10 000.

**234. When costs of investigation are debt**

- (1) If —
  - (a) an investigator states in his or her report of an investigation that there is evidence that a breach of this Act has been committed or evidence that a default (as



defined in section 334) has occurred in relation to the law practice whose affairs are under investigation; and

- (b) the Board is satisfied that the breach or default is wilful or of a substantial nature,

the Board may decide that the whole or part of the costs of carrying out the investigation is payable to the Board and may specify the amount payable.

- (2) The amount specified by the Board is a debt owing to the Board by the law practice whose affairs are under investigation.
- (3) If an investigator is appointed under this Part at the request of the Trust, the Board may require the Trust to pay part or all of the costs of carrying out the investigation and the Trust must comply with that requirement.

#### **Division 4 — External examinations**

##### **235. Designation of external examiners**

- (1) The Board may, in writing, designate an accountant (a *designated accountant*) as being eligible to be appointed as an external examiner.
- (2) Only an accountant who is —
- (a) a registered company auditor; or
  - (b) an employee or agent of the Board,
- may be designated under subsection (1).
- (3) Only designated accountants may be appointed as external examiners.
- (4) The Board may revoke an accountant's designation under this section.

**236. Designation and appointment of associates as external examiners**

- (1) The Board may designate an associate of a law practice under section 235 only if the Board is satisfied that it is appropriate to do so.
- (2) However, an associate of a law practice cannot be appointed as an external examiner under this Division to examine the practice's trust records.

**237. Trust records to be externally examined**

- (1) A law practice must at least once in each financial year have its trust records externally examined by an external examiner appointed in accordance with the regulations.  
Penalty: a fine of \$10 000.
- (2) The Board may appoint an external examiner to examine a law practice's trust records if the Board is not satisfied —
  - (a) that the practice has had its trust records externally examined as required by this section; or
  - (b) that an external examination of the practice's trust records has been carried out in accordance with the regulations.
- (3) Without affecting the generality of section 250, this section has effect subject to any exemptions provided by or given under the regulations from the requirement to have trust records examined as otherwise required by this section.

**238. Examination of affairs in connection with examination of trust records**

- (1) An external examiner appointed to examine a law practice's trust records may examine the affairs of the practice for the purposes of and in connection with an examination of the trust records.

- (2) If the law practice is an incorporated legal practice or multi-disciplinary partnership, the reference in subsection (1) to the affairs of the law practice extends to the affairs of the incorporated legal practice or multi-disciplinary partnership or of an associate, so far as they are relevant to trust money, trust records and associated matters.
- (3) A reference in this Division to *trust records* includes a reference to the affairs of a law practice that may be examined under this section for the purposes of and in connection with an examination of the practice's trust records.

**239. Final examination of trust records**

- (1) This section applies if a law practice —
  - (a) ceases to be authorised to receive trust money; or
  - (b) ceases to engage in legal practice in this jurisdiction.
- (2) The law practice must appoint an external examiner to examine the practice's trust records —
  - (a) in respect of the period since an external examination was last conducted; and
  - (b) in respect of each period thereafter, comprising a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.

Penalty: a fine of \$10 000.

- (3) The law practice must lodge with the Board —
  - (a) a report of each examination under subsection (2) within 60 days after the end of the period to which the examination relates; and
  - (b) a statutory declaration in the prescribed form within 60 days of ceasing to hold trust money.

Penalty: a fine of \$10 000.

- (4) If any Australian legal practitioner dies, the practitioner's legal personal representative must comply with this section as if the representative were the practitioner.
- (5) Nothing in this section affects any other requirements under this Part.

**240. Carrying out examination**

- (1) Part 15 applies to an external examination.
- (2) Subject to Part 15, an external examination of trust records must be carried out in accordance with the regulations.
- (3) Without limiting subsection (2), the regulations may provide for the following —
  - (a) the standards to be adopted and the procedures to be followed by external examiners;
  - (b) the form and content of an external examiner's report on an external examination.

**241. External examiner's report and confidentiality**

- (1) As soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the Board.
- (2) The examiner must not disclose information included in the report or acquired in carrying out the examination except —
  - (a) to the law practice concerned or an associate of the law practice; or
  - (b) as is necessary for properly conducting the examination and making the report of the examination; or
  - (c) as provided in section 533.

Penalty: a fine of \$10 000.

**242. Law practice liable for costs of examination**

- (1) A law practice whose trust accounts have been externally examined must pay the costs of the examination.
- (2) If the Board appointed the external examiner to carry out the examination, the Board may specify the amount payable as the costs of the examination, and the specified amount is a debt payable to it by the law practice.

**Division 5 — Provisions relating to ADIs**

**243. ADI not subject to certain obligations and liabilities**

- (1) An ADI at which a trust account is maintained by a law practice —
  - (a) is not under any obligation to control or supervise transactions in relation to the account or to see to the application of money disbursed from the account; and
  - (b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right (whether by way of set-off counterclaim, charge or otherwise) against money in the account.
- (2) Subsection (1) does not relieve an ADI from any liability to which it is subject apart from this Act.

**244. Reports, records and information**

- (1) An ADI at which a trust account is maintained must report any deficiency in the account to the Board as soon as practicable after becoming aware of the deficiency.  
Penalty: a fine of \$5 000.
- (2) An ADI at which a trust account is maintained must report a suspected offence in relation to the trust account to the Board as soon as practicable after forming the suspicion.  
Penalty: a fine of \$5 000.

- (3) An ADI must furnish to the Board reports about trust accounts in accordance with the regulations.

Penalty: a fine of \$5 000.

- (4) An ADI at which a trust account is maintained must without charge —

- (a) produce for inspection or copying by an investigator or external examiner any records relating to the trust account or trust money deposited in the trust account; and
- (b) provide the investigator or external examiner with full details of any transactions relating to the trust account or trust money,

on demand by the investigator or external examiner and on production to the ADI of evidence of the appointment of the investigator or the external examiner in relation to the law practice concerned.

Penalty: a fine of \$5 000.

- (5) Subsections (1) to (4) apply despite any legislation or duty of confidence to the contrary.

- (6) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of —

- (a) reporting a deficiency in accordance with subsection (1); or
- (b) making or furnishing a report in accordance with subsection (2) or (3); or
- (c) producing records or providing details in accordance with subsection (4).

**Division 6 — Miscellaneous**

**245. Restrictions on receipt of trust money**

- (1) A law practice (other than an incorporated legal practice) must not receive trust money unless a principal holds an Australian practising certificate authorising the receipt of trust money.  
Penalty: a fine of \$25 000.
- (2) An incorporated legal practice must not receive trust money unless —
- (a) at least one legal practitioner director of the practice holds an Australian practising certificate authorising the receipt of trust money; or
  - (b) a person is holding an appointment under section 107 in relation to the practice and the person holds an Australian practising certificate authorising the receipt of trust money; or
  - (c) the money is received during any period during which the practice —
    - (i) does not have any legal practitioner directors; and
    - (ii) is not in default of director requirements under section 107,so long as there was, immediately before the start of that period, at least one legal practitioner director of the practice who held an Australian practising certificate authorising the receipt of trust money.
- Penalty: a fine of \$25 000.

**246. Restrictions on receipt of trust money by interstate legal practitioners**

- An interstate legal practitioner must not receive trust money in this jurisdiction unless the practitioner —
- (a) is authorised to receive trust money in the practitioner's home jurisdiction; and

- (b) has paid the required contributions (if any) to the Guarantee Fund under this Act.

**247. Application of Part to incorporated legal practices and multi-disciplinary partnerships**

- (1) The obligations imposed on law practices by this Part, and any other provisions of this Act relating to trust money and trust accounts, apply to an incorporated legal practice or multi-disciplinary partnership only in connection with legal services provided by the practice or partnership.
- (2) The regulations may provide that specified provisions of this Part, and any other provisions of this Act relating to trust money and trust accounts, do not apply to incorporated legal practices or multi-disciplinary partnerships or both or apply to them with specified modifications.

**248. Disclosure to clients — money not received or held as trust money**

- (1) In this section —  
*non-trust money* means money that is not trust money for the purposes of this Act because of section 206 or because of a determination under section 207.
- (2) When money entrusted to a law practice is or becomes non-trust money, the practice must, in accordance with this section and the regulations, notify the person who entrusted the money to the practice that —
  - (a) the money is not treated as trust money for the purposes of this Act and is not subject to any supervision, investigation or audit requirements of this Act; and
  - (b) a claim against the Guarantee Fund cannot be made in respect of the money.

Penalty: a fine of \$5 000.



- (3) The notification must be given, in writing, to the person at the time —
  - (a) if the money was non-trust money when it was entrusted to the law practice — when the money is entrusted to the practice; or
  - (b) if the money was trust money when it was entrusted to the practice but becomes non-trust money because of a determination under section 207 — as soon as practicable after the determination is made.
- (4) The regulations may make provision for or with respect to the form and manner in which notification required by this section is to be given and the contents of the notification.

**249. Disclosure of accounts used to hold money entrusted to law practice or legal practitioner associate**

- (1) A law practice must in accordance with the regulations notify the Board of the details required by the regulations of each account maintained at any ADI in which the practice or any legal practitioner associate of the practice holds money entrusted to the practice or legal practitioner associate.  
Penalty: a fine of \$5 000.
- (2) Subsection (1) applies whether or not the money is trust money and whether or not section 206 or 207 applies to the money.

**250. Regulations**

- (1) The regulations may make provision for or with respect to any matter to which this Part relates, including for or with respect to —
  - (a) the establishment, maintenance and closure of general trust accounts and controlled money accounts; and
  - (b) the manner of receiving, depositing, withdrawing, making records about and otherwise dealing with and accounting for trust money; and
  - (c) without limiting paragraph (a) or (b) —

- (i) the keeping and reconciliation of trust records;  
and
  - (ii) the establishment and keeping of trust ledger  
accounts; and
  - (iii) the establishment and keeping of records about  
controlled money and transit money; and
  - (iv) the establishment and keeping of registers of  
powers and estates where trust money is  
involved; and
  - (v) the recording of information about the  
investment of trust money; and
  - (vi) the furnishing of statements regarding trust  
money;
- and
- (d) the notification to the Board of information relating  
directly or indirectly to matters to which this Part relates,  
including information about —
    - (i) trust accounts, trust money and trust records; and
    - (ii) the proposed or actual termination of a law  
practice that holds trust money; and
    - (iii) the proposed or actual termination of engaging in  
legal practice in this jurisdiction by a law  
practice that holds trust money; and
    - (iv) the proposed or actual restructuring of the  
business of a law practice so that it no longer  
holds or no longer will hold trust money;
- and
- (e) the creation and exercise of liens over trust money; and
  - (f) providing exemptions, or providing for the giving of  
exemptions, from all or any specified requirements of  
this Part.

## Part 10 — Costs disclosure and assessment

### Division 1 — Preliminary

#### 251. Purposes

The purposes of this Part are as follows —

- (a) to provide for law practices to make disclosures to clients regarding legal costs;
- (b) to regulate the making of costs agreements in respect of legal services, including conditional costs agreements;
- (c) to regulate the billing of costs for legal services;
- (d) to provide a mechanism for the assessment of legal costs and the setting aside of certain costs agreements.

#### 252. Terms used

In this Part —

*bill* means a bill of costs for providing legal services;

*business day* means a day other than a Saturday, a Sunday or a public holiday;

*conditional costs agreement* means a costs agreement that provides that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate, as referred to in section 283, but does not include a costs agreement to the extent to which section 285(1) applies;

*costs agreement* means an agreement about the payment of legal costs;

*costs assessment* means an assessment of legal costs under Division 8;

*costs determination* means a legal costs determination made under section 275;

*disbursements* includes outlays;

**itemised bill** means a bill that specifies in detail how the legal costs are made up in a way that would allow them to be assessed under Division 8;

**Legal Costs Committee** means the Legal Costs Committee established under section 310;

**litigious matter** means a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal;

**lump sum bill** means a bill that describes the legal services to which it relates and specifies the total amount of the legal costs;

**sophisticated client** means a client to whom because of section 263(2)(c) or (d), disclosure under section 260 or 261(1) is or was not required;

**third party payer** has the meaning given in section 253;

**uplift fee** means additional legal costs (excluding disbursements) payable under a costs agreement on the successful outcome of the matter to which the agreement relates.

### **253. Terms relating to third party payers**

- (1) For the purposes of this Part —
- (a) a person is a **third party payer**, in relation to a client of a law practice, if the person is not the client and —
    - (i) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or
    - (ii) being under that obligation, has already paid all or a part of those legal costs;
- and
- (b) a third party payer is an **associated third party payer** if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person; and

- (c) a third party payer is a *non-associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the client or another person but not to the law practice.
- (2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.
- (3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.

### **Division 2 — Application of this Part**

#### **254. Application of Part — first instructions rule**

This Part applies to a matter if the client first instructs the law practice in relation to the matter in this jurisdiction.

#### **255. Part also applies by agreement or at client's election**

- (1) This Part applies to a matter if —
  - (a) either —
    - (i) this Part does not currently apply to the matter;  
or
    - (ii) it is not possible to determine the jurisdiction in which the client first instructs the law practice in relation to the matter;
  - and
  - (b) either —
    - (i) the legal services are or will be provided wholly or primarily in this jurisdiction; or
    - (ii) the matter has a substantial connection with this jurisdiction,
- or both; and

- (c) either —
  - (i) the client accepts, in writing or by other conduct, a written offer to enter into an agreement under subsection (2)(a) in respect of the matter; or
  - (ii) the client gives a notification under subsection (2)(b) in respect of the matter.
- (2) For the purposes of subsection (1)(c), the client may —
  - (a) accept, in writing or by other conduct, a written offer that complies with subsection (3) to enter into an agreement with the law practice that this Part is to apply to the matter; or
  - (b) notify the law practice in writing that the client requires this Part to apply to the matter.
- (3) An offer referred to in subsection (2)(a) must clearly state —
  - (a) that it is an offer to enter into an agreement that this Part is to apply to the matter; and
  - (b) that the client may accept it in writing or by other conduct; and
  - (c) the type of conduct that will constitute acceptance.
- (4) A notification has no effect for the purposes of subsection (2)(b) if it is given after the period of 28 days after the law practice discloses to the client (under a corresponding law) information about the client's right to make a notification of that kind, but nothing in this subsection prevents an agreement referred to in subsection (2)(a) from coming into effect at any time.

**256. Displacement of Part**

- (1) This section applies if this Part applies to a matter by the operation of section 254 or 255.

- (2) This Part ceases to apply to a matter if —
- (a) either —
    - (i) the legal services are or will be provided wholly or primarily in another jurisdiction; or
    - (ii) the matter has a substantial connection with another jurisdiction,or both; and
  - (b) either —
    - (i) the client enters under the corresponding law of the other jurisdiction into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
    - (ii) the client notifies under the corresponding law of the other jurisdiction (and within the time allowed by the corresponding law) the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.
- (3) Nothing in this section prevents the application of this Part to the matter by means of a later agreement or notification under section 255.

**257. How and where client first instructs law practice**

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the law practice first receives instructions from or on behalf of the client in relation to the matter in that jurisdiction, whether in person or by post, telephone, fax, email or other form of communication.

**258. When matter has substantial connection with this jurisdiction**

The regulations may prescribe the circumstances in which, or the rules to be used to determine whether, a matter has or does

not have a substantial connection with this jurisdiction for the purposes of this Part.

**259. What happens when different laws apply to matter**

- (1) This section applies if this Part applies to a matter for a period and a corresponding law applies for another period.
- (2) If this Part applied to a matter for a period and a corresponding law applies to the matter afterwards, this Part continues to apply in respect of legal costs (if any) incurred while this Part applied to the matter.
- (3) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not apply in respect of legal costs (if any) incurred while the corresponding law applied to the matter, so long as the corresponding law continues to apply in respect of those costs.
- (4) However —
  - (a) the client may enter into a written agreement with the law practice that the cost assessment provisions of this Part are to apply in respect of all legal costs incurred in relation to the matter, and Division 8 accordingly applies in respect of those legal costs; or
  - (b) if the client enters into a written agreement with the law practice that the cost assessment provisions of a corresponding law are to apply in respect of all legal costs incurred in relation to the matter, Division 8 accordingly does not apply in respect of those legal costs.
- (5) A written agreement referred to in subsection (4) need not be signed by the client but in that case the client's acceptance must be communicated to the law practice by facsimile transmission, email or some other written form.
- (6) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not require



disclosure of any matters to the extent that they have already been disclosed under a corresponding law.

- (7) This section has effect despite any other provision of this Part.

### **Division 3 — Costs disclosure**

#### **260. Disclosure of costs to clients**

- (1) A law practice must disclose to a client in accordance with this Division —
- (a) the basis on which legal costs will be calculated, including whether a costs determination applies to any of the legal costs; and
  - (b) the client's right to —
    - (i) negotiate a costs agreement with the law practice; and
    - (ii) receive a bill from the law practice; and
    - (iii) request an itemised bill after receipt of a lump sum bill; and
    - (iv) be notified under section 267 of any substantial change to the matters disclosed under this section;
- and
- (c) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable —
    - (i) a range of estimates of the total legal costs; and
    - (ii) an explanation of the major variables that will affect the calculation of those costs;
- and
- (d) details of the intervals (if any) at which the client will be billed; and
  - (e) the rate of interest (if any) that the law practice charges on overdue legal costs, whether that rate is a specific

rate of interest or is a benchmark rate of interest (as referred to in subsection (2)); and

- (f) if the matter is a litigious matter, an estimate of —
  - (i) the range of costs that may be recovered if the client is successful in the litigation; and
  - (ii) the range of costs the client may be ordered to pay if the client is unsuccessful;and
- (g) the client's right to progress reports in accordance with section 269; and
- (h) details of the person whom the client may contact to discuss the legal costs; and
- (i) the following avenues that are open to the client in the event of a dispute in relation to legal costs —
  - (i) costs assessment under Division 8;
  - (ii) the setting aside of a costs agreement under section 288;
  - (iii) making a complaint under Part 13;and
- (j) any time limits that apply to the taking of any action referred to in paragraph (i); and
- (k) that the law of this jurisdiction applies to legal costs in relation to the matter; and
- (l) information about the client's right —
  - (i) to accept under a corresponding law a written offer to enter into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; and
  - (ii) to notify under a corresponding law (and within the time allowed by the corresponding law) the law practice in writing that the client requires the

corresponding provisions of the corresponding law to apply to the matter.

- (2) For the purposes of subsection (1)(e), a ***benchmark rate of interest*** is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is specified or determined from time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.
- (3) The regulations may make provision for or with respect to the use of benchmark rates of interest, and in particular for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.
- (4) For the purposes of subsection (1)(f), the disclosure must include —
  - (a) a statement that an order by a court for the payment of costs in favour of the client will not necessarily cover the whole of the client's legal costs; and
  - (b) if applicable, a statement that disbursements may be payable by the client even if the client enters into a conditional costs agreement.
- (5) A law practice is taken to have complied with the requirement to disclose the details referred to in subsection (1)(b)(i), (ii) and (iii), (g), (i), (j) and (l) if it provides a written statement in or to the effect of a form prescribed by the regulations for the purposes of this subsection at the same time as the other details are disclosed as required by this section.
- (6) A form prescribed for the purposes of subsection (5) may, instead of itself containing details of the kind referred to in that subsection, refer to publicly accessible sources of information (such as an internet website) from which those details can be obtained.

- (7) The regulations may require the Board to develop a statement of the relevant details and to revise it as necessary to keep it up to date.

**261. Disclosure if another law practice to be retained**

- (1) If a law practice intends to retain another law practice on behalf of a client, the first law practice must disclose to the client the details specified in section 260(1)(a), (c) and (d) in relation to the other law practice, in addition to any information required to be disclosed to the client under section 260.
- (2) A law practice retained or to be retained on behalf of a client by another law practice is not required to make disclosure to the client under section 260, but must disclose to the other law practice the information necessary for the other law practice to comply with subsection (1).
- (3) This section does not apply if the first law practice ceases to act for the client in the matter when the other law practice is retained.

**262. How and when disclosure must be made**

- (1) Disclosure under section 260 must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.
- (2) Disclosure under section 261(1) must be made in writing before, or as soon as practicable after, the other law practice is retained.
- (3) Disclosure made to a person before the law practice is retained in a matter is taken to be disclosure to the person as a client for the purposes of sections 260 and 261.

**263. Exceptions to requirement for disclosure**

- (1) In this section —  
*GST* has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth;

**public authority** means an authority or body (whether a body corporate or not) established or incorporated for a public purpose by a law of a jurisdiction or of the Commonwealth, and includes a body corporate incorporated under a law of a jurisdiction or of the Commonwealth in which a jurisdiction or the Commonwealth has a controlling interest.

- (2) Disclosure under section 260 or 261(1) is not required to be made in any of the following circumstances —
- (a) if the total legal costs in the matter, excluding disbursements, are not likely to exceed \$1 500 (exclusive of GST) or the prescribed amount (whichever is higher);
  - (b) if —
    - (i) the client has received one or more disclosures under section 260 or 261(1) from the law practice in the previous 12 months; and
    - (ii) the client has agreed in writing to waive the right to disclosure; and
    - (iii) a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous disclosures and the relevant circumstances, the further disclosure is not warranted;
  - (c) if the client is —
    - (i) a law practice or an Australian legal practitioner; or
    - (ii) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body (within the meaning given to those terms in the Corporations Act); or
    - (iii) a financial services licensee (within the meaning given in the Corporations Act); or

- (iv) a liquidator, administrator or receiver (within the meaning given to those terms in the Corporations Act); or
  - (v) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning given in the Corporations Act) if it were a company; or
  - (vi) a proprietary company (within the meaning given in the Corporations Act) formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required; or
  - (vii) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not such persons and if all of the members of the group who are not such persons have indicated that they waive their right to disclosure; or
  - (viii) a Minister of the Crown in right of a jurisdiction or the Commonwealth acting in the Minister's capacity as such, or a government department or public authority of a jurisdiction or the Commonwealth;
- (d) if the legal costs or the basis on which they will be calculated have or has been agreed as a result of a tender process;
  - (e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice;
  - (f) in any other circumstances prescribed by the regulations.

- (3) Despite subsection (2)(a), if a law practice becomes aware that the total legal costs are likely to exceed \$1 500 (exclusive of GST) or the amount prescribed by the regulations (whichever is higher), the law practice must disclose the matters in section 260 or 261 (as the case requires) to the client as soon as practicable.
- (4) A law practice must ensure that a written record of a principal's decision that further disclosure is not warranted as mentioned in subsection (2)(b) is made and kept with the files relating to the matter concerned.
- (5) The reaching of a decision referred to in subsection (4) otherwise than on reasonable grounds is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of the principal.
- (6) Nothing in this section affects or takes away from any client's right —
  - (a) to progress reports in accordance with section 269; or
  - (b) to obtain reasonable information from the law practice in relation to any of the matters specified in section 260; or
  - (c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

**264. Additional disclosure — settlement of litigious matters**

- (1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is executed —
  - (a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
  - (b) a reasonable estimate of any contributions towards those costs likely to be received from another party.

- (2) A law practice retained on behalf of a client by another law practice is not required to make a disclosure to the client under subsection (1) if the other law practice makes the disclosure to the client before the settlement is executed.

**265. Additional disclosure — uplift fees**

- (1) If a costs agreement involves an uplift fee, the law practice must, before entering into the agreement, disclose to the client in writing —
- (a) the law practice's legal costs; and
  - (b) the uplift fee (or the basis for the calculation of the uplift fee); and
  - (c) the reasons why the uplift fee is warranted.
- (2) A law practice is not required to make a disclosure under subsection (1) to a sophisticated client.

**266. Form of disclosure**

- (1) Written disclosure to a client under this Division —
- (a) must be expressed in clear plain language; and
  - (b) may be in a language other than English if the client is more familiar with that language.
- (2) If the law practice is aware that the client is unable to read, the law practice must arrange for the information required to be given to a client under this Division to be conveyed orally to the client in addition to providing the written disclosure.

**267. Ongoing obligation to disclose**

A law practice must, in writing, disclose to a client any substantial change to anything included in a disclosure already made under this Division as soon as is reasonably practicable after the law practice becomes aware of that change.



**268. Effect of failure to disclose**

- (1) If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed, the client or associated third party payer (as the case may be) need not pay the legal costs unless they have been assessed under Division 8.
- (2) A law practice that does not disclose to a client or an associated third party payer anything required by this Division to be disclosed may not maintain proceedings against the client or associated third party payer (as the case may be) for the recovery of legal costs unless the costs have been assessed under Division 8.
- (3) If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed and the client or associated third party payer has entered a costs agreement with the law practice, the client or associated third party payer may also apply under section 288 for the costs agreement to be set aside.
- (4) If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed then, on an assessment of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the taxing officer to be proportionate to the seriousness of the failure to disclose.
- (5) If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to a client solely because the retained practice failed to disclose the relevant information as required by section 261(2), then subsections (1) to (4) —
  - (a) do not apply to the legal costs owing to the first law practice on account of legal services provided by it, to the extent that the non-disclosure by the first law practice was caused by the failure of the retained law practice to disclose the relevant information; and

- (b) do apply to the legal costs owing to the retained law practice.
- (6) In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other —
  - (a) subsection (1) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
  - (b) subsection (2) does not prevent proceedings from being maintained against the one to whom the disclosure was made for the recovery of those legal costs.
- (7) Failure by a law practice to comply with this Division is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any Australian legal practitioner or Australian-registered foreign lawyer involved in the failure.

**269. Progress reports**

- (1) A law practice must give a client, on reasonable request —
  - (a) a written report of the progress of the matter in which the law practice is retained by the client; and
  - (b) a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.
- (2) A law practice may charge a client a reasonable amount for a report under subsection (1)(a) but must not charge a client for a report under subsection (1)(b).
- (3) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subsection.
- (4) Subsection (3) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

**270. Disclosure to associated third party payers**

- (1) If a law practice is required to make a disclosure to a client of the practice under this Division, the practice must, in accordance with subsections (2) and (3), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.
- (2) A disclosure under subsection (1) must be made in writing —
  - (a) at the time the disclosure to the client is required under this Division; or
  - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client — as soon as practicable after the practice becomes aware of the obligation.
- (3) Section 266 applies to a disclosure to an associated third party payer under subsection (1) in the same way as it applies to a client.
- (4) An associated third party payer for a client of a law practice has the same right as the client to obtain reports under section 269(1)(b) of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in respect of legal services provided to the client, and the law practice must comply with that section accordingly.

**Division 4 — Legal costs generally**

**271. Basis on which legal costs are recoverable**

Subject to Division 2, legal costs are recoverable —

- (a) under a costs agreement made in accordance with Division 6 or the corresponding provision of a corresponding law; or

- (b) if paragraph (a) does not apply, in accordance with an applicable costs determination; or
- (c) if neither paragraph (a) nor paragraph (b) applies, according to the fair and reasonable value of the legal services provided.

**272. Security for legal costs**

A law practice may take reasonable security from a client for legal costs (including security for the payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security.

**273. Interest on unpaid legal costs**

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the practice has given a bill for the costs in accordance with Division 7.
- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest under subsection (1) or (2) on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.
- (4) A law practice may not charge interest under this section or under a costs agreement at a rate that exceeds the rate prescribed by the regulations.

**Division 5 — Legal costs determinations**

**274. Terms used**

In this Division —

*contentious business* means legal services by an Australian legal practitioner in or for the purposes of any action, suit or

proceedings before a court, but does not include the administration of estates and trusts;

*court* includes an arbitrator, tribunal, or person, having power to require the production of documents or the answering of questions.

**275. Legal costs determinations**

- (1) The Legal Costs Committee may make legal costs determinations regulating the costs that may be charged by law practices in respect of —
  - (a) non-contentious business; and
  - (b) contentious business before —
    - (i) the Supreme Court; or
    - (ii) the District Court; or
    - (iii) the Magistrates Court; or
    - (iv) a court of summary jurisdiction; or
    - (v) the State Administrative Tribunal; or
    - (vi) the Family Court of Western Australia; or
    - (vii) any other court declared by the Attorney General under subsection (7) to be a court to which this section applies.
- (2) A costs determination may provide that law practices may charge —
  - (a) according to a scale of rates of commission or percentages; or
  - (b) a specified amount; or
  - (c) a maximum amount; or
  - (d) in any other way or combination of ways.
- (3) A costs determination —
  - (a) may differ according to different classes of legal services; and

- (b) may confer a discretionary authority or impose a duty on a specified person or class of persons.
- (4) A declaration must not be made under subsection (7) in respect of a dispute resolution authority as defined in the *Workers' Compensation and Injury Management Act 1981*.
- (5) If —
  - (a) another written law refers to a determination under this section or a costs determination as defined in section 252; and
  - (b) the determination is for purposes of the written law that are, or include, purposes other than the purposes of subsection (1) (the *other purposes*),the Legal Costs Committee may make a determination for the other purposes.
- (6) A costs determination may be amended or revoked by a subsequent determination.
- (7) For the purposes of subsection (1)(b)(vii), the Attorney General may, by order published in the *Gazette*, declare any court to be a court in respect of which the Legal Costs Committee may make a costs determination and may, by subsequent order so published, vary or revoke that order.

**276. Review of costs determinations**

- (1) The Legal Costs Committee must review each costs determination in force at least once in the period of 2 years after it was made and in each period of 2 years after that period.
- (2) The Attorney General may at any time direct the Legal Costs Committee to review a costs determination in force and the Legal Costs Committee must carry out that review as soon as practicable after being so directed.

**277. Inquiries by Legal Costs Committee**

- (1) Before making or reviewing a costs determination the Legal Costs Committee must —
  - (a) give public notice under section 278 of its intention to make or review the determination; and
  - (b) if the determination is to be made or reviewed in respect of proceedings before a court, consult with that court; and
  - (c) make such other inquiries as it considers necessary to facilitate the making or review of the determination.
- (2) Subject to subsection (1) the Legal Costs Committee —
  - (a) may inform itself as it thinks fit; and
  - (b) must take into consideration submissions received by it in relation to legal costs, whether or not those submissions were received in response to a notice under section 278; and
  - (c) is not required to conduct proceedings in a formal manner; and
  - (d) is not bound by the rules of evidence.

**278. Notice and submissions in respect of determination**

- (1) The Legal Costs Committee must —
  - (a) give written notice of its intention to make or review a costs determination to the Law Society; and
  - (b) publish notice of its intention in 2 issues of a daily newspaper circulating throughout this State.
- (2) A notice under subsection (1) must —
  - (a) state that submissions on the intended costs determination or review may be made to the Legal Costs Committee; and
  - (b) specify the manner in which the submissions may be made; and

- (c) specify the period within which the submissions may be made (being a period of not less than 30 days after the day on which the notice is last published under subsection (1)(b)).

**279. Report and publication of costs determinations**

- (1) As soon as practicable after making a costs determination the Legal Costs Committee must report to the Attorney General —
  - (a) the determination; and
  - (b) the reasons for its decisions in respect of the determination.
- (2) The report must be published in the *Gazette* as soon as practicable after it is received by the Attorney General.
- (3) A costs determination comes into force on —
  - (a) the day on which the report of the determination is published under subsection (2); or
  - (b) if a later day is specified in the report, that day.
- (4) Judicial notice must be taken of —
  - (a) a costs determination; and
  - (b) the day of publication of the report of the determination.

**280. Effect of costs determination**

- (1) Subject to any costs agreement made in accordance with Division 6 or the corresponding provision of a corresponding law, section 306 and the *Legal Aid Commission Act 1976* section 14 —
  - (a) the taxation of bills of law practices; and
  - (b) any other aspect of the costs charged by law practices,is regulated by an applicable costs determination.



- (2) Despite subsection (1), if a court or judicial officer is of the opinion that the amount of costs allowable in respect of a matter under a costs determination is inadequate because of the unusual difficulty, complexity or importance of the matter, the court or officer may do all or any of the following —
- (a) order the payment of costs above those fixed by the determination;
  - (b) fix higher limits of costs than those fixed in the determination;
  - (c) remove limits on costs fixed in the determination;
  - (d) make any order or give any direction for the purposes of enabling costs above those in the determination to be ordered or assessed.
- (3) Nothing in subsection (1) is to be construed as limiting the power of a court, a judicial officer or a taxing officer of a court to determine in any particular case before that court or judicial officer the amount of costs allowed.
- (4) If a costs determination is in force in respect of any business referred to in section 275(1), any other subsidiary legislation fixing or purporting to regulate the remuneration of law practices in respect of that kind of business is of no force or effect.

**281. Reports**

The Legal Costs Committee may investigate and report and make recommendations to the Attorney General on any matter relating to —

- (a) bills generally and, in particular, the desirability of the use of scales in the calculation and fixing of bills; and
- (b) the basis on which costs are or should be calculated and fixed; and
- (c) any other aspect of the remuneration of law practices.

### **Division 6 — Costs agreements**

#### **282. Making costs agreements**

- (1) A costs agreement may be made —
  - (a) between a client and a law practice retained by the client; or
  - (b) between a client and a law practice retained on behalf of the client by another law practice; or
  - (c) between a law practice and another law practice that retained that law practice on behalf of a client; or
  - (d) between a law practice and an associated third party payer.
- (2) A costs agreement must be written or evidenced in writing.
- (3) A costs agreement may consist of a written offer in accordance with subsection (4) that is accepted in writing or by other conduct.
- (4) The offer must clearly state —
  - (a) that it is an offer to enter into a costs agreement; and
  - (b) that the offer can be accepted in writing or by other conduct; and
  - (c) the type of conduct that will constitute acceptance.
- (5) Except as provided in section 309, a costs agreement cannot provide that the legal costs to which it relates are not subject to costs assessment under Division 8.
- (6) A reference in section 288 and in any prescribed provision of this Part to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as referred to in subsection (1)(d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

**283. Conditional costs agreements**

- (1) A costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.
- (2) A conditional costs agreement may relate to any matter, except a matter that involves —
  - (a) criminal proceedings; or
  - (b) proceedings that relate to or involve child protection, custody, guardianship or adoption; or
  - (c) proceedings under either of the following Acts —
    - (i) the *Family Court Act 1997*;
    - (ii) the *Children and Community Services Act 2004*;or
  - (d) proceedings under any of the following Acts of the Commonwealth —
    - (i) the *Family Law Act 1975*;
    - (ii) the *Migration Act 1958*;
    - (iii) the *Child Support (Assessment) Act 1989*;or
  - (e) proceedings prescribed by the regulations.
- (3) A conditional costs agreement —
  - (a) must set out the circumstances that constitute the successful outcome of the matter to which it relates; and
  - (b) may provide for disbursements to be paid irrespective of the outcome of the matter; and
  - (c) must be —
    - (i) in writing; and
    - (ii) in clear plain language; and
    - (iii) signed by the client;and

- (d) must contain a statement that the client has been informed of the client's right to seek independent legal advice before entering into the agreement; and
  - (e) must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement.
- (4) Subsection (3)(c)(iii), (d) and (e) does not apply to —
- (a) a conditional costs agreement made under section 282(1)(c); or
  - (b) a conditional costs agreement made with a sophisticated client.
- (5) If a client terminates an agreement within the period referred to in subsection (3)(e), the law practice —
- (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
  - (b) without affecting the generality of paragraph (a), may not recover the uplift fee (if any).

**284. Conditional costs agreements involving uplift fees**

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) The basis of calculation of the uplift fee must be separately identified in the agreement.
- (3) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable —
  - (a) a range of estimates of the uplift fee; and
  - (b) an explanation of the major variables that will affect the calculation of the uplift fee.

- (4) If a conditional costs agreement relates to a litigious matter —
- (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
  - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (5) A law practice must not enter into a costs agreement in contravention of this section.  
Penalty: a fine of \$10 000.

**285. Contingency fees are prohibited**

- (1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.  
Penalty: a fine of \$10 000.
- (2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable costs determination.

**286. Effect of costs agreement**

Subject to this Division and Division 8, a costs agreement may be enforced in the same way as any other contract.

**287. Certain costs agreements void**

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division, is void.
- (2) Subject to this section and Division 8, legal costs under a void costs agreement are recoverable as set out in section 271(b) or (c).
- (3) However, a law practice is not entitled to recover any amount in excess of the amount that the law practice would have been

entitled to recover if the costs agreement had not been void and must repay any excess amount received.

- (4) A law practice that has entered into a costs agreement in contravention of section 284 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received.
- (5) A law practice that has entered into a costs agreement in contravention of section 285 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.
- (6) If a law practice does not repay an amount required by subsection (3), (4) or (5) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

**288. Setting aside costs agreements**

- (1) In this section —  
*client* means a person to whom or for whom legal services are or have been provided.
- (2) On application by a client, the Supreme Court may order that a costs agreement be set aside if satisfied that the agreement is not fair or reasonable.
- (3) In determining whether or not a costs agreement is fair or reasonable, and without limiting the matters to which the Supreme Court can have regard, the Supreme Court may have regard to any or all of the following matters —
  - (a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the law practice;

- (b) whether any Australian legal practitioner or Australian-registered foreign lawyer acting on behalf of the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the provision of legal services to which the agreement relates;
  - (c) whether the law practice has failed to make any of the disclosures required under Division 3;
  - (d) the circumstances and the conduct of the parties before and when the agreement was made;
  - (e) the circumstances and the conduct of the parties in the matters after the agreement was made;
  - (f) whether and how the agreement addresses the effect on costs of matters and changed circumstances that might foreseeably arise and affect the extent and nature of legal services provided under the agreement;
  - (g) whether and how billing under the agreement addresses changed circumstances affecting the extent and nature of legal services provided under the agreement.
- (4) The Supreme Court may adjourn the hearing of an application under this section pending the completion of any investigation or determination of any charge in relation to the conduct of any Australian legal practitioner or Australian-registered foreign lawyer.
- (5) If the Supreme Court determines that a costs agreement be set aside, the Court may make an order in relation to the payment of legal costs the subject of the agreement.
- (6) In making an order under subsection (5) —
- (a) the Supreme Court must apply the applicable costs determination (if any); or
  - (b) if there is no applicable costs determination — the Court must determine the fair and reasonable legal costs in

relation to the work to which the agreement related,  
taking into account —

- (i) the seriousness of the conduct of the law practice or any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf; and
  - (ii) whether or not it was reasonable to carry out the work; and
  - (iii) whether or not the work was carried out in a reasonable manner.
- (7) In making an order under subsection (5), the Supreme Court may not order the payment of an amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been set aside.
- (8) For the purposes of subsection (6)(b), the Supreme Court may have regard to any or all of the following matters —
- (a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act;
  - (b) any disclosures made by the law practice under Division 3, or the failure to make any disclosures required under that Division;
  - (c) any relevant advertisement as to —
    - (i) the law practice's costs; or
    - (ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;
  - (d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;
  - (e) the retainer and whether the work done was within the scope of the retainer;



- (f) the complexity, novelty or difficulty of the matter;
  - (g) the quality of the work done;
  - (h) the place where, and circumstances in which, the work was done;
  - (i) the time within which the work was required to be done;
  - (j) any other relevant matter.
- (9) The Supreme Court may determine whether or not a costs agreement exists.
- (10) The Supreme Court may order the payment of the costs of and incidental to a hearing under this section.

### **Division 7 — Billing**

#### **289. Legal costs cannot be recovered unless bill has been given**

- (1) A law practice must not commence legal proceedings to recover legal costs from a person until at least 30 days after the law practice has given a bill to the person in accordance with sections 290 and 291.
- (2) A court of competent jurisdiction may make an order authorising a law practice to commence legal proceedings against a person sooner if satisfied that —
  - (a) the law practice has given a bill to the person in accordance with sections 290 and 291; and
  - (b) the person is about to leave this jurisdiction.
- (3) A court or tribunal before which any proceedings are brought in contravention of subsection (1) must stay those proceedings on the application of a party, or on its own initiative.
- (4) This section applies whether or not the legal costs are the subject of a costs agreement.

**290. Bills**

(1) In this section —

*agent* of a person means an agent, law practice or Australian legal practitioner who has authority to accept service of legal process on behalf of the person.

(2) A bill may be in the form of a lump sum bill or an itemised bill.

(3) A bill must be signed on behalf of the law practice by an Australian legal practitioner or an employee of the law practice.

(4) It is sufficient compliance with subsection (3) if a letter signed on behalf of a law practice by an Australian legal practitioner or an employee of the law practice is attached to, or enclosed with, the bill.

(5) A bill or letter is taken to have been signed by a law practice that is an incorporated legal practice if it has the practice's seal affixed to it or is signed by a legal practitioner director of the practice or an officer or employee of the practice who is an Australian legal practitioner.

(6) A bill is to be given to a person —

(a) by delivering it personally to the person or to an agent of the person; or

(b) by sending it by post to the person or an agent of the person at —

(i) the usual or last known business or residential address of the person or agent; or

(ii) an address nominated for the purpose by the person or agent;

or

(c) by leaving it for the person or agent at —

(i) the usual or last known business or residential address of the person or agent; or

- (ii) an address nominated for the purpose by the person or agent,  
with a person on the premises who is apparently at least 16 years old and apparently employed or residing there;  
or
  - (d) subject to the *Electronic Transactions Act 2011* section 10, by transmitting it electronically to a facsimile number or email address provided by the person or agent; or
  - (e) by sending or delivering it to the person or agent in a manner prescribed by regulation.
- (7) A reference in subsection (6) to any method of giving a bill to a person includes a reference to arranging for the bill to be given to that person by that method (for example, by delivery by courier).

*[Section 290 amended by No. 46 of 2011 s. 25.]*

**291. Notification of client's rights**

- (1) A bill must include or be accompanied by a written statement setting out —
  - (a) the following avenues that are open to the client in the event of a dispute in relation to legal costs —
    - (i) costs assessment under Division 8;
    - (ii) the setting aside of a costs agreement under section 288;
    - (iii) making a complaint under Part 13;and
  - (b) any time limits that apply to the taking of any action referred to in paragraph (a).
- (2) Subsection (1) does not apply in relation to a sophisticated client.

- (3) A law practice is taken to have complied with the requirement to disclose the details referred to in subsection (1) if it provides a written statement in or to the effect of a form prescribed by the regulations for the purposes of this subsection.
- (4) A form prescribed for the purposes of subsection (3) may, instead of itself containing details of the kind referred to in that subsection, refer to publicly accessible sources of information (such as an internet website) from which those details can be obtained.
- (5) The regulations may require the Board to develop a statement of the relevant details and to revise it as necessary to keep it up to date.

**292. Request for itemised bill**

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) The law practice must comply with the request within 21 days after the date on which the request is made.
- (3) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.
- (4) Subject to subsection (5), a law practice must not commence legal proceedings to recover legal costs from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill in accordance with this Division.
- (5) If the person makes a request for an itemised bill in accordance with this section, the law practice must not commence legal proceedings to recover the legal costs from the person until at least 30 days after complying with the request.

- (6) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.
- (7) Section 290(3) and (6) apply to the giving of an itemised bill under this section.

**293. Interim bills**

- (1) A law practice may give a person an interim bill covering part only of the legal services the law practice was retained to provide.
- (2) Legal costs that are the subject of an interim bill may be assessed under Division 8, either at the time of the interim bill or at the time of the final bill, whether or not the interim bill has been paid.

**Division 8 — Costs assessment**

**294. Term used: client**

In this Division —

*client* means a person to whom or for whom legal services are or have been provided.

**295. Application by clients or third party payers for costs assessment**

- (1) In this section —
  - client* includes the following —
    - (a) an executor or administrator of a client;
    - (b) a trustee of the estate of a client;
  - third party payer* includes the following —
    - (a) an executor or administrator of a third party payer;
    - (b) a trustee of the estate of a third party payer.
- (2) A client may apply to a taxing officer for an assessment of the whole or any part of a bill for legal costs.

- (3) A third party payer may apply to a taxing officer for an assessment of the whole or any part of a bill for legal costs payable by the third party payer.
- (4) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (5) If any legal costs have been paid without a bill, the client or third party payer may nevertheless apply for a costs assessment.
- (6) An application by a client or third party payer under this section must be made within 12 months after —
  - (a) the bill was given in accordance with Division 7 or the request for payment was made to the client or third party payer; or
  - (b) the costs were paid if neither a bill was given nor a request was made.
- (7) However, an application that is made out of time, otherwise than by —
  - (a) a sophisticated client; or
  - (b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned,may be dealt with by the taxing officer if the Supreme Court, on application by the taxing officer or the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for assessment to be dealt with after the 12 month period.
- (8) If the third party payer is a non-associated third party payer, the law practice must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, an application for a costs assessment under this section.

- (9) If there is an associated third party payer for a client of a law practice —
- (a) nothing in this section prevents —
    - (i) the client from making one or more applications for assessment under this section in relation to costs for which the client is solely liable; and
    - (ii) the associated third party payer from making one or more applications for assessment under this section in relation to costs for which the associated third party payer is solely liable,and those applications may be made by them at the same time or at different times and may be dealt with jointly or separately; and
  - (b) the client or the associated third party payer —
    - (i) may participate in the costs assessment process where the other of them makes an application for assessment under this section in relation to costs for which they are both liable; and
    - (ii) is taken to be a party to the assessment and is bound by the assessment;and
  - (c) the law practice —
    - (i) must participate in the costs assessment process where an application is made under this section by the associated third party payer in the same way as the practice must participate in the process where an application is made under this section by a client; and
    - (ii) is taken to be a party to the assessment and is bound by the assessment.

(10) If there is a non-associated third party payer for a client of a law practice —

(a) nothing in this section prevents —

- (i) the client from making one or more applications under this section in relation to costs for which the client is liable; and
- (ii) the non-associated third party payer from making one or more applications under this section in relation to costs for which the non-associated third party payer is liable,

and those applications may be made by them at the same time or at different times but must be dealt with separately; and

(b) the client —

- (i) may participate in the costs assessment process where the non-associated third party payer makes an application under this section in relation to costs for which the non-associated third party payer is liable; and
- (ii) is taken to be a party to the assessment and is bound by the assessment;

and

(c) the law practice —

- (i) must participate in the costs assessment process; and
- (ii) is taken to be a party to the assessment;

and

(d) despite any other provision of this Division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.



**296. Application for costs assessment by law practice retaining another law practice**

- (1) A law practice that retains another law practice to act on behalf of a client may apply to a taxing officer for an assessment of the whole or any part of the legal costs.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) An application under this section must be made within 60 days after —
  - (a) the bill was given or the request for payment was made; or
  - (b) the costs were paid if neither a bill was given nor a request was made.
- (5) An application cannot be made under this section if there is a costs agreement between the client and the other law practice.

**297. Application for costs assessment by law practice giving bill**

- (1) A law practice that has given a bill in accordance with Division 7 may apply to a taxing officer for an assessment of the whole or any part of the legal costs to which the bill relates.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) An application may not be made under this section unless at least 30 days have passed since —
  - (a) the bill was given or the request for payment was made; or

- (b) the costs were paid if neither a bill was given nor a request was made; or
- (c) an application has been made under this Division by another person in respect of the legal costs.

**298. Consequences of application**

If an application for a costs assessment is made under this Division —

- (a) the costs assessment must take place without any money being paid into court on account of the legal costs the subject of the application; and
- (b) the law practice must not commence any proceedings to recover the legal costs until the costs assessment has been completed.

**299. Persons to be notified of application**

- (1) An applicant for a costs assessment must cause a copy of the application to be given to any law practice or client concerned or any other person whom the taxing officer thinks it is appropriate to notify.
- (2) A person who is notified by the applicant under subsection (1) —
  - (a) is entitled to participate in the costs assessment procedure; and
  - (b) is to be taken to be a party to the costs assessment; and
  - (c) if the taxing officer so determines, is bound by the costs assessment.

**300. Procedure on assessment**

If, after proper notice that a costs assessment will take place, a party to the assessment does not attend, the taxing officer may proceed with the assessment in the absence of that party.

**301. Criteria for assessment**

- (1) In conducting an assessment of legal costs, a taxing officer must consider —
  - (a) whether or not it was reasonable to carry out the work to which the legal costs relate; and
  - (b) whether or not the work was carried out in a reasonable manner; and
  - (c) the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that section 302 or 303 applies to any disputed costs.
  
- (2) In considering what is a fair and reasonable amount of legal costs, the taxing officer may have regard to any or all of the following matters —
  - (a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act;
  - (b) any disclosure made by the law practice under Division 3;
  - (c) any relevant advertisement as to —
    - (i) the law practice's costs; or
    - (ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;
  - (d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;
  - (e) the retainer and whether the work was done was within the scope of the retainer;
  - (f) the complexity, novelty or difficulty of the matter;
  - (g) the quality of the work done;

- (h) the place where, and circumstances in which, the legal services were provided;
  - (i) the time within which the work was required to be done;
  - (j) any other relevant matter.
- (3) In conducting an assessment of legal costs payable by a non-associated third party payer, the taxing officer must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

**302. Assessment of costs by reference to costs agreement**

- (1) A taxing officer must assess the amount of any disputed costs that are subject to a costs agreement by reference to the provisions of the costs agreement if —
- (a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs; and
  - (b) the agreement has not been set aside under section 288,
- unless the taxing officer is satisfied that —
- (c) the agreement does not comply in a material respect with any applicable disclosure requirements of Division 3; or
  - (d) Division 6 precludes the law practice concerned from recovering the amount of the costs; or
  - (e) the parties otherwise agree.
- (2) The taxing officer is not required to initiate an examination of the matters referred to in subsection (1)(c) and (d).

**303. Assessment of costs by reference to costs determination**

A taxing officer must assess the amount of any disputed costs that are subject to a costs determination by reference to the determination.

**304. Costs of assessment**

- (1) A taxing officer must determine the costs of a costs assessment.
- (2) Unless the taxing officer otherwise orders and subject to subsection (4) the law practice to which the costs are payable or were paid must pay the costs of the assessment if —
  - (a) on the assessment the legal costs are reduced by 15% or more; or
  - (b) the taxing officer is satisfied that the law practice failed to comply with Division 3.
- (3) Unless the taxing officer otherwise orders and subject to subsection (4), if the law practice is not, under subsection (2), liable to pay the costs of the assessment, the costs of the assessment must be paid by the party ordered by the taxing officer to pay those costs.
- (4) A taxing officer may refer to the Supreme Court any special circumstances relating to a costs assessment and the Court may make any order it thinks fit concerning the costs of the costs assessment.

**305. Certification and interest**

- (1) The taxing officer must certify in writing —
  - (a) the amount of disputed costs allowed; and
  - (b) the costs of the costs assessment.
- (2) Subject to sections 299(2)(c) and 308, a certificate under subsection (1) is binding on the parties to the costs assessment.
- (3) A certificate under subsection (1) bears interest, and may be enforced against any person liable to pay, as if it were a judgment of the Supreme Court for the payment of the amount mentioned in the certificate.

**306. Assessment of Legal Aid Commission bill**

If a taxing officer taxes a bill of costs with which the Legal Aid Commission is charged for services by way of legal assistance under the *Legal Aid Commission Act 1976* Part V Division 3 —

- (a) the taxing officer must give effect to section 14(1) of that Act, other than the requirement of section 14(1)(a)(ii) that fees be approved, in determining the amount as which the bill is allowed; and
- (b) the amount certified by the taxing officer, or an order made in respect of that amount under section 308, is conclusive and binding on the Legal Aid Commission and the law practice despite the provisions of the *Legal Aid Commission Act 1976*.

**307. Referral for disciplinary action**

- (1) If, on a costs assessment, the taxing officer considers that the legal costs charged by a law practice are grossly excessive, the taxing officer must refer the matter to the Complaints Committee to consider whether disciplinary action should be taken against any Australian legal practitioner or Australian-registered foreign lawyer involved.
- (2) If the taxing officer considers that a costs assessment raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the taxing officer may refer the matter to the Complaints Committee to consider whether disciplinary action should be taken against the Australian legal practitioner or Australian-registered foreign lawyer.

**308. Review of assessment**

- (1) A costs assessment may be reviewed by the Supreme Court in accordance with the Rules of the Supreme Court.

- (2) An order made upon review may be enforced in the same way as the certificate of a taxing officer under section 305.

**309. Contracting out of Division by sophisticated clients**

A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, may contract out of this Division.

**Division 9 — Legal Costs Committee**

**Subdivision 1 — Establishment**

**310. Legal Costs Committee**

- (1) A committee called the Legal Costs Committee is established.
- (2) The Legal Costs Committee consists of the following members appointed by the Governor —
- (a) a chairperson who is to be —
    - (i) a judge of the Supreme Court or the District Court; or
    - (ii) an Australian legal practitioner of no less than 8 years' standing;
  - (b) 2 local legal practitioners in private practice nominated under section 311;
  - (c) 3 persons who are not Australian lawyers, at least one of whom must be an accountant.

**311. Nominations**

- (1) If a nomination for appointment under section 310(2)(b) or 314 is required to be made, the Attorney General must, by written notice —
- (a) request the Law Society to submit to the Attorney General a list containing the names of not fewer than

- twice the number of Australian legal practitioners in private practice to be appointed; and
- (b) specify a time (being not less than 28 days after receipt of the notice) within which a list must be submitted.
- (2) If the Law Society has been requested by notice under subsection (1) to submit a list, the Attorney General —
- (a) must, if the list is submitted within the time specified in the notice, nominate for appointment one or more, as the case requires, of the practitioners whose names appear on the list; and
- (b) may, if the list is not submitted within the time specified in the notice, nominate for appointment a practitioner or practitioners as the Attorney General thinks fit.

**312. Term of office**

- (1) Subject to section 315, a Legal Costs Committee member —
- (a) holds office for a term of not more than 3 years specified in the instrument of appointment; and
- (b) is eligible for reappointment.
- (2) Subject to section 315, a person appointed under section 313 or 314 —
- (a) holds office for a term specified in the instrument of appointment; and
- (b) is eligible for reappointment.

**313. Deputy chairperson**

- (1) The Governor may appoint as deputy chairperson of the Legal Costs Committee a person qualified for appointment as chairperson under section 310(2)(a).
- (2) The deputy chairperson is to act in the place of the chairperson of the Legal Costs Committee —



- (a) if the chairperson is unable to act because of illness, absence or other cause; or
  - (b) if there is no chairperson.
- (3) An act or omission of the deputy chairperson acting in the chairperson's place cannot be questioned on the ground that the occasion to act in the chairperson's place had not arisen or had ceased.

**314. Deputy members**

- (1) The Governor may appoint a person having a like qualification or being nominated in the same manner as the member for whom the person is a deputy to act in the place of a Legal Costs Committee member.
- (2) A deputy of a member is, if the member is unable to act because of illness, absence or other cause, entitled to act in the place of that member and while so acting is taken to be a Legal Costs Committee member.
- (3) An act or omission of a deputy member acting in the place of a Legal Costs Committee member cannot be questioned on the ground that the occasion to act in the member's place had not arisen or had ceased.

**315. Removal and resignation**

- (1) In this section —  
*member* includes a deputy member.
- (2) The Governor may remove a Legal Costs Committee member from office —
  - (a) if the member is an insolvent under administration; or
  - (b) on the grounds of —
    - (i) mental or physical incapacity to carry out the member's duties in a satisfactory manner; or
    - (ii) neglect of duty; or

(iii) misconduct.

- (3) A Legal Costs Committee member may resign office by notice in writing delivered to the Governor.

**316. Leave of absence**

The Attorney General may grant leave of absence to a Legal Costs Committee member on such terms and conditions as the Attorney General thinks fit.

**317. Remuneration and allowances**

A Legal Costs Committee member or deputy member is to be paid such remuneration and allowances as the Attorney General from time to time, after consultation with the Public Sector Commissioner, may determine.

*[Section 317 amended by No. 39 of 2010 s. 89.]*

**Subdivision 2 — Procedure**

**318. Meetings**

- (1) Meetings of the Legal Costs Committee are to be held at times and places determined by the Legal Costs Committee.
- (2) The chairperson of the Legal Costs Committee presides at all meetings of the Legal Costs Committee at which the chairperson is present.
- (3) If neither the chairperson, nor the deputy chairperson acting as chairperson, is presiding at a meeting of the Legal Costs Committee the members present at the meeting are to appoint one of their number to preside.
- (4) The Committee must ensure that minutes of its meetings are kept.

**319. Voting**

At a meeting of the Legal Costs Committee —

- (a) each member has a deliberative vote; and
- (b) if the votes cast on a question are equally divided, the chairperson of the Legal Costs Committee has a casting vote; and
- (c) if the votes cast on a question at a meeting from which the chairperson and deputy chairperson are absent are equally divided, the question remains unresolved until the next meeting at which either the chairperson or deputy chairperson is present.

**320. Quorum**

At a meeting of the Legal Costs Committee 4 members, of whom 2 are Australian legal practitioners and 2 are members appointed under section 310(2)(c), constitute a quorum.

**321. Legal Costs Committee to determine procedures**

The Legal Costs Committee is to determine its own procedures to the extent that they are not fixed by this Act.

**Subdivision 3 — Support and financial provisions**

**322. Use of staff and facilities of departments**

- (1) The Legal Costs Committee may by arrangement with the relevant employer make use of the services of any officer or employee —
  - (a) in the department of the Public Service principally assisting the Attorney General in the administration of this Act; or
  - (b) in an agency or instrumentality established or constituted under a written law administered by the Attorney General.
- (2) The Legal Costs Committee may by arrangement with —
  - (a) the department referred to in subsection (1); or

- (b) an agency or instrumentality referred to in that subsection,

make use of any facilities of the department, agency or instrumentality.

- (3) The Legal Costs Committee must not enter into an arrangement under subsection (1) or (2) without the prior approval of the Attorney General.
- (4) An arrangement under subsection (1) or (2) must be made on such terms as are agreed to by the parties.

**323. Funds**

- (1) The funds available for the purpose of enabling the Legal Costs Committee to perform its functions consist of —
  - (a) money from time to time appropriated by Parliament; and
  - (b) other money lawfully made available to the Legal Costs Committee.
- (2) An account called the Legal Costs Committee Account is to be established —
  - (a) as an agency special purpose account under the *Financial Management Act 2006* section 16; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,to which the funds referred to in subsection (1) are to be credited.
- (3) The Account is to be charged with —
  - (a) the remuneration and allowances payable under section 317; and
  - (b) all other expenditure lawfully incurred by the Legal Costs Committee in the performance of its functions.

**324. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Legal Costs Committee and its operations.

**Division 10 — Miscellaneous**

**325. Application of Part to incorporated legal practices and multi-disciplinary partnerships**

The regulations may provide that specified provisions of this Part do not apply to incorporated legal practices or multi-disciplinary partnerships or both or apply to them with specified modifications.

**326. Imputed acts, omissions or knowledge**

For the purposes of this Part —

- (a) anything done or omitted by, to or in relation to —
  - (i) an Australian legal practitioner; or
  - (ii) an Australian-registered foreign lawyer (except for the purposes of section 284(4) or for the purposes of any provision of this Part prescribed by the regulations for the purposes of this section),  
  
in the course of acting on behalf of a law practice is taken to have been done or omitted by, to or in relation to the law practice; and
- (b) without limiting paragraph (a), the law practice is taken to become or be aware of, or to have a belief as to, any matter if —
  - (i) an Australian legal practitioner; or

- (ii) an Australian-registered foreign lawyer (except for the purposes of section 284(4) or for the purposes of any provision of this Part prescribed by the regulations for the purposes of this section),

becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the law practice.

## Part 11 — Professional indemnity insurance

### 327. Terms used

- (1) In this Part —

**Law Mutual Fund** means the fund continued under section 330(1);

**PII management committee** means the management committee referred to in section 331;

**professional indemnity insurance** means professional indemnity insurance for local legal practitioners and law practices against loss arising from claims in respect of any description of civil liability incurred in connection with legal practice.

- (2) A reference in this Part or section 591 to the Law Society includes, where appropriate, a reference to the Law Society in its capacity as trustee of the Law Mutual Fund.

*[Section 327 amended by No. 47 of 2011 s. 27.]*

### 328. Regulations as to professional indemnity insurance

- (1) The Governor may make regulations concerning professional indemnity insurance.

- (2) Without limiting subsection (1), the regulations may —

- (a) authorise or require the Law Society to do either or both of the following —

- (i) make arrangements with one or more insurers for the provision to local legal practitioners and law practices of professional indemnity insurance;
- (ii) approve a scheme providing professional indemnity insurance;

and

- (b) confer discretionary powers on the Law Society —
  - (i) to do such acts and things as may be necessary or expedient for giving effect to the arrangements or scheme; and
  - (ii) in relation to the administration of the arrangements or the scheme; and
  - (iii) in relation to the administration of the Law Mutual Fund, including the management and application of any surplus funds;and
- (c) require local legal practitioners and law practices, subject to any exemption referred to in paragraph (i), to take out and maintain professional indemnity insurance in accordance with the requirements of the regulations and either in accordance with the arrangements made under the regulations or in accordance with the scheme approved under the regulations; and
- (d) specify the terms and conditions on and subject to which professional indemnity insurance is to be provided, including the extent of the insurance cover to be taken out and maintained and the period during which such cover is to be maintained; and
- (e) specify classes or categories of local legal practitioners and law practices to which different provisions or obligations under the regulations may apply; and
- (f) impose on local legal practitioners and law practices obligations to pay premiums, levies, fees or other charges (which may vary according to factors stipulated in the arrangements or scheme); and
- (g) impose on local legal practitioners and law practices obligations to provide information to the Law Society that is relevant to an arrangement or scheme in respect of professional indemnity insurance; and
- (h) provide for and regulate the approval of insurers and the issue of certificates of insurance to local legal



practitioners and law practices covered by professional indemnity insurance and prescribe the form of the certificates; and

- (i) specify circumstances in which local legal practitioners or law practices are exempt from the regulations, or empower the Board to exempt any local legal practitioner or class of legal practitioners or any law practice or class of law practice, in whole or in part from any provision of the regulations either for a specified or indefinite period or subject to any condition which may be imposed by the Board; and
- (j) provide for the Board to be given information by the Law Society as to the local legal practitioners and law practices to whom or which exemptions referred to in paragraph (i) apply, and authorise the Board to use that information in performing its functions; and
- (k) empower the Board to vary or revoke any exemption granted by the Board under the regulations; and
- (l) empower the Board or the Law Society to take such steps as it considers necessary or expedient to ascertain whether or not the regulations are being complied with; and
- (m) contain incidental, procedural and supplementary provisions.

**329. Law Mutual (WA)**

The entity called Law Mutual (WA) is continued under this Act.

**330. Law Mutual Fund**

- (1) The Law Mutual Fund is continued under this Act.
- (2) The Law Mutual Fund is held on trust by the Law Society as trustee.

**331. PII management committee**

- (1) The Law Society may establish a PII management committee consisting of 7 members.

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- (2) The members of the PII management committee —
  - (a) are to be appointed by the Law Society; and
  - (b) may include persons who are not members of the Law Society; and
  - (c) are to include —
    - (i) a chairperson who has knowledge and experience in the insurance industry; and
    - (ii) at least 2 persons who have knowledge and experience in the insurance industry or accounting or financial expertise; and
    - (iii) not less than 4 members of the Law Society Council.
- (3) Subject to this Part and any directions of the Law Society Council, the PII management committee may determine its own procedures.

**332. Delegation**

- (1) The Law Society may delegate any power or duty of the Law Society under another provision of this Part or regulations made under this Part to the PII management committee.
- (2) The delegation must be made by resolution of the Law Society Council.
- (3) The PII management committee cannot delegate a power or duty delegated to it under this section.
- (4) The PII management committee exercising or performing a power or duty that has been delegated to it under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Law Society to perform a function through an officer or agent in the normal course of its activities.

## Part 12 — Fidelity cover

### Division 1 — Preliminary

#### 333. Purpose

The purposes of this Part are as follows —

- (a) to establish and maintain the Guarantee Fund to provide a source of compensation for defaults by law practices arising from or constituted by acts or omissions of associates; and
- (b) to establish the Trust; and
- (c) to provide for the application to public purposes of money resulting to the Trust.

#### 334. Terms used

In this Part —

*Australian trust account* means a local trust account or an interstate trust account;

*capping and sufficiency provisions* of —

- (a) this jurisdiction — means sections 371 and 372; or
- (b) another jurisdiction — means the provisions of the corresponding law of that jurisdiction that correspond to those sections;

*claim* means a claim under this Part;

*claimant* means a person who makes a claim under this Part;

*concerted interstate default* means a default of a law practice arising from or constituted by an act or omission —

- (a) that was committed jointly by 2 or more associates of the practice; or

- (b) parts of which were committed by different associates of the practice or different combinations of associates of the practice,

where this jurisdiction is the relevant jurisdiction for at least one of the associates and another jurisdiction is the relevant jurisdiction for at least one of the associates;

**default**, in relation to a law practice, means —

- (a) a failure of the practice to pay or deliver trust money or trust property that was received by the practice in the course of legal practice by the practice, where the failure arises from an act or omission of an associate that involves dishonesty; or
- (b) a fraudulent dealing with trust property that was received by the practice in the course of legal practice by the practice, where the fraudulent dealing arises from or is constituted by an act or omission of an associate that involves dishonesty;

**dishonesty** includes fraud;

**interstate trust account** means a trust account maintained under a corresponding law;

**local trust account** means a trust account maintained under this Act;

**pecuniary loss**, in relation to a default, means —

- (a) the amount of trust money, or the value of trust property, that is not paid or delivered; or
- (b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing;

**relevant jurisdiction** has the meaning given in section 348.

**335. Time of default**

- (1) This section applies for the purpose of determining which jurisdiction's law applies to a default.
- (2) The default is taken to have occurred when the act or omission giving rise to or constituting the default occurred.
- (3) An omission is taken to have occurred on the day on or by which the act not performed ought reasonably to have been performed or on such other day as is determined in accordance with the regulations.

**Division 2 — Solicitors' Guarantee Fund**

**336. Establishment of Guarantee Fund**

- (1) The Solicitors' Guarantee Fund is established.
- (2) The following money must be paid into the Guarantee Fund —
  - (a) money paid out of the Trust Interest Account to the Guarantee Fund under section 388;
  - (b) money resulting from the investment of the Guarantee Fund under section 342;
  - (c) money paid to, or recovered by or on behalf of, the Trust in respect of fees, costs and expenses, whether under the right of action conferred on the Trust by this Part or otherwise;
  - (d) the money, other than interest mentioned in section 387, paid to the Trust under this Act;
  - (e) such other money as may lawfully be paid to the Guarantee Fund.
- (3) The Trust may pay out of the Guarantee Fund —
  - (a) the amount of any claim, including costs, expenses and interest allowed or established against the Trust, or allowed by the Trust, in respect of the Guarantee Fund; and

- (b) the legal and other expenses incurred in investigating or defending claims against the Trust in respect of, or otherwise incurred in relation to, the Guarantee Fund or in the exercise by the Trust of functions conferred upon it by this or any other Act; and
  - (c) costs payable by the Trust under section 234(3); and
  - (d) the premiums, other than those mentioned in section 388, in respect of any contract of indemnity or insurance entered into by the Trust under the provisions of this Part; and
  - (e) the costs and expenses of the administration of the Guarantee Fund; and
  - (f) any other money that is payable out of the Guarantee Fund under this Part.
- (4) Pending their investment under section 342, money in the Guarantee Fund must be deposited in an ADI account or ADI accounts in the State.

**337. Payment of contributions by local legal practitioners**

- (1) Subject to subsection (4), each local legal practitioner who, on 30 June in any year has held a practising certificate for 2 years or longer must, if and when paying the fee for any succeeding practising certificate, pay to the Board, for application to the Guarantee Fund, such amount, if any, as may be prescribed by the legal profession rules.
- (2) The Board must not issue a practising certificate to a local legal practitioner obliged to make a payment under subsection (1) until the payment is made.
- (3) The Board must pay to the Trust all money received by it under subsection (1).
- (4) A local legal practitioner who has made 5 payments, or has paid an amount equal to 5 payments as then prescribed, under

subsection (1), is exempt from the requirement of making any further payment under that subsection.

**338. Payment of contributions by interstate legal practitioners**

- (1) A notice under section 71 must be accompanied by an amount for application to the Guarantee Fund that is the same as the amount that would have to be paid under section 337 if the interstate legal practitioner were a local legal practitioner required to make a payment under that section.
- (2) An interstate legal practitioner practising in this State must pay for each of the 4 years following the year in which payment is made under subsection (1) an amount for application to the Guarantee Fund that is the same as the amount that would have to be paid under section 337 if the interstate legal practitioner were a local legal practitioner required to make a payment under that section.

**339. Levy to supplement Guarantee Fund**

- (1) In this section —  
*local legal practitioner* does not include a WA government lawyer.
- (2) If the Trust is at any time of the opinion that the Guarantee Fund is likely to be insufficient to meet the ascertained or contingent liabilities to which it is subject, the Trust may make a written determination imposing on each local legal practitioner of a class specified by the Trust in the determination a levy for payment into the Guarantee Fund.
- (3) A levy is to be of such amount as the Trust determines and may differ according to the class of the local legal practitioner.
- (4) As soon as practicable after making a determination under subsection (2), the Trust must —
  - (a) cause notice of the determination to be published in the *Gazette*; and

- (b) give written notice of the determination to the Board and the Law Society.
- (5) The levy is payable to the Trust, at the time and in the manner fixed by the Trust in the determination, by each local legal practitioner who is of a class specified in the determination.
- (6) However, the Trust may in a special case extend the time for payment of a levy or part of a levy by a local legal practitioner.

**340. Failure to pay levy**

- (1) If a local legal practitioner fails to pay the amount of a levy in accordance with this Division the Trust must, as soon as practicable, give written notice to the Board of the practitioner's failure.
- (2) If a local legal practitioner fails to pay a levy in accordance with this Division, the Board may suspend the local legal practitioner's practising certificate while the failure continues.
- (3) The amount of a levy that is not paid by a person in accordance with this Division is recoverable in a court of competent jurisdiction by the Trust from that person as a debt.

**341. Insurance**

- (1) The Trust may arrange with an insurer for the insurance of the Guarantee Fund.
- (2) Without limiting subsection (1), the Trust may arrange for the insurance of the Guarantee Fund against particular claims or particular classes of claims.
- (3) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the Guarantee Fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.
- (4) 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 in relation to the insurance of the Guarantee



Fund, including publication of the fact that the Guarantee Fund has been insured against particular claims or particular classes of claims.

(5) In subsection (4) —

***protected person*** means —

- (a) the Trust or a trustee of the Trust; or
- (b) a person acting at the direction of the Trust or a trustee of the Trust.

### **342. Investment of Guarantee Fund**

(1) The Trust may, with the approval of the Minister, invest that portion of the Guarantee Fund that is not immediately required for the purposes of Division 3 —

- (a) on deposit with an ADI in the State, bearing interest at a rate agreed between the ADI and the Trust; or
- (b) on loan to the Treasurer at a rate of interest that is agreed with the Treasurer; or
- (c) as trust funds may be invested under the *Trustees Act 1962* Part III.

(2) The Trust must apply the money resulting from investment under subsection (1) in the manner provided by section 388.

### **343. Borrowing**

The Trust cannot borrow money for the purposes of the Guarantee Fund.

## **Division 3 — Fidelity cover**

### **Subdivision 1 — Application provisions**

### **344. Application to Australian-registered foreign lawyers**

(1) The regulations may provide that specified provisions of this Part or any legal profession rule relating to the Guarantee Fund apply to prescribed classes of Australian-registered foreign

lawyers and so apply with any modifications specified in the regulations.

- (2) The regulations may make provision for or with respect to payments by locally registered foreign lawyers of contributions to the Guarantee Fund.

**345. Application to incorporated legal practices**

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Guarantee Fund do not apply to incorporated legal practices or apply to them with any modifications specified in the regulations.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Guarantee Fund, to an incorporated legal practice, a reference in those provisions to a default of a law practice extends to a default of an incorporated legal practice, but only if it occurs in connection with the provision of legal services.
- (3) Nothing in this section affects any obligations of an Australian legal practitioner who is an officer or employee of an incorporated legal practice to comply with the provisions of this Act or any legal profession rule relating to the Guarantee Fund.

**346. Application to multi-disciplinary partnerships**

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Guarantee Fund do not apply to multi-disciplinary partnerships or apply to them with any modifications specified in the regulations.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Guarantee Fund, to a multi-disciplinary partnership, a reference in those provisions to a default of a law practice extends to a default of a multi-disciplinary partnership or a partner or employee of a multi-disciplinary partnership,

whether or not any person involved is an Australian legal practitioner, but only if it occurs in connection with the provision of legal services.

- (3) Nothing in this section affects any obligations of an Australian legal practitioner who is a partner or employee of a multi-disciplinary partnership to comply with the provisions of this Act or any legal profession rule relating to the Guarantee Fund.

**347. Application to sole practitioners whose practising certificates lapse**

- (1) This section applies if an Australian lawyer is not an Australian legal practitioner because the lawyer's Australian practising certificate has lapsed and the lawyer was a sole practitioner immediately before the certificate lapsed, but does not apply where —
- (a) the certificate has been suspended or cancelled under this Act or a corresponding law; or
  - (b) the lawyer's application for the grant or renewal of an Australian practising certificate has been refused under this Act or a corresponding law and the lawyer would be an Australian legal practitioner had it been granted or renewed.
- (2) For the purposes of other provisions of this Part, the practising certificate is taken not to have lapsed, and accordingly the lawyer is taken to continue to be an Australian legal practitioner.
- (3) Subsection (2) ceases to apply when the first of the following occurs —
- (a) a manager or receiver is appointed under this Act for the law practice;
  - (b) the period of 6 months after the practising certificate actually lapsed expires;

- (c) the lawyer's application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law.

**Subdivision 2 — Defaults to which this Division applies**

**348. Meaning of relevant jurisdiction**

- (1) The relevant jurisdiction for an associate of a law practice whose act or omission (whether alone or with one or more other associates of the practice) gives rise to or constitutes a default of the practice is to be determined under this section.
- (2) In the case of a default involving trust money received in Australia (whether or not it was paid into an Australian trust account), the relevant jurisdiction for the associate is —
  - (a) if the trust money was paid into an Australian trust account and if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default — the jurisdiction under whose law that trust account was maintained; or
  - (b) in any other case — the associate's home jurisdiction.
- (3) In the case of a default involving trust money received outside Australia and paid into an Australian trust account, the relevant jurisdiction for the associate is —
  - (a) if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default — the jurisdiction under whose law that trust account was maintained; or
  - (b) in any other case — the associate's home jurisdiction.
- (4) In the case of a default involving trust property received in Australia, or received outside Australia and brought to

Australia, the relevant jurisdiction for the associate is the associate's home jurisdiction.

**349. Defaults to which this Division applies**

- (1) This Division applies to a default of a law practice arising from or constituted by an act or omission of one or more associates of the practice, where this jurisdiction is the relevant jurisdiction for the only associate or one or more of the associates involved.
- (2) It is immaterial where the default occurs.
- (3) It is immaterial that the act or omission giving rise to or constituting a default does not constitute a crime or other offence under the law of this or any other jurisdiction or of the Commonwealth or that proceedings have not been commenced or concluded in relation to a crime or other offence of that kind.

**350. Defaults relating to financial services or investments**

- (1) In this section —  
*Australian financial services licence, authorised representative, financial service* and *financial services business* have the meanings given in the Corporations Act Chapter 7.
- (2) This Division does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for or in connection with —
  - (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not such a licence is held at any relevant time); or
  - (b) a financial service provided by the practice or an associate of the practice in circumstances where the

practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).

(3) Without limiting subsection (2), this Division does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for or in connection with —

- (a) a managed investment scheme; or
- (b) mortgage financing,

undertaken by the practice.

(4) Without limiting subsections (2) and (3), this Division does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for investment purposes, whether on its own account or as agent, unless —

- (a) the money or property was entrusted to or held by the practice —
    - (i) in the ordinary course of legal practice; and
    - (ii) primarily in connection with the provision of legal services to or at the direction of the client;
- and

- (b) the investment is or is to be made —
  - (i) in the ordinary course of legal practice; and
  - (ii) for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

### **Subdivision 3 — Claims about defaults**

#### **351. Claims about defaults**

- (1) A person who suffers pecuniary loss because of a default to which this Division applies may make a claim against the Guarantee Fund to the Trust about the default.
- (2) A claim must be made in writing in a form approved by the Trust.
- (3) The Trust may require the person who makes a claim to do any or all of the following —
  - (a) to give further information about the claim or any dispute to which the claim relates;
  - (b) to verify the claim, or any further information, by statutory declaration;
  - (c) to produce to the Trust any documents relating to the claim in the custody or under the control of the person.

#### **352. Time limit for making claims**

- (1) Subject to section 354, a claim does not lie against the Guarantee Fund unless the prospective claimant notifies the Trust of the default concerned —
  - (a) within the period of 6 months after the prospective claimant becomes aware of the default; or
  - (b) within a further period allowed by the Trust; or
  - (c) if, on an application for review of the Trust's decision, the State Administrative Tribunal allows a further time after the Trust refuses to do so — within a period allowed by the Tribunal.
- (2) The State Administrative Tribunal or the Trust may allow a further period referred to in subsection (1) if satisfied that —
  - (a) it would be reasonable to do so after taking into account all ascertained and contingent liabilities of the Guarantee Fund; and

- (b) it would be appropriate to do so in a particular case having regard to matters the Tribunal or the Trust thinks appropriate.

**353. Advertisements**

- (1) If the Trust considers that there has been, or may have been, a default by a law practice, it may publish either or both of the following —
  - (a) a notice that seeks information about the default;
  - (b) a notice that invites claims about the default and fixes a final date after which claims relating to the default cannot be made.
- (2) The final date fixed by a notice must be a date that is —
  - (a) at least 3 months later than the date of the first or only publication of the notice; and
  - (b) not more than 12 months after the date of that first or only publication.
- (3) A notice must be published —
  - (a) in a newspaper circulating generally throughout Australia; and
  - (b) in a newspaper circulating generally in each jurisdiction where the law practice —
    - (i) has an office; or
    - (ii) at any relevant time had an office, if known to the Trust; and
  - (c) on the internet site (if any) of the Trust.
- (4) The Trust may provide information to persons making inquiries in response to a notice published under this section.
- (5) Apart from extending the period during which claims can be made under this Division (where relevant), publication of a notice under this section does not confer any entitlements in



relation to any claim or the default to which it relates or provide any grounds affecting the determination of any claim.

- (6) Neither the publication in good faith of a notice under this section, nor the provision of information in good faith under this section, subjects a protected person to any liability (including liability in defamation).
- (7) In subsection (6) —  
***protected person*** means —
- (a) the Trust or a trustee of the Trust; or
  - (b) the proprietor, editor or publisher of the newspaper; or
  - (c) an internet service provider or internet content host; or
  - (d) a person acting at the direction of any person or entity referred to in this definition.

**354. Time limit for making claims following advertisement**

- (1) This section applies if the Trust publishes a notice under section 353 fixing a final date after which claims relating to a default cannot be made.
- (2) A claim may be made —
- (a) up to and including the final date fixed under the notice; or
  - (b) within a further period allowed by the Trust; or
  - (c) if, on an application for review of the Trust's decision, the State Administrative Tribunal allows further time after the Trust refuses to do so — within a period allowed by the Tribunal,

even though it would have been barred under section 352 had the notice not been published.

**355. Claims not affected by certain matters**

- (1) A claim may be made about a law practice's default despite a change in the status of the practice or the associate concerned

after the occurrence of the act or omission giving rise to or constituting the default.

- (2) A claim that has been made is not affected by a later change in the status of the practice or associate.
- (3) For the purposes of this section, a change in status includes —
  - (a) a change in the membership or staffing or the dissolution of the practice (in the case of a partnership); and
  - (b) a change in the directorship or staffing or the winding-up or dissolution of the practice (in the case of an incorporated legal practice); and
  - (c) the fact that the associate has ceased to practise or to hold an Australian practising certificate (in the case of an associate who was an Australian legal practitioner); and
  - (d) the death of the associate (in the case of a natural person).

**356. Investigation of claims**

The Trust may investigate a claim made to it, including the default to which it relates, in any manner it considers appropriate.

**357. Advance payments**

- (1) The Trust may, at its absolute discretion, make payments to a claimant in advance of the determination of the claim if satisfied that —
  - (a) the claim is likely to be allowed; and
  - (b) payment is warranted to alleviate hardship.
- (2) Any payments made in advance are to be taken into account when the claim is determined.
- (3) Payments under this section are to be made from the Guarantee Fund.

- (4) If the claim is disallowed, the amounts paid under this section are recoverable by the Trust as a debt due to the Guarantee Fund.
- (5) If the claim is allowed but the amount payable is less than the amount paid under this section, the excess paid under this section is recoverable by the Trust as a debt due to the Guarantee Fund.
- (6) Nothing in this section affects the right of the Trust to recover surplus payments under section 364.

#### **Subdivision 4 — Determination of claims**

#### **358. Determination of claims**

- (1) The Trust may determine a claim by wholly or partly allowing or disallowing it.
- (2) The Trust may disallow a claim to the extent that the claim does not relate to a default for which the Guarantee Fund is liable.
- (3) The Trust may wholly or partly disallow a claim, or reduce a claim, to the extent that —
  - (a) the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
  - (b) the negligence of the claimant contributed to the loss; or
  - (c) the conduct of the transaction with the law practice in relation to which the claim is made was illegal, and the claimant knew or ought reasonably to have known of the illegality; or
  - (d) proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or

- (e) the claimant has unreasonably refused to disclose information or documents to or cooperate with —
  - (i) the Trust; or
  - (ii) any other authority (including, for example, an investigative or prosecuting authority),in the investigation of the claim.
- (4) Subsections (2) and (3) do not limit the Trust's power to disallow a claim on any other ground.
- (5) Without limiting subsection (2) or (3), the Trust may reduce the amount otherwise payable on a claim to the extent the Trust considers appropriate if satisfied that the claimant —
  - (a) assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
  - (b) unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or
  - (c) has unreasonably hindered the investigation of the claim.
- (6) The Trust must, in allowing a claim, specify the amount payable.

**359. Maximum amount allowable**

- (1) The amount payable in respect of a default must not exceed the pecuniary loss resulting from the default.
- (2) This section does not apply to costs payable under section 360 or to interest payable under section 361.

**360. Costs**

- (1) If the Trust wholly or partly allows a claim, the Trust must order payment of the claimant's reasonable legal costs involved in making and proving the claim, unless the Trust considers that special circumstances exist warranting a reduction in the amount

of costs or warranting a determination that no amount should be paid for costs.

- (2) If the Trust wholly disallows a claim, the Trust may order payment of the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim, where the Trust considers it is appropriate to make the order.
- (3) The costs are payable from the Guarantee Fund.

**361. Interest**

- (1) In determining the amount of pecuniary loss resulting from a default, the Trust is to add interest on the amount payable (excluding interest), unless the Trust considers that special circumstances exist warranting a reduction in the amount of interest or warranting a determination that no amount should be paid by way of interest.
- (2) The interest is to be calculated from the date on which the claim was made, to the date the Trust notifies the claimant that the claim has been allowed, at the rate specified or determined under the regulations.
- (3) To the extent that regulations are not in force for the purposes of subsection (2), interest is to be calculated at the rate of 5% per annum.
- (4) The interest is payable from the Guarantee Fund.

**362. Reduction of claim because of other benefits**

- (1) A person is not entitled to recover from the Guarantee Fund any amount equal to amounts, or to the value of other benefits, from other sources in respect of the pecuniary loss to which a claim relates —
  - (a) that have already been paid to or received by the person; or
  - (b) that have already been determined and are payable to or receivable by the person; or

- (c) that (in the opinion of the Trust) are likely to be paid to or received by the person; or
  - (d) that (in the opinion of the Trust) might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person.
- (2) The Trust may, at its absolute discretion, pay to a person the whole or part of an amount referred to in subsection (1)(c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 364.

**363. Subrogation**

- (1) On payment of a claim from the Guarantee Fund, the Trust is subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates.
- (2) Without limiting subsection (1), that subsection extends to a right or remedy against —
  - (a) the associate in respect of whom the claim is made; or
  - (b) the person authorised to administer the estate of the associate in respect of whom the claim is made and who is deceased or an insolvent under administration.
- (3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in respect of the default, the claim would not be disallowed on any of the grounds set out in section 358(3).
- (4) The Trust may exercise its rights and remedies under this section in its own name or in the name of the claimant.
- (5) If the Trust brings proceedings under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceedings.
- (6) The Trust may exercise its rights and remedies under this section even though any limitation periods under this Division have expired.

- (7) The Trust must pay into the Guarantee Fund any money recovered in exercising its rights and remedies under this section.

**364. Repayment of certain amounts**

- (1) If —
- (a) a claimant receives a payment from the Guarantee Fund in respect of a claim; and
  - (b) the claimant receives or recovers from another source or sources a payment on account of the pecuniary loss; and
  - (c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant from both or all sources,
- the amount of the surplus is a debt payable by the claimant to the Guarantee Fund.
- (2) However, the amount payable by the claimant cannot exceed the amount the claimant received from the Guarantee Fund in respect of the claim.

**365. Notification of delay in making decision**

- (1) If the Trust considers that a claim is not likely to be determined within 12 months after the claim was made, the Trust must notify the claimant in writing that the claim is not likely to be determined within that period.
- (2) The notification must contain a brief statement of reasons for the delay.

**366. Notification of decision**

- (1) The Trust must, as soon as practicable, notify the claimant in writing about any decision it makes about the claim.
- (2) A notice about —
- (a) a decision of the Trust to wholly or partly disallow a claim; or

- (b) a decision of the Trust to reduce the amount allowed in respect of a claim,

must include —

- (c) the decision; and
- (d) the reasons for the decision; and
- (e) that the person in respect of whom the decision is made may bring a proceeding against the Trust in the Supreme Court.

**367. Proceedings against Trust restrained**

- (1) Subject to subsection (2), a claimant may not, without leave of the Trust, bring any proceedings against the Trust in respect of the Guarantee Fund, until —
  - (a) the Trust has disallowed the claimant's claim, in whole or in part; and
  - (b) the claimant has exhausted every other remedy that may be available to the claimant, against the law practice in respect of which the claim arose or against such other persons as may be liable in respect of the loss suffered by the claimant, for the recovery (including any rights that the claimant may have to follow assets and any money or property into which it may have been converted) of the money or property in respect of which the claim is made.
- (2) A person who has been refused leave by the Trust to bring a proceeding against it may apply to the Supreme Court, by way of originating summons, for an order enabling the person to bring such a proceeding.
- (3) The Supreme Court may, as it thinks fit —
  - (a) grant the application, conditionally or unconditionally; or
  - (b) dismiss the application.



**368. Proceedings to establish claim**

- (1) Where, in any proceedings brought to establish a claim against the Trust, in respect of the Guarantee Fund, the Supreme Court is satisfied that the default to which the claim relates is a default which in fact occurred and to which this Division applies and that the claimant has a valid claim, it must, by order —
  - (a) declare the occurrence, and the date of the occurrence, of the default and the amount of the pecuniary loss sustained by the claimant; and
  - (b) direct the Trust to deal with the claim in accordance with the provisions of this Division; and
  - (c) award such costs and direct the payment of interest on the claim in accordance with sections 360 and 361, as it thinks fit.
- (2) An order made under subsection (1) does not affect the functions of the Trust under Subdivision 5.

**369. Court proceedings**

In any proceeding brought in a court under section 363 or 368 —

- (a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or other person with respect to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the practitioner or other person is not a defendant in, or a party to, the proceedings; and
- (b) any defence that would have been available to the practitioner or other person is available to the Trust.

**Subdivision 5 — Payments from Guarantee Fund for defaults**

**370. Application of Guarantee Fund**

- (1) The Guarantee Fund must be applied by the Trust for the purposes of compensating claimants in respect of claims allowed under this Division in respect of defaults to which this Division applies.
- (2) An amount payable from the Guarantee Fund in respect of a claim is payable to the claimant or to another person at the claimant's direction.

**371. Caps on payments**

- (1) The Trust may, with the approval of the Minister, fix either or both of the following —
  - (a) the maximum amounts, or the method of calculating maximum amounts, that may be paid from the Guarantee Fund in respect of individual claims or classes of individual claims;
  - (b) the maximum aggregate amount, or the method of calculating the maximum aggregate amount, that may be paid from the Guarantee Fund in respect of all claims made in relation to individual law practices or classes of law practices.
- (2) Amounts must not be paid from the Guarantee Fund that exceed the amounts fixed, or calculated by a method fixed, under subsection (1).
- (3) Payments from the Guarantee Fund in accordance with the requirements of subsection (2) are made in full and final settlement of the claims concerned.
- (4) Despite subsection (2), the Trust may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the Guarantee Fund and the circumstances of the particular case.
- (5) No proceeding can be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the Trust to consider payment of a larger amount.

**372. Sufficiency of Guarantee Fund**

- (1) The Guarantee Fund is the only property of the Trust to be applied in satisfaction of a claim allowed or directed to be dealt with under this Division.
- (2) If the Trust is of the opinion that the Guarantee Fund is likely to be insufficient to meet the ascertained and contingent liabilities to which it is subject, the Trust may do any or all of the following —
  - (a) postpone all payments relating to all or any class of claims out of the Guarantee Fund;
  - (b) impose a levy under section 339;
  - (c) make partial payments of the amounts of one or more allowed claims out of the Guarantee Fund with payment of the balance being a charge on the Guarantee Fund;
  - (d) make partial payments of the amounts of 2 or more allowed claims out of the Guarantee Fund on a pro rata basis, with payment of the balance ceasing to be a liability of the Guarantee Fund.
- (3) In deciding whether to do any or all of the things mentioned in subsection (2) the Trust —
  - (a) must have regard to hardship where relevant information is known to the Trust; and
  - (b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.
- (4) If the Trust declares that a decision is made under subsection (2)(d) —
  - (a) the balance specified in the declaration ceases to be a liability of the Guarantee Fund; and
  - (b) the Trust may (but need not) at any time revoke the declaration in relation to either the whole or a specified part of the balance, and the balance or that part of the balance again becomes a liability of the Guarantee Fund.

- (5) A decision of the Trust made under this section is final and not subject to appeal or review.

**Subdivision 6 — Claims by law practices or associates**

**373. Claims by law practices or associates about defaults**

- (1) This section applies to a default of a law practice arising from or constituted by an act or omission of an associate of the practice.
- (2) A claim may be made under section 351 by another associate of the law practice, if the associate suffers pecuniary loss because of the default.
- (3) A claim may be made under section 351 by the law practice, if the practice is an incorporated legal practice and it suffers pecuniary loss because of the default.

**374. Claims by law practices or associates about notional defaults**

- (1) This section applies if a default of a law practice arising from or constituted by an act or omission of an associate of the practice was avoided, remedied or reduced by a financial contribution made by the practice or by one or more other associates.
- (2) The default, to the extent that it was avoided, remedied or reduced is referred to in this section as a ***notional default***.
- (3) This Division applies to a notional default in the same way as it applies to other defaults of law practices, but only the law practice or the other associate or associates concerned are eligible to make claims about the notional default.

**Subdivision 7 — Defaults involving interstate elements**

**375. Concerted interstate defaults**

- (1) The Trust may treat a concerted interstate default as if the default consisted of 2 or more separate defaults —

- (a) one of which is a default to which this Division applies, where this jurisdiction is the relevant jurisdiction for one or more of the associates involved; and
  - (b) the other or others of which are defaults to which this Division does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions for one or more of the associates involved.
- (2) The Trust may treat a claim about a concerted interstate default as if the claim consisted of —
- (a) one or more claims made under this Division; and
  - (b) one or more claims made under a corresponding law or laws.
- (3) A claim about a concerted interstate default is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute —
- (a) in equal shares in respect of the default, regardless of the number of associates involved in each of those jurisdictions, and disregarding the capping and sufficiency provisions of those jurisdictions; or
  - (b) in other shares as agreed by the Trust and the corresponding authority or authorities involved.
- (4) Subsection (3) does not affect the application of the capping and sufficiency requirements of this jurisdiction in respect of the amount payable from the Guarantee Fund after the claim has been assessed.

**376. Defaults involving interstate elements where committed by one associate only**

- (1) This section applies to a default of a law practice arising from or constituted by an act or omission that was committed by only one associate of the practice, where the default involves more than one of the cases referred to in section 348(2), (3) or (4).

- (2) The Trust may treat the default to which this section applies as if the default consisted of 2 or more separate defaults —
  - (a) one of which is a default to which this Division applies, where this jurisdiction is the relevant jurisdiction; and
  - (b) the other or others of which are defaults to which this Division does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions.
- (3) The Trust may treat a claim about the default to which this section applies as if the claim consisted of —
  - (a) one or more claims made under this Division; and
  - (b) one or more claims made under a corresponding law or laws.
- (4) A claim about a default to which this section applies is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute —
  - (a) in equal shares in respect of the default, and disregarding the capping and sufficiency provisions of those jurisdictions; or
  - (b) in other shares as agreed by the Trust and the corresponding authority or authorities involved.
- (5) Subsection (4) does not affect the application of the capping and sufficiency requirements of this jurisdiction in respect of the amount payable from the Guarantee Fund after the claim has been assessed.

**Subdivision 8 — Inter-jurisdictional provisions**

**377. Fidelity protocols**

- (1) The regulations may authorise the Trust to enter into arrangements (*fidelity protocols*) with corresponding authorities for or with respect to matters to which this Division relates.

- (2) Without limiting subsection (1), the regulations may authorise the making of a fidelity protocol that provides that the Trust is taken to have —
  - (a) requested a corresponding authority to act as agent of the Trust in specified classes of cases; or
  - (b) agreed to act as agent of a corresponding authority in specified classes of cases.
- (3) The regulations may —
  - (a) provide for the amendment, revocation or replacement of fidelity protocols; and
  - (b) provide that fidelity protocols or specified classes of fidelity protocols do not have effect in this jurisdiction unless approved under the regulations.

**378. Forwarding of claims**

- (1) If a claim is made to the Trust about a default that appears to be a default to which a corresponding law applies, the Trust must forward the claim or a copy of it to a corresponding authority of the jurisdiction concerned.
- (2) If a claim is made to a corresponding authority about a default that appears to be a default to which this Division applies and the claim or a copy of it is forwarded under a corresponding law to the Trust by the corresponding authority, the claim is taken —
  - (a) to have been made under this Division; and
  - (b) to have been so made when the claim was received by the corresponding authority.

**379. Investigation of defaults to which this Division applies**

- (1) This section applies if a default appears to be a default to which this Division applies and to have —
  - (a) occurred solely in another jurisdiction; or
  - (b) occurred in more than one jurisdiction; or

(c) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.

(2) The Trust may request a corresponding authority or corresponding authorities to act as agent or agents for the Trust, for the purpose of processing or investigating a claim about the default or aspects of the claim.

**380. Investigation of defaults to which corresponding law applies**

(1) This section applies if a default appears to be a default to which a corresponding law applies and to have —

(a) occurred solely in this jurisdiction; or

(b) occurred in more than one jurisdiction; or

(c) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.

(2) The Trust may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.

(3) If the Trust agrees to act as agent of a corresponding authority under subsection (2), the Trust may exercise any of its functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made under this Division.

**381. Investigation of concerted interstate defaults and other defaults involving interstate elements**

(1) This section applies if —

(a) a concerted interstate default; or

(b) a default to which section 376 applies,

appears to have occurred.



- (2) The Trust may request a corresponding authority or corresponding authorities to act as agent or agents for the Trust, for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (3) The Trust may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (4) If the Trust agrees to act as agent of a corresponding authority under subsection (3), the Trust may exercise any of its powers or functions in relation to processing and investigating the claim or aspects of the claim as if the claim had been made entirely under this Division.

**382. Recommendations by Trust to corresponding authorities**

If the Trust is acting as agent of a corresponding authority in relation to a claim made under a corresponding law, the Trust may make recommendations about the decision the corresponding authority might make about the claim.

**383. Recommendations to and decisions by Trust after receiving recommendations from corresponding authorities**

- (1) If a corresponding authority makes recommendations about the decision the Trust might make about a claim in relation to which the corresponding authority was acting as agent of the Trust, the Trust may —
  - (a) make its decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or
  - (b) disregard the recommendations.
- (2) A corresponding authority cannot, as agent of the Trust, make a decision about the claim under Subdivision 4.

**384. Request to another jurisdiction to investigate aspects of claim**

- (1) The Trust may request a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with by the Trust and to provide a report on the result of the investigation.
- (2) A report on the result of an investigation received from —
  - (a) the corresponding authority; or
  - (b) a person or entity authorised by the corresponding authority to conduct an investigation,

may be used and taken into consideration by the Trust in the course of dealing with the claim under this Division.

**385. Request from another jurisdiction to investigate aspects of claim**

- (1) If a request, made under a corresponding law, is received by the Trust from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with under a corresponding law, the Trust may conduct the investigation.
- (2) The provisions of this Division relating to the investigation of a claim apply, with any necessary adaptations, in relation to the investigation of the relevant aspect of the claim that is the subject of the request.
- (3) The Trust must provide a report on the result of the investigation to the corresponding authority.

**386. Cooperation with other authorities**

- (1) When dealing with a claim under this Division involving a law practice or an Australian legal practitioner, the Trust may consult and cooperate with another person or body who or which has powers under the corresponding law of another jurisdiction in relation to the practice or practitioner.

- (2) For the purposes of subsection (1), the Trust and the other person or body may exchange information concerning the claim.

### **Division 4 — Interest on trust accounts**

#### **387. ADI to pay interest on trust accounts to Trust**

(1) In this section —

*relevant period* means —

- (a) the 6 months ending on 31 December; and
- (b) the 6 months ending on 30 June,

in each financial year, or such other period as is prescribed.

(2) Each ADI with which a trust account is maintained must pay to the Trust in accordance with this section the prescribed percentage of the interest earned on the money in the trust account during the relevant period.

Penalty: a fine of \$5 000.

(3) The interest must be paid to the Trust by the ADI at such times as are prescribed by the regulations.

(4) The rate of interest payable on money in the trust account is —

- (a) the rate prescribed by, or determined in accordance with, the regulations; or
- (b) if no regulations are made as to such a rate, the rate agreed between the ADI and the Trust.

(5) This section does not apply in respect of a trust account if, during the relevant period, the lowest balance of the trust account, or where more than one trust account is maintained by the same law practice, the lowest sum of the balance of the trust account is less than \$500.

(6) An action does not lie against an Australian legal practitioner or an ADI by reason of anything done by the ADI in compliance with this section.

**388. Application of interest**

- (1) In this section —

**community legal centre** means a not-for-profit body, one of the main functions of which is the delivery of free or substantially subsidised legal services to a disadvantaged section of the community or community legal education;

**Legal Aid Commission** means the Legal Aid Commission of Western Australia established under the *Legal Aid Commission Act 1976* section 6;

**Legal Aid Fund** means the Legal Aid Fund of Western Australia referred to in the *Legal Aid Commission Act 1976* section 52;

**peak organisation** means an incorporated body that provides representation, coordination or support services to advance the purposes of community legal centres.

- (2) The Trust must pay all money received under section 387 to the credit of an account called the “Trust Interest Account”.
- (3) Money in the Trust Interest Account must, subject to subsection (5) —
- (a) be applied, firstly, in payment of the costs and expenses, other than those mentioned in section 336(3), of administering the Trust; and
  - (b) be paid, secondly, to the Guarantee Fund, until the Guarantee Fund is in credit in such amount of not less than \$100 000 as the Minister and the Law Society may, from time to time, by agreement determine.
- (4) Once the Guarantee Fund has been in credit in the amount provided by subsection (3)(b), the money in the Trust Interest Account must, subject to subsection (5) be paid —
- (a) in maintaining the Guarantee Fund in credit to that amount; and
  - (b) as to 50% of the balance, to the Legal Aid Commission to be applied to the Legal Aid Fund; and

- (c) as to the remainder —
  - (i) to the Legal Aid Commission, to be applied to the Legal Aid Fund; or
  - (ii) to the Law Society, to be applied in the furtherance of law reform, legal research and legal education, or any of those things; or
  - (iii) to a body, whether corporate or not, for the purposes of which money has been appropriated by Parliament and which is charged with the functions of law reform; or
  - (iv) to any prescribed community legal centre, to be substantially applied to funding the provision by that centre of legal services or community legal education; or
  - (v) to any prescribed peak organisation, to be substantially applied to funding the provision by that organisation of representation, coordination or support services to advance the purposes of community legal centres,

in such amounts or in such proportions as the Minister may, after consultation with the Law Society, from time to time, approve or determine.

- (5) Despite subsections (3) and (4), if the Trust effects a policy or policies of insurance indemnifying the Guarantee Fund in the amount of \$100 000 or such lesser amount as may, taking into account the amount in which the Guarantee Fund is in credit, be required to indemnify the Guarantee Fund in the balance of the amount of \$100 000, the money in the Trust Interest Account must —
  - (a) be applied, firstly, as provided by subsection (3)(a); and
  - (b) be applied, secondly, in payment of the premiums payable under the policy or policies of insurance; and

- (c) be paid, thirdly, to the credit of the Guarantee Fund in such amounts as the Minister and the Law Society may, from time to time, by agreement, determine; and
  - (d) be paid, finally, and applied as provided in subsection (4)(b) and (c).
- (6) The costs and expenses of administering the Trust include such fees and allowances to the trustees, or any of them, as may be prescribed.

**389. Audit of expenditure**

- (1) A body to whom money is paid under section 388(4)(b) or (c) must —
- (a) maintain accounts of the money received and of its expenditure; and
  - (b) at the end of each financial year cause those accounts to be audited by a registered company auditor as defined in the Corporations Act; and
  - (c) deliver a copy of the audit report to the Minister, the Trust and the Board.

Penalty: a fine of \$5 000.

- (2) The Minister must within 14 days after the day on which a copy of an audit report is received by the Minister cause a copy of the report to be laid before each House of Parliament or dealt with under section 595.

**390. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Trust and its operations.
- (2) Despite the *Financial Management Act 2006*, references in that Act to “financial year” and “annual report” are to be construed

in relation to the Trust (but not in relation to the Guarantee Fund) so that every period from 1 January to 30 June and from 1 July to 31 December are to be taken to be a financial year and “annual report” is to be construed accordingly, except that the obligation to prepare a report on the operations of the Trust imposed under the *Financial Management Act 2006* Part 5 is satisfied by preparing a report for the 12 month period ending on 30 June in each year and submitting that report at the same time as the financial statements for the 6 month period ending on 30 June are submitted.

- (3) Any requirement imposed on the Trust under the *Financial Management Act 2006* Part 5 to submit an annual report to the Minister is to be taken to impose also a similar requirement to submit within the same period a copy of each such report to the Board and the Law Society.

### **Division 5 — Legal Contribution Trust**

#### **391. Establishment of Trust**

- (1) A body called the Legal Contribution Trust is established.
- (2) The Trust is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Trust in its corporate name.

#### **392. Relationship to Crown**

The Trust does not represent, and is not an agent of, the Crown.

#### **393. Constitution of Trust**

- (1) The Trust consists of 3 trustees appointed by the Governor of whom —
  - (a) one is to be an Australian lawyer nominated in writing by the Law Society; and



- (b) one is to be an Australian lawyer nominated in writing by the Board; and
  - (c) one is to be a person, not being an Australian lawyer, nominated in writing by the Minister.
- (2) A trustee holds office during the pleasure of the person by whom or the body by which the trustee was nominated.
  - (3) The Minister must, as the occasion requires, by notice in writing to the Law Society or the Board, require the nomination of an Australian lawyer for the purposes of this section.
  - (4) A nomination must be made within the period specified in the notice under subsection (3) (being a period of not less than one month) or within such further period as the Minister may allow.
  - (5) If, within the period specified in the notice under subsection (3) or any extension of that period allowed by the Minister, the Minister has not received the required nomination, the Minister must nominate such person as, having regard to the body the nominee is to represent, the Minister thinks fit.
  - (6) Subsection (2) and section 396(3) apply to a trustee nominated by the Minister under subsection (5), as if that trustee had been appointed by the body that the trustee is appointed to represent on the Trust.

**394. Chairperson**

- (1) The trustee nominated by the Law Society is to be chairperson of the Trust.
- (2) If there is no trustee nominated by the Law Society, the Minister must appoint a trustee to act as chairperson.

**395. Deputies**

- (1) The Governor may appoint a person to be a deputy of a trustee and may terminate such an appointment at any time.

- (2) The provisions of this Subdivision that apply to and in relation to the appointment of a trustee apply, with any necessary modification, to and in relation to the appointment of the deputy of that trustee.
- (3) A deputy of a trustee may perform the functions of the trustee when the trustee is unable to do so by reason of illness, absence or other cause, and while so acting is taken to be a trustee.
- (4) No act or omission of a person acting in place of another under this section is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

**396. Vacation of office**

- (1) A trustee may resign from office by notice given in writing given to the nominator of the trustee.
- (2) A trustee who resigns under subsection (1) must give a copy of the notice of resignation to the Trust.
- (3) The Governor may, at the request of the nominator of a trustee, remove that trustee from office and appoint a duly nominated person to hold that office instead.
- (4) The office of a trustee becomes vacant if the trustee dies, resigns or is removed from office under subsection (3).

**397. Meetings**

- (1) The chairperson of the Trust must —
  - (a) convene such meetings of the Trust as the chairperson considers necessary for the efficient conduct of its business; and
  - (b) on the written request of a trustee, convene a meeting of the Trust.
- (2) A meeting of the Trust is duly constituted by the attendance of 3 trustees but, in the event of a vacancy in the office of trustee, a meeting is duly constituted by the attendance of 2 trustees.

- (3) The chairperson is to preside at all meetings of the Trust at which the chairperson is present.
- (4) If the chairperson is absent from a meeting of the Trust, the deputy of the chairperson is to preside.
- (5) Subject to this Division, the Trust may determine its own procedures.

**398. Voting**

- (1) A decision of the majority of trustees at a meeting of the Trust is a decision of the Trust.
- (2) If the votes of the trustees present at a meeting and voting on a question are equally divided, the question is resolved in the negative.

**399. Functions of Trust**

- (1) The functions of the Trust are —
  - (a) to receive and invest money paid to it under this or any other Act; and
  - (b) to apply money resulting from investments in the manner and for the purposes provided by this Part; and
  - (c) to administer and control the Guarantee Fund; and
  - (d) to exercise and discharge the functions conferred or imposed on it by this or any other Act.
- (2) The Trust may engage or employ persons to provide such professional, technical or other assistance as the Trust considers necessary to enable it to perform its functions.

**400. Execution of documents by Trust**

- (1) The Trust is to have a common seal.
- (2) A document is duly executed by the Trust if —
  - (a) the common seal of the Trust is affixed to it in accordance with subsections (3) and (4); or

- (b) it is signed on behalf of the Trust by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Trust must not be affixed to any document except as authorised by the Trust.
- (4) The common seal of the Trust must be affixed to a document in the presence of 2 trustees, each of whom must sign the document to attest that the common seal was so affixed.
- (5) The Trust may, by writing under its seal, authorise a trustee or trustees or a staff member or staff members to sign documents on behalf of the Trust, either generally or subject to such conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Trust, it is to be presumed that the seal is the common seal of the Trust unless the contrary is shown.

## **Part 13 — Complaints and discipline**

### **Division 1 — Preliminary**

#### **401. Purposes**

The purposes of this Part are as follows —

- (a) to provide for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;
- (b) to promote and enforce the professional standards, competence and honesty of the legal profession;
- (c) to provide a means of redress for complaints about lawyers.

### **Division 2 — Key concepts**

#### **402. Term used: unsatisfactory professional conduct**

For the purposes of this Act —

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

#### **403. Term used: professional misconduct**

(1) For the purposes of this Act —

*professional misconduct* includes —

- (a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or

occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

- (2) For the purpose of finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission or for the grant or renewal of a local practising certificate.

**404. Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

Without limiting section 402 or 403, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct —

- (a) conduct consisting of a contravention of this Act or a previous Act;
- (b) charging of excessive legal costs in connection with the practice of law;
- (c) conduct in respect of which there is a conviction for —
  - (i) a serious offence; or
  - (ii) a tax offence; or
  - (iii) an offence involving dishonesty;
- (d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;
- (e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
- (f) conduct of an Australian legal practitioner consisting of a failure to comply with an order of the Complaints Committee, or the State Administrative Tribunal or

Supreme Court exercising jurisdiction under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Act, a previous Act or a corresponding law);

- (g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.

### **Division 3 — Application**

#### **405. Practitioners to whom this Part applies**

This Part applies to an Australian legal practitioner in respect of conduct to which this Part applies, and so applies —

- (a) whether or not the practitioner is a local lawyer; and
- (b) whether or not the practitioner holds a local practising certificate; and
- (c) whether or not the practitioner holds an interstate practising certificate; and
- (d) whether or not the practitioner resides or has an office in this jurisdiction; and
- (e) whether or not the person making a complaint about the conduct resides, works or has an office in this jurisdiction.

#### **406. Application of Part to lawyers, former lawyers and former practitioners**

- (1) This Part applies to Australian lawyers and former Australian lawyers in relation to conduct occurring while they were Australian lawyers, but not Australian legal practitioners, in the same way as it applies to Australian legal practitioners and former Australian legal practitioners, and so applies with any necessary modifications.

- (2) This Part applies to former Australian legal practitioners in relation to conduct occurring while they were Australian legal practitioners in the same way as it applies to persons who are Australian legal practitioners, and so applies with any necessary modifications.

**407. Conduct to which this Part applies — generally**

- (1) Subject to subsection (3), this Part applies to conduct of an Australian legal practitioner occurring in this jurisdiction.
- (2) This Part also applies to an Australian legal practitioner's conduct occurring outside this jurisdiction but only —
- (a) if it is part of a course of conduct that has occurred partly in this jurisdiction and partly in another jurisdiction, and either —
- (i) the corresponding authority of each other jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or
- (ii) the complainant and the practitioner consent to its being dealt with under this Act;
- or
- (b) if it occurs in Australia but wholly outside this jurisdiction and the practitioner concerned is a local lawyer or a local legal practitioner, and either —
- (i) the corresponding authority of each jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or
- (ii) the complainant and the practitioner concerned consent to its being dealt with under this Act;
- or
- (c) if —
- (i) it occurs wholly or partly outside Australia; and
- (ii) the practitioner concerned is a local lawyer or a local legal practitioner.



- (3) This Part does not apply to conduct occurring in this jurisdiction if —
  - (a) the Complaints Committee consents to its being dealt with under a corresponding law; or
  - (b) the complainant and the Australian legal practitioner consent to its being dealt with under a corresponding law.
- (4) Subsection (3) does not apply if the conduct is not capable of being dealt with under the corresponding law.
- (5) The Complaints Committee may give consent for the purposes of subsection (3)(a), and may do so conditionally or unconditionally.

**408. Conduct to which this Part applies — insolvency, serious offences and tax offences**

- (1) This Part applies to the following conduct of a local legal practitioner whether occurring in Australia or elsewhere —
  - (a) conduct of the practitioner in respect of which there is a conviction for —
    - (i) a serious offence; or
    - (ii) a tax offence; or
    - (iii) an offence involving dishonesty;
  - (b) conduct of the practitioner as or in becoming an insolvent under administration;
  - (c) conduct of the practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act.
- (2) This section has effect despite anything in section 407.

## **Division 4 — Complaints about Australian legal practitioners**

### **409. Complaints**

- (1) A complaint may be made under this Part about an Australian legal practitioner's conduct to which this Part applies.
- (2) A complaint may be made under this Part about the conduct of an Australian legal practitioner occurring outside this jurisdiction, but the complaint must not be dealt with under this Part unless this Part is or becomes applicable to it.
- (3) A complaint that is duly made is to be dealt with in accordance with this Part.

### **410. Making of complaints**

- (1) A complaint about an Australian legal practitioner may be made by —
  - (a) the Attorney General; or
  - (b) the Board; or
  - (c) the Executive Director of the Law Society in respect of matters where the making of the complaint has been authorised by a resolution of the Council of the Law Society; or
  - (d) any legal practitioner; or
  - (e) any other person who has or had a direct personal interest in the matters alleged in the complaint.
- (2) A complaint may be made direct to the Complaints Committee or through the Law Complaints Officer.
- (3) A complaint should normally be in writing, but the Complaints Committee or the Law Complaints Officer may formulate in writing any oral complaint received.
- (4) A complaint must —
  - (a) identify the complainant; and

- (b) if possible, identify the Australian legal practitioner about whom the complaint is made; and
  - (c) describe the alleged conduct the subject of the complaint.
- (5) A complaint may be made —
- (a) by the complainant personally; or
  - (b) by an Australian legal practitioner with the authority of the complainant; or
  - (c) where a person who might have been a complainant has died or is otherwise unable to act, by or on behalf of that person by a personal representative or any relative or other representative of that person.
- (6) A complaint may be made and dealt with even though the Australian legal practitioner concerned is the subject of proposed or current criminal or civil proceedings relating to the subject matter of the complaint.

**411. Time of complaint**

- (1) A complaint may be made about conduct of an Australian legal practitioner irrespective of when the conduct is alleged to have occurred.
- (2) However, a complaint cannot be dealt with (otherwise than to dismiss it or refer it to mediation) if the complaint is made more than 6 years after the conduct is alleged to have occurred unless the Complaints Committee determines that —
- (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; or
  - (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.
- (3) A determination under subsection (2) is final and cannot be challenged in any proceedings by the complainant or the Australian legal practitioner concerned.

**412. Further information and verification**

The Complaints Committee may require a complainant to do either or both of the following —

- (a) give further details about the complaint;
- (b) verify any details about the complaint by statutory declaration.

**413. Practitioner to be notified of complaint**

- (1) The Complaints Commission must ensure that, as soon as practicable after a complaint is made, written notice of the making of the complaint, the nature of the complaint and the identity of the complainant is given to the Australian legal practitioner about whom the complaint is made.
- (2) Subsection (1) does not apply if the Complaints Committee is of the opinion that the giving of the notice will or is likely to —
  - (a) prejudice the investigation of the complaint; or
  - (b) prejudice an investigation by the police or other investigatory or law enforcement body of any matter with which the complaint is concerned; or
  - (c) place the complainant or another person at risk of intimidation or harassment; or
  - (d) prejudice pending court proceedings.
- (3) In a case in which subsection (2) applies, the Complaints Committee —
  - (a) may postpone giving the practitioner a copy of the complaint and notice about making submissions until of the opinion that it is appropriate to do so; or
  - (b) may in its discretion —
    - (i) notify the practitioner of the general nature of the complaint; and

- (ii) inform the practitioner of the practitioner's right to make submissions specifying the period within which submissions may be made, if of the opinion that the practitioner has sufficient information to make submissions.
- (4) The notice must also inform the practitioner of any action already taken by the Complaints Committee in relation to the complaint.
- (5) The notice must also inform the practitioner of the practitioner's right to make submissions to the Complaints Committee, unless the Complaints Committee advises the practitioner that the Complaints Committee has dismissed or intends to dismiss the complaint.
- (6) Nothing in this section requires the Complaints Committee to give written notice under this section to the practitioner until the Complaints Committee has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint, and properly prepare the notice.

**414. Submissions by practitioner**

- (1) The Australian legal practitioner about whom a complaint is made may, within a period specified by the Complaints Committee, make submissions to the Complaints Committee about the complaint or its subject matter or both.
- (2) The Complaints Committee may at its discretion extend the period in which submissions may be made.
- (3) The Complaints Committee must consider the submissions made within the permitted period before deciding what action is to be taken in relation to the complaint.

**415. Summary dismissal of complaints**

- (1) The Complaints Committee may dismiss a complaint if —
  - (a) further details are not given, or the details of the complaint are not verified, as required by the Complaints Committee under section 412; or
  - (b) the complaint is vexatious, misconceived, frivolous or lacking in substance; or
  - (c) the conduct complained about is the subject of another complaint; or
  - (d) it is not in the public interest to deal with the complaint having regard to the fact that the name of the Australian legal practitioner to whom the complaint relates has already been removed from any Australian roll on which the practitioner was enrolled.
- (2) The Complaints Committee must dismiss a complaint if —
  - (a) the complaint was made more than 6 years after the conduct complained of is alleged to have occurred, unless a determination is made under section 411 in relation to the complaint; or
  - (b) the conduct complained about has been the subject of a previous complaint that has been dismissed; or
  - (c) the complaint is not one that the Complaints Committee has power to deal with.
- (3) The Complaints Committee may dismiss a complaint under this section without completing an investigation if, having considered the complaint, the Complaints Committee forms the view that the complaint requires no further investigation.

**416. Withdrawal of complaint**

- (1) A complaint may, subject to this section, be withdrawn by the complainant.

- (2) Withdrawal of a complaint may be effected by oral or written communication to the Complaints Committee or the Law Complaints Officer.
- (3) If a complaint is withdrawn orally and the withdrawal is not confirmed in writing, the Complaints Committee must —
  - (a) make a written record of the withdrawal; and
  - (b) give the complainant a copy of the record, or send a copy of it addressed to the complainant at the complainant's address last known to the Complaints Committee.
- (4) A complaint may be withdrawn even though the Complaints Committee has commenced or completed an investigation of the complaint, but cannot be withdrawn if the complaint has been referred to the State Administrative Tribunal.
- (5) If a complaint is made by a person other than the Attorney General, the Board or the Executive Director of the Law Society, a further complaint about the matter that is the subject of the withdrawn complaint cannot be made unless the Complaints Committee is satisfied that it is appropriate to do so in the circumstances.
- (6) If the complaint is duly withdrawn, no further action is to be taken under this Part with respect to the complaint unless the Complaints Committee is satisfied that investigation or further investigation of the complaint is justified in the particular circumstances.
- (7) Withdrawal of a complaint does not prevent —
  - (a) the Attorney General, the Board or the Executive Director of the Law Society making a complaint or further complaint about the matter the subject of the withdrawn complaint (whether or not after investigation or further investigation referred to in subsection (6)); or
  - (b) action being taken on any other complaint made with respect to that matter.

- (8) This section extends to the withdrawal of a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

### **Division 5 — Mediation**

#### **417. Mediation of complaints**

- (1) If the Complaints Committee considers that a complaint is capable of resolution by mediation, the Complaints Committee may suggest to the complainant and the Australian legal practitioner to whom the complaint relates that they enter into a process of mediation.
- (2) Subsection (1) does not apply to a complaint if the Complaints Committee considers that the practitioner would be likely to be found guilty of professional misconduct if proceedings were instituted in the State Administrative Tribunal with respect to the complaint.
- (3) This section extends to a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

#### **418. Facilitation of mediation**

If the complainant and the Australian legal practitioner agree to enter into a process of mediation under this Division in connection with a complaint the Complaints Committee may facilitate the mediation to the extent it considers appropriate.

#### **419. Admissibility of evidence and documents**

- (1) The following are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence —
- (a) evidence of anything said or admitted during a mediation or attempted mediation under this Division of



- the whole or a part of the matter that is subject of a complaint;
- (b) a document prepared for the purposes of the mediation or attempted mediation.
- (2) Subsection (1) does not apply to an agreement reached during mediation.

**420. Order following mediation**

- (1) If, following mediation, the parties reach agreement with respect to the subject matter of the complaint, the Complaints Committee may, with the consent of each of the parties to the agreement, by order give effect to the agreement.
- (2) An order referred to in subsection (1) —
- (a) is final and binding on the parties; and
  - (b) may include any provision that might have been ordered under this Part by the State Administrative Tribunal; and
  - (c) may be enforced as if it were an order of the State Administrative Tribunal.

**Division 6 — Investigation by Complaints Committee**

**421. Investigations**

- (1) The Complaints Committee may, on its own initiative, investigate the conduct of an Australian legal practitioner if the Complaints Committee has reasonable cause to suspect the practitioner has been guilty of unsatisfactory professional conduct or professional misconduct.
- (2) The Complaints Committee must investigate each complaint.
- (3) Subsection (2) does not apply to —
- (a) a complaint that is referred to the State Administrative Tribunal; or
  - (b) a complaint that is dismissed or withdrawn under this Part; or

- (c) a complaint to the extent that it is the subject of mediation under this Part.

**422. Application of Part 15**

Part 15 applies to an investigation under section 421.

**423. Referral of matters for costs assessment**

- (1) For the purpose of an investigation under section 421, the Complaints Committee may refer a matter to a taxing officer for assessment of costs charged or claimed by an Australian legal practitioner.
- (2) Any such referral may be made outside the 12 month period referred to in section 295.
- (3) Subject to this section, Part 10 Division 8 applies to an assessment referred under subsection (1) as if the Complaints Committee were a client of the practitioner.

**Division 7 — Decision of Complaints Committee**

**424. Decision of Complaints Committee after investigation**

- (1) After an investigation under section 421 is completed, the Complaints Committee must —
  - (a) in the case of the investigation of a complaint, dismiss the complaint under section 425 or, in the case of an investigation on the initiative of the Complaints Committee, decide to take no further action; or
  - (b) take action under section 426; or
  - (c) refer the matter to the State Administrative Tribunal under section 428.
- (2) Nothing in this section affects section 416.

**425. Dismissal of complaint**

After an investigation of a complaint against an Australian legal practitioner is completed, the Complaints Committee may dismiss the complaint if satisfied that —

- (a) there is no reasonable likelihood that the practitioner would be found guilty by the State Administrative Tribunal of either unsatisfactory professional conduct or professional misconduct; or
- (b) it is in the public interest to do so.

**426. Summary conclusion of complaint procedure**

(1) This section applies if —

- (a) the Complaints Committee —
  - (i) completes an investigation into the conduct of an Australian legal practitioner; and
  - (ii) is satisfied that there is a reasonable likelihood that the practitioner would be found guilty by the State Administrative Tribunal of unsatisfactory professional conduct (but not professional misconduct); and
  - (iii) is satisfied that the practitioner is generally competent and diligent; and
  - (iv) is satisfied that the taking of action under this section is justified having regard to all the circumstances of the case (including the seriousness of the conduct concerned) and to whether any other substantiated complaints have been made against the practitioner;

and

- (b) the Australian legal practitioner concerned consents to the exercise of power by the Complaints Committee under this section.

- (2) If this section applies, the Complaints Committee may do any one or more of the following —
  - (a) publicly reprimand the practitioner or, if there are special circumstances, privately reprimand the practitioner;
  - (b) order the practitioner to pay to the Board a fine of a specified amount not exceeding \$2 500;
  - (c) make a compensation order;
  - (d) order that the practitioner seek and implement, within a period specified in the order, advice from the Board, or from a person specified in the order, in relation to the management and conduct of the practitioner's practice, or the specific part or aspect of the practice specified in the order.
- (3) If action is taken under subsection (2) in relation to a matter, no further action is to be taken under this Part with respect to the matter.
- (4) An order made by the Complaints Committee may be enforced as if it were an order of the State Administrative Tribunal.

**427. Record of decision**

The Complaints Committee must cause a record of each decision under section 424, together with reasons for the decision, to be kept in respect of each investigation under section 421.

**428. Referrals to SAT**

- (1) If the Complaints Committee determines that a matter should be heard by the State Administrative Tribunal the Committee may refer the matter to the Tribunal.
- (2) The Complaints Committee is not limited under subsection (1) by the terms of any complaint it has received or by the subject matter of any investigation it has conducted and is not required

to conduct an investigation before referring a matter to the State Administrative Tribunal.

**429. Costs**

- (1) The Complaints Committee may make an order requiring an Australian legal practitioner to pay all or any specified part of the costs of either or both the complainant and the Complaints Committee in relation to an investigation under this Part.
- (2) An order may be made under subsection (1) even where no finding is made against the Australian legal practitioner, if the Complaints Committee is of the opinion that the conduct of the Australian legal practitioner gave reasonable cause for the investigation.

**Division 8 — General procedural matters**

**430. Procedure**

- (1) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act, apply in relation to the Complaints Committee's procedures under section 426.
- (2) The Complaints Committee is not bound by the rules of evidence but may inform itself on any matter in any manner it sees fit.

**431. Duty to deal with complaints efficiently and expeditiously**

It is the duty of the Complaints Committee to deal with complaints as efficiently and expeditiously as is practicable.

**432. Complainant and practitioner to be informed of action taken**

- (1) If a complaint has been made about an Australian legal practitioner or the Complaints Committee has decided to initiate an investigation under section 421, the Complaints Committee must notify the complainant and the Australian legal practitioner of —

- (a) a decision under section 424(1)(a) in relation to the matter; or
  - (b) a decision under section 426 in relation to the matter; or
  - (c) a decision to refer the matter to the State Administrative Tribunal.
- (2) In the case of a decision under section 424(1)(a) or 426 the notice must include —
- (a) a statement of reasons from the Complaints Committee in relation to the decision; and
  - (b) notification of the right of the complainant, if any, to apply to the State Administrative Tribunal for a review of the decision.

**433. Parties**

- (1) The parties to proceedings before the Complaints Committee are —
- (a) the Australian legal practitioner against whom the complaint has been made or in respect of whom the Complaints Committee has initiated an investigation; and
  - (b) the complainant.
- (2) The Complaints Committee may grant leave to a party and any other person to appear before it if satisfied that it is appropriate for that person to so appear.
- (3) A person who is granted leave to so appear may appear personally or be represented by an Australian legal practitioner or, with the leave of the Complaints Committee, by any other person.

**434. Proceedings generally not to be public**

- (1) Subject to subsection (2), proceedings before the Complaints Committee must not be held in public.

- (2) The Complaints Committee in a particular case may determine —
- (a) that the whole or part of the proceeding is to be conducted in public; or
  - (b) who, other than the parties and their representatives, may be present before it at any stage of the proceeding.

**435. Review of Complaints Committee decision**

- (1) Subject to subsection (2), a person aggrieved by —
- (a) a decision of the Complaints Committee to dismiss a complaint; or
  - (b) a decision made by the Complaints Committee under section 426,

may apply to the State Administrative Tribunal for a review of the decision.

- (2) If the Complaints Committee, in its reasons for its decision, specifically finds the complaint —
- (a) to be trivial, unreasonable, vexatious or frivolous; or
  - (b) in the case of a complaint purporting to be made under section 410(1)(e), to be a matter in which the complainant does not have, or did not have, a direct personal interest,

the person aggrieved cannot apply to the State Administrative Tribunal for a review of the decision without the leave of the Tribunal.

**Division 9 — Immediate suspension of local  
practising certificate**

**436. Interim restrictions on practice**

- (1) The Complaints Committee may apply to the State Administrative Tribunal for —

- (a) an order that an Australian legal practitioner's local practising certificate be suspended for a specified period; or
  - (b) an order that specified conditions be imposed on an Australian legal practitioner's practising certificate restricting the entitlement of an Australian legal practitioner to practise for a specified period,
- pending —
- (c) investigation, and determination or referral of a complaint or matter, by the Complaints Committee; or
  - (d) the hearing of a referral by the State Administrative Tribunal; or
  - (e) an appeal against a decision of the State Administrative Tribunal.
- (2) On an application under subsection (1), the State Administrative Tribunal may, in addition to or instead of any other order it may make under subsection (1), make an order under Part 14 as if the application were an application by the Board.

### **Division 10 — Proceedings in State Administrative Tribunal**

#### **437. Constitution of SAT under this Act**

- (1) Subject to subsection (2), for the purpose of exercising jurisdiction conferred under this Act, the State Administrative Tribunal is to be constituted by 3 members, as follows —
- (a) by —
    - (i) the President of the Tribunal; and
    - (ii) a Deputy President of the Tribunal or a senior member who is a legally qualified member as defined in the *State Administrative Tribunal Act 2004* section 3(1); and



- (iii) a person who is not a legal practitioner but has knowledge and understanding of the interests of a person dealing with a legal practitioner;
- or
- (b) by —
  - (i) a Deputy President of the Tribunal; and
  - (ii) a senior member who is a legally qualified member as defined in the *State Administrative Tribunal Act 2004* section 3(1); and
  - (iii) a person who is not a legal practitioner but has knowledge and understanding of the interests of a person dealing with a legal practitioner.
- (2) In a hearing for the purposes of section 443 or a directions hearing or other procedural hearing, the State Administrative Tribunal is to be constituted by, or so as to include, the President or a Deputy President of the Tribunal.

**438. Jurisdiction of SAT**

- (1) The State Administrative Tribunal has jurisdiction to make a finding that an Australian legal practitioner has engaged in unsatisfactory professional conduct or professional misconduct.
- (2) If, after it has completed a hearing in relation to a referral under this Part in respect of an Australian legal practitioner, the State Administrative Tribunal is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal may —
  - (a) make and transmit a report on the finding to the Supreme Court (full bench); or
  - (b) make any one or more of the orders specified in section 439, 440 and 441.
- (3) If the State Administrative Tribunal transmits a report in respect of a legal practitioner to the Supreme Court (full bench) under

subsection (2)(a), the Tribunal may, pending the determination of the Supreme Court (full bench), make the following orders —

- (a) an order that the Australian legal practitioner's local practising certificate be suspended for a specified period;
  - (b) an order that specified conditions be imposed on an Australian legal practitioner's local practising certificate restricting the entitlement of an Australian legal practitioner to practise for a specified period.
- (4) Where appropriate, a report forwarded under subsection (2)(a) may include either or both of the following —
- (a) a record of the evidence taken at the hearing;
  - (b) a recommendation that the name of the practitioner be removed from the local roll.

**439. Orders requiring official implementation in this jurisdiction**

The State Administrative Tribunal may, under section 438(2)(b), make any one or more of the following orders —

- (a) an order that the practitioner's local practising certificate be suspended for a specified period or cancelled;
- (b) an order that a local practising certificate not be granted to the practitioner before the end of a specified period;
- (c) an order that —
  - (i) specified conditions be imposed on the practitioner's practising certificate granted or to be granted under this Act; and
  - (ii) the conditions be imposed for a specified time; and
  - (iii) specifies the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;

- (d) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner.

**440. Orders requiring official implementation in another jurisdiction**

The State Administrative Tribunal may, under section 438(2)(b), make any one or more of the following orders —

- (a) an order recommending that the name of the practitioner be removed from an interstate roll;
- (b) an order recommending that the practitioner's interstate practising certificate be suspended for a specified period or cancelled;
- (c) an order recommending that an interstate practising certificate not be granted to the practitioner before the end of a specified period;
- (d) an order recommending that —
  - (i) specified conditions be imposed on the practitioner's interstate practising certificate, or existing conditions be amended; and
  - (ii) the conditions be imposed or amended for a specified time; and
  - (iii) the conditions specify the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed.

**441. Orders requiring compliance by practitioner**

The State Administrative Tribunal may, under section 438(2)(b), make any one or more of the following orders —

- (a) an order that the practitioner pay a fine to the Board of a specified amount not exceeding \$25 000;

- (b) an order that the practitioner undertake and complete a specified course of further legal education;
- (c) a compensation order;
- (d) an order that the complainant pay the amount of legal costs in dispute or that the amount of legal costs be reduced by a specified amount (not exceeding the amount in dispute);
- (e) an order that the practitioner provide specified legal services to the complainant either free of charge or at a specified cost;
- (f) an order that the practitioner undertake a specified period of practice under specified supervision;
- (g) an order that the practitioner do or refrain from doing something in connection with the practice of law;
- (h) an order that the practitioner's practice, or the financial affairs of the practitioner or of the practitioner's practice, be conducted for a specified period in a specified way or subject to specified conditions;
- (i) an order that the practitioner's practice be subject to periodic inspection for a specified period;
- (j) an order that the practitioner undergo counselling or medical treatment or act in accordance with medical advice given to the practitioner;
- (k) an order that the practitioner use the services of an accountant or other financial specialist in connection with the practitioner's practice;
- (l) an order that the practitioner seek advice in relation to the management of the practitioner's practice from a specified person;
- (m) an order that the practitioner not apply for a local practising certificate before the end of a specified period.

**442. Alternative finding**

The State Administrative Tribunal may find a person guilty of unsatisfactory professional conduct even though the referral alleged professional misconduct.

**443. Interlocutory and interim orders**

- (1) The State Administrative Tribunal may make interlocutory or interim orders as it thinks fit before making its final decision about a complaint against an Australian legal practitioner.
- (2) Without limiting subsection (1), orders of the kind referred to in sections 439, 440 and 441 may be made as interlocutory or interim orders.

**444. Court may punish**

- (1) If the State Administrative Tribunal under section 438(2)(a) makes and transmits a report in respect of an Australian legal practitioner to the Supreme Court (full bench), the report is to be taken to be conclusive as to all facts and findings mentioned or contained in the report.
- (2) The Supreme Court (full bench) may, upon motion and upon reading the report, and without any further evidence do either or both of the following —
  - (a) make any order that the State Administrative Tribunal may make under sections 439, 440 and 441;
  - (b) order the removal from the roll of the name of an Australian legal practitioner who is a local lawyer.
- (3) The Supreme Court (full bench) may make such order as to the payment of costs by the legal practitioner as the Court thinks fit.

**445. Official notification to Board and Complaints Committee of removals from local roll**

- (1) This section applies if a person's name is removed from the local roll.

- (2) The Principal Registrar must, as soon as practicable, give written notice of the removal to the Board and the Complaints Committee.
- (3) The notice must state —
  - (a) the person's name and address as last known to the Principal Registrar; and
  - (b) the date the person's name was removed from the roll; and
  - (c) the reason for removing the person's name.
- (4) The notice may contain other relevant information.

**446. Compliance with orders**

- (1) Persons and bodies having relevant powers or functions under this Act must —
  - (a) give effect to the following orders —
    - (i) any order of the State Administrative Tribunal under section 439, or the Supreme Court (full bench) under section 444 so far as it is an order of the kind referred to in section 439 or otherwise needs to be, or is capable of being, given effect to in this jurisdiction;
    - (ii) any interlocutory or interim order of the State Administrative Tribunal made under section 443 so far as it is an order of the kind referred to in section 439 or otherwise needs to be, or is capable of being, given effect to in this jurisdiction;
  - and
  - (b) enforce the following orders (to the extent that they relate to the practitioner's practice of law in this jurisdiction) —
    - (i) any order of the State Administrative Tribunal made under section 441, or the Supreme Court

- (full bench) under section 444 so far as it is an order of the kind referred to in section 441 or otherwise needs to be, or is capable of being, given effect to in this jurisdiction;
- (ii) any interlocutory or interim order of the State Administrative Tribunal made under section 443 so far as it is an order of the kind referred to in section 441 or otherwise needs to be, or is capable of being, given effect to in this jurisdiction.
- (2) The Complaints Committee must ensure that persons and bodies having relevant powers or functions under a corresponding law of another jurisdiction are notified of the making and contents of —
- (a) the following orders —
- (i) any order of the State Administrative Tribunal under section 440 in relation to that corresponding law;
- (ii) any interlocutory or interim order of the State Administrative Tribunal made under section 443 so far as it is an order of the kind referred to in section 440 or otherwise needs to be, or is capable of being, given effect to in the other jurisdiction;
- and
- (b) the following orders (to the extent that they relate to the practitioner's practice of law in the other jurisdiction) —
- (i) any order of the State Administrative Tribunal made under section 441;
- (ii) any interlocutory or interim order of the State Administrative Tribunal made under section 443 so far as it is an order of the kind referred to in section 441 or otherwise needs to be, or is

capable of being, given effect to in the other jurisdiction.

**447. Other remedies not affected**

This Division does not affect any other remedy available to a complainant.

**Division 11 — Compensation**

**448. Compensation orders**

- (1) A compensation order is an order made to compensate a person (the *aggrieved person*) for loss suffered because of conduct of an Australian legal practitioner that is the subject of a complaint by that person or is investigated by the Complaints Committee of its own initiative.
- (2) A compensation order consists of one or more of the following —
  - (a) an order that the practitioner cannot recover or must repay the whole or a specified part of the amount charged to the aggrieved person by the practitioner in respect of specified legal services;
  - (b) an order discharging a lien possessed by the practitioner in respect of a specified document or class of documents;
  - (c) an order that the practitioner pay to the aggrieved person, by way of monetary compensation for the loss, a specified amount.
- (3) A compensation order under subsection (2)(a) preventing recovery of an amount is effective even if proceedings to recover the amount (or any part of it) have been commenced by or on behalf of the practitioner.
- (4) A compensation order under subsection (2)(a) requiring repayment of an amount is effective even if a court has ordered



payment of the amount (or an amount of which it is part) in proceedings brought by or on behalf of the practitioner.

- (5) A compensation order under subsection (2)(c) requiring payment of an amount exceeding —
- (a) \$25 000, except where paragraph (b) applies; or
  - (b) \$10 000, where the order is made by the Complaints Committee,

is not to be made unless the aggrieved person and the practitioner both consent to the order.

**449. Prerequisites to making of compensation orders**

- (1) Unless the aggrieved person and the Australian legal practitioner concerned agree, a compensation order is not to be made unless the Complaints Committee or State Administrative Tribunal is satisfied —
- (a) that the aggrieved person has suffered loss because of the conduct concerned; and
  - (b) that it is in the interests of justice that the order be made.
- (2) A compensation order is not to be made in respect of any loss for which the aggrieved person has received or is entitled to receive —
- (a) compensation received or receivable under an order that has been made by a court; or
  - (b) compensation paid or payable from the Guarantee Fund or from a fidelity fund of any jurisdiction, where a relevant claim for payment from the fund has been made or determined.

**450. Effect on other remedies**

The recovery of compensation awarded under this Part does not affect any other remedy available to an aggrieved person, but any compensation so awarded is to be taken into account in any

other proceedings by or on behalf of the aggrieved person in respect of the same loss.

### **Division 12 — Publicising disciplinary action**

#### **451. Terms used**

In this Division —

***disciplinary action*** means —

- (a) the making of an order by a court or tribunal for or following a finding of unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner under this Act or a corresponding law; or
- (b) any one of the following actions taken under this Act or under a corresponding law, following a finding by a court or tribunal of professional misconduct by an Australian legal practitioner —
  - (i) removal of the name of the practitioner from an Australian roll;
  - (ii) the suspension or cancellation of the Australian practising certificate of the practitioner;
  - (iii) the refusal to grant or renew an Australian practising certificate to the practitioner;
  - (iv) the appointment of a receiver of all or any of the practitioner's property or the appointment of a manager of the practitioner's practice;

***Register*** means the Register of Disciplinary Action referred to in section 452.

#### **452. Register of Disciplinary Action**

- (1) The Board is to keep a register (in this Act referred to as the ***Register of Disciplinary Action***) of —
  - (a) disciplinary action taken under this Act against Australian legal practitioners; and

- (b) disciplinary action taken under a corresponding law against Australian legal practitioners who are or were enrolled or practising in this jurisdiction when the conduct that is the subject of the disciplinary action occurred.
- (2) The Register is to include —
    - (a) the full name of the person against whom the disciplinary action was taken; and
    - (b) the person’s business address or former business address; and
    - (c) the person’s home jurisdiction or most recent home jurisdiction; and
    - (d) particulars of the disciplinary action taken; and
    - (e) other particulars prescribed by the regulations.
  - (3) The Register may be kept in a form determined or identified by the Board and form part of other registers.
  - (4) The Register is to be made available for public inspection on —
    - (a) the internet site of the Board; or
    - (b) an internet site identified on the internet site of the Board.
  - (5) Information recorded on the Register may be provided to members of the public in any other manner approved by the Board.
  - (6) The Board may cause any error in or omission from the Register to be corrected.
  - (7) The requirement to keep the Register applies only in relation to disciplinary action taken after the commencement of this section, but details relating to earlier disciplinary action may be included in the Register.
  - (8) The Complaints Committee, the State Administrative Tribunal and the Principal Registrar must provide to the Board sufficient

information to enable the Board to exercise the Board's functions in respect of the Register.

**453. Other means of publicising disciplinary action**

- (1) The Board may publicise disciplinary action taken against an Australian legal practitioner in any manner the Board thinks fit.
- (2) Nothing in this section affects the provisions of this Division relating to the Register.

**454. Quashing of disciplinary action**

- (1) If disciplinary action is quashed on appeal or review, any reference to that disciplinary action must be removed from the Register.
- (2) If disciplinary action is quashed on appeal or review after the action was publicised by the Board under section 453, the result of the appeal or review must be publicised with equal prominence by the Board.

**455. Liability for publicising disciplinary action**

- (1) In this section —  
*protected person* means —
  - (a) the State; or
  - (b) the Board; or
  - (c) a person responsible for keeping the whole or any part of the Register; or
  - (d) an internet service provider or internet content host; or
  - (e) a member of staff of, or a person acting at the direction of, an authority of the State or any person or body referred to in this definition.

- (2) No liability is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of —
- (a) publicising disciplinary action against an Australian legal practitioner; or
  - (b) exercising powers or functions of the Board under this Division; or
  - (c) keeping, publishing or enabling access to the Register.
- (3) Without limiting subsection (2), no liability (including liability in defamation) is incurred by a protected person publishing in good faith —
- (a) information about disciplinary action —
    - (i) recorded in the Register; or
    - (ii) otherwise publicised by the Board under this Part,or matter purporting to contain information of that kind where the matter is incorrect in any respect; or
  - (b) a fair report or summary of that information.

**456. Disciplinary action taken because of infirmity, injury or illness**

- (1) Disciplinary action taken because of infirmity, injury or mental or physical illness is not to be recorded in the Register or otherwise publicised under this Division.
- (2) Subsection (1) does not apply where the disciplinary action involves —
- (a) the suspension or cancellation of the person's Australian practising certificate; or
  - (b) a refusal to grant or renew an Australian practising certificate applied for by the person; or

- (c) a restriction or prohibition on the person's right to engage in legal practice,

but in that case the reason for the disciplinary action, and any other information relating to the infirmity, injury or mental or physical illness, is not to be recorded in the Register or otherwise publicised under this Division without the person's consent.

**457. Effect of secrecy provisions and non-disclosure orders**

- (1) The provisions of this Division are subject to any order made by —
  - (a) the State Administrative Tribunal in relation to disciplinary action taken under this Part; or
  - (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this Part; or
  - (c) a court or tribunal of this or another jurisdiction,so far as the order prohibits or restricts the disclosure of information.
- (2) Despite subsection (1), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register in accordance with the requirements of this Part and may be otherwise publicised under this Part.

**Division 13 — Inter-jurisdictional provisions**

**458. Conduct protocols**

- (1) The Complaints Committee may enter into arrangements (*conduct protocols*) with corresponding authorities for or with respect to investigating and dealing with conduct that appears to have occurred in more than one jurisdiction.

- (2) In particular, the conduct protocols may make provision for or with respect to —
- (a) providing principles to assist in determining where conduct occurs, either generally or in specified classes of cases; and
  - (b) giving and receiving consent for conduct occurring in a jurisdiction to be dealt with under a law of another jurisdiction; and
  - (c) the procedures to be adopted for requesting and conducting the investigation of any aspect of complaints under this Division.

**459. Request to another jurisdiction to investigate complaint or conduct**

- (1) The Complaints Committee may request a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with by the Complaints Committee, or any aspect of the conduct of an Australian legal practitioner being investigated by the Complaints Committee in the absence of a complaint, and to provide a report on the result of the investigation.
- (2) A report on the result of the investigation received from —
- (a) the corresponding authority; or
  - (b) a person or body authorised by the corresponding authority to conduct the investigation,

may be used and taken into consideration by the Complaints Committee and the State Administrative Tribunal in the course of dealing with the complaint or conduct under this Part.

**460. Request from another jurisdiction to investigate complaint or conduct**

- (1) This section applies in relation to a request received by the Complaints Committee from a corresponding authority to

arrange for the investigation of any aspect of a complaint being dealt with under a corresponding law.

- (2) The Complaints Committee may conduct the investigation or authorise another local regulatory authority to conduct it.
- (3) The provisions of this Part relating to the investigation of a complaint apply, with any necessary adaptations, in relation to the investigation of the relevant aspect of the complaint that is the subject of the request.
- (4) The Complaints Committee must provide a report on the result of the investigation to the corresponding authority.

**461. Sharing of information with corresponding authorities**

The Complaints Committee may enter into arrangements with a corresponding authority for providing information to the corresponding authority about —

- (a) complaints and investigations under this Part; and
- (b) any action taken with respect to any complaints made or investigations conducted under this Part, including determinations of the Complaints Committee, the State Administrative Tribunal or the Supreme Court under this Part.

**462. Cooperation with other authorities**

- (1) When dealing with a complaint or conducting an investigation, the Complaints Committee may consult and cooperate with another person or body (whether in or of Australia or a foreign country) who or which has or may have relevant information or powers in relation to the person against whom the complaint was made or the person under investigation.
- (2) For the purposes of subsection (1), the Complaints Committee may exchange information concerning the complaint or investigation.



**463. Compliance with recommendations or orders made under corresponding laws**

- (1) Persons and bodies having relevant functions under this Act must —
  - (a) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law in relation to powers exercisable under this Act; and
  - (b) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law so far as the recommendation or order relates to the practice of law by the Australian legal practitioner concerned in this jurisdiction.
- (2) If a corresponding disciplinary body makes a recommendation or order recommending that a person's name be removed from the roll of lawyers under this Act, the Supreme Court (full bench) may order the removal of the name from the roll.
- (3) If a corresponding disciplinary body makes an order that an Australian legal practitioner pay an amount (whether as a fine or otherwise), a copy of the order may be filed in the appropriate court and the order may be enforced as if it were an order of that court.
- (4) In subsection (3) —  
*appropriate court* means a court having jurisdiction to enforce a debt of the same amount as the amount ordered to be paid.

**464. Other powers or functions not affected**

Nothing in this Division affects any functions or powers that a person or body has apart from this Division.

### **Division 14 — Miscellaneous**

#### **465. Jurisdiction of Supreme Court**

The inherent jurisdiction and powers of the Supreme Court with respect to the control and discipline of local lawyers are not affected by anything in this Part and extend to —

- (a) local legal practitioners; and
- (b) interstate legal practitioners engaged in legal practice in this jurisdiction.

#### **466. Failure to comply with orders**

A person who contravenes an order of —

- (a) the Complaints Committee; or
- (b) the State Administrative Tribunal exercising jurisdiction under this Act; or
- (c) the Supreme Court exercising jurisdiction under this Act; or
- (d) a corresponding disciplinary body under a corresponding law,

is not entitled to apply for the grant or renewal of a local practising certificate while the contravention continues.

#### **467. Confidentiality of client communications**

An Australian legal practitioner must comply with a requirement under this Part to answer a question or to produce information or a document, despite any duty of confidentiality in respect of a communication between the practitioner and a client.

#### **468. Claims of privilege**

If, in any investigation or proceedings under this Part, a person properly claims privilege in respect of any information —

- (a) the Complaints Committee or the State Administrative Tribunal may require that person to disclose that information; and
- (b) if any information adverse to the interests of that person is then disclosed, no question or answer relating to that information may be used in or in connection with any procedures or proceedings other than —
  - (i) those relating to the complaint or investigation concerned; or
  - (ii) those resulting from a report or disclosure under section 589.

**469. Waiver of privilege or duty of confidentiality**

- (1) If a client of an Australian legal practitioner makes a complaint about the practitioner, the complainant is taken to have waived legal professional privilege, or the benefit of any duty of confidentiality, to enable the practitioner to disclose to the Complaints Committee or the State Administrative Tribunal any information necessary for dealing with or investigating the complaint.
- (2) Without limiting subsection (1), any information so disclosed may be used in or in connection with any procedures or proceedings relating to the complaint.

## **Part 14 — External intervention**

### **Division 1 — Preliminary**

#### **470. Purposes**

- (1) The purpose of this Part is to ensure that an appropriate range of options is available for intervention in the business and professional affairs of law practices and Australian-registered foreign lawyers for the purpose of protecting the interests of —
  - (a) the general public; and
  - (b) clients; and
  - (c) lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients.
- (2) It is intended that interventions occur consistently with —
  - (a) similar interventions in other jurisdictions, especially where a law practice operates in this jurisdiction and one or more other jurisdictions; and
  - (b) other provisions of this Act.

#### **471. Terms used**

In this Part —

***external intervener*** means a supervisor, manager or receiver under this Part;

***external intervention*** means the appointment of, and the exercise of the functions of, a supervisor, manager or receiver under this Part;

***regulated property***, in relation to a law practice, means the following —

- (a) trust money or trust property received, receivable or held by the practice;

- (b) interest, dividends or other income or anything else derived from or acquired with money or property referred to in paragraph (a);
- (c) documents or records of any description relating to anything referred to in paragraph (a) or (b);
- (d) any computer hardware or software, or other device, in the custody or control of the practice or an associate of the practice by which any records referred to in paragraph (c) may be produced or reproduced in visible form.

**472. Application of Part to Australian-registered foreign lawyers**

This Part applies, with any necessary adaptations, to Australian-registered foreign lawyers and former Australian-registered foreign lawyers in the same way as it applies to law practices.

**473. Application of Part to other persons**

This Part applies, with any necessary adaptations, to —

- (a) a former law practice or former Australian legal practitioner; and
- (b) the executor (original or by representation) or administrator for the time being of an Australian legal practitioner or of the practitioner's estate; and
- (c) the administrator, or receiver, or receiver and manager, of the property of an incorporated legal practice; and
- (d) the liquidator of an incorporated legal practice that is being or has been wound-up,

in the same way as it applies to law practices.

**Division 2 — Initiation of external intervention**

**474. Circumstances warranting external intervention**

External intervention may take place in relation to a law practice in any of the following circumstances —

- (a) where a legal practitioner associate involved in the practice —
  - (i) has died; or
  - (ii) ceases to be an Australian legal practitioner; or
  - (iii) has become an insolvent under administration; or
  - (iv) is in prison;
- (b) in the case of a firm — where the partnership has been wound-up or dissolved;
- (c) in the case of an incorporated legal practice — where the corporation concerned —
  - (i) ceases to be an incorporated legal practice; or
  - (ii) is being or has been wound-up; or
  - (iii) has been deregistered or dissolved;
- (d) in any case — where the Board forms a belief on reasonable grounds that the practice or an associate of the practice —
  - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the practice; or
  - (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the practice; or
  - (iii) has failed properly to account in a timely manner to any person for trust money or trust property received by the practice for or on behalf of that person; or

- (iv) has failed properly to make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or
  - (v) is in breach of the regulations or legal profession rules with the result that the record keeping for the practice's trust account is inadequate; or
  - (vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or
  - (vii) is the subject of a complaint relating to trust money or trust property received by the practice; or
  - (viii) has failed to comply with any requirement of an investigator appointed under Part 9 or external examiner appointed under this Part; or
  - (ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the practice or for properly winding-up the affairs of the practice;
- (e) where any other proper cause exists in relation to the practice.

**475. Determination regarding external intervention**

- (1) This section applies when the Board becomes aware that one or more of the circumstances referred to in section 474 exist in relation to a law practice and decides that, having regard to the interests of the clients of the practice and to other matters that it considers appropriate, external intervention is warranted.

- (2) The Board may determine —
- (a) to appoint a supervisor of trust money of the law practice, if the Board is of the opinion —
    - (i) that external intervention is required because of issues relating to the practice's trust accounts; and
    - (ii) that it is not appropriate that the provision of legal services by the practice be wound-up and terminated because of those issues;or
  - (b) to appoint a manager for the law practice, if the Board is of the opinion —
    - (i) that external intervention is required because of issues relating to the practice's trust records; or
    - (ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
    - (iii) that there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice;or
  - (c) to apply to the State Administrative Tribunal for the appointment of a receiver for the law practice, if the Board is of the opinion —
    - (i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
    - (ii) that it may be appropriate that the provision of legal services by the practice be wound-up and terminated.
- (3) The Board may, from time to time, make further determinations in relation to the law practice and for that purpose may revoke a



previous determination with effect from a date or event specified by the Board.

- (4) A further determination may be made under subsection (3) whether or not there has been any change in the circumstances in consequence of which the original determination was made and whether or not any further circumstances have come into existence in relation to the law practice after the original determination was made.
- (5) An appointment of an external intervener for a law practice may be made in respect of the practice generally or may be limited in any way the Board, or in the case of a receiver, the State Administrative Tribunal, considers appropriate, including for example to matters connected with a particular legal practitioner associate or to matters connected with a particular office or particular subject matter.

### **Division 3 — Supervisors of trust money**

#### **476. Appointment of supervisor of trust money**

- (1) This section applies if the Board determines to appoint a supervisor of trust money of a law practice.
- (2) The Board may, by instrument in writing, appoint a person as a supervisor of trust money.
- (3) The appointee must be either —
  - (a) an Australian legal practitioner who holds an unrestricted practising certificate; or
  - (b) a person holding accounting qualifications with experience in law practices' trust accounts,and may (but need not) be an employee of the Board.
- (4) The instrument of appointment must —
  - (a) identify the practice and the supervisor of trust money;and

- (b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and
  - (c) specify the term of appointment; and
  - (d) specify any conditions imposed by the Board when the appointment is made; and
  - (e) specify any fees payable by way of remuneration to the supervisor specifically for carrying out the supervisor's duties in relation to the external intervention; and
  - (f) provide for the legal costs and the expenses that may be incurred by the supervisor in relation to the external intervention.
- (5) The instrument of appointment may specify any reporting requirements to be observed by the supervisor.

**477. Notice of appointment**

- (1) As soon as possible after an appointment of a supervisor of trust money of a law practice is made, the Board must serve a notice of the appointment on —
- (a) the practice; and
  - (b) any other person authorised to operate any trust account of the practice; and
  - (c) any external examiner appointed to examine the practice's trust records; and
  - (d) the ADI with which any trust account of the practice is maintained; and
  - (e) any other person whom the Board reasonably believes should be served with the notice.
- (2) The notice must —
- (a) identify the law practice and the supervisor of trust money; and
  - (b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and

- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the supervisor of trust money; and
- (e) specify any conditions imposed by the Board when the appointment is made; and
- (f) include a statement that the law practice may apply for a review of the decision to appoint the supervisor under section 508; and
- (g) contain or be accompanied by other information or material prescribed by the regulations.

**478. Effect of service of notice of appointment**

- (1) After service on an ADI of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless —
  - (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by the supervisor or a nominee of the supervisor; or
  - (b) the withdrawal or transfer is made by the supervisor or the supervisor's nominee by means of electronic or internet banking facilities; or
  - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the supervisor or a nominee of the supervisor.
- (2) After service on a person (other than the supervisor or an ADI) of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the person must not —
  - (a) deal with any of the practice's trust money; or
  - (b) sign any cheque or other instrument drawn on a trust account of the practice; or

- (c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Penalty: a fine of \$10 000.

- (3) A supervisor of trust money may, for the purposes of subsection (1)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (4) Any money that is withdrawn or transferred in contravention of subsection (1) may be recovered from the ADI concerned by the supervisor as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice.

**479. Role of supervisor of trust money**

- (1) A supervisor of trust money of a law practice has the powers and duties of the practice in relation to the trust money including powers —
  - (a) to receive trust money entrusted to the practice; and
  - (b) to open and close trust accounts.
- (2) For the purpose of exercising or performing the supervisor's powers or duties under subsection (1), the supervisor may exercise any or all of the following powers —
  - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
  - (b) to require the practice or an associate or former associate of the practice or any other person who has or had control of documents relating to trust money received by the practice to give the supervisor either or both of the following —
    - (i) access to the files and documents the supervisor reasonably requires;
    - (ii) information relating to the trust money the supervisor reasonably requires;

- (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the supervisor's appointment;
  - (d) to take possession of any relevant material and retain it for as long as may be necessary;
  - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
  - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to the supervisor's appointment.
- (3) If the supervisor takes anything from the premises, the supervisor must issue a receipt in the approved form and —
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (4) If the supervisor is refused access to the premises or the premises are unoccupied, the supervisor may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the Police Force to assist entry.
- (5) This section applies to trust money held by the practice before the supervisor is appointed, as well as to trust money received afterwards.
- (6) The supervisor does not have a role in the management of the affairs of the law practice except in so far as the affairs relate to a trust account of the practice.

**480. Records of and dealing with trust money of law practice under supervision**

- (1) A supervisor of trust money received by a law practice must maintain the records of the supervisor's dealings with the trust money —
  - (a) separately from records relating to dealings with trust money before his or her appointment as supervisor; and
  - (b) separately from the affairs of any other law practice for which he or she is supervisor; and
  - (c) in the manner prescribed by the regulations.
- (2) Subject to subsection (1), a supervisor of trust money of a law practice must deal with the trust money in the same way as a law practice must deal with trust money.

**481. Termination of supervisor's appointment**

- (1) The appointment of a supervisor of trust money of a law practice terminates in the following circumstances —
  - (a) the term of appointment comes to an end;
  - (b) the appointment is set aside under section 508;
  - (c) the appointment of a manager for the practice takes effect;
  - (d) the appointment of a receiver for the practice takes effect;
  - (e) the supervisor has distributed all trust money received by the practice and wound-up all trust accounts;
  - (f) a determination of the Board that the appointment be terminated takes effect.
- (2) The Board may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) The Board must serve a written notice of the termination on all persons originally served with notice of the appointment.

### **Division 4 — Managers**

**482. Appointment of manager**

- (1) This section applies if the Board determines to appoint a manager for a law practice.
- (2) The Board, may, by instrument in writing, appoint a person as a manager.
- (3) The appointee must be an Australian legal practitioner who holds an unrestricted practising certificate, and may (but need not be) an employee of the Board.
- (4) The instrument of appointment must —
  - (a) identify the law practice and the manager; and
  - (b) indicate that the external intervention is by way of appointment of a manager; and
  - (c) specify the term of the appointment; and
  - (d) specify any conditions imposed by the Board when the appointment is made; and
  - (e) specify any fees payable by way of remuneration to the manager specifically for carrying out the manager's duties in relation to the external intervention; and
  - (f) provide for the legal costs and the expenses that may be incurred by the manager in relation to the external intervention.
- (5) The instrument of appointment may specify any reporting requirements to be observed by the manager.

**483. Notice of appointment**

- (1) As soon as possible after an appointment of a manager for a law practice is made, the Board must serve a notice of the appointment on —
  - (a) the practice; and

- (b) any other person authorised to operate any trust account of the practice; and
- (c) any external examiner appointed to examine the practice's trust records; and
- (d) the ADI with which any trust account of the practice is maintained; and
- (e) any other person whom the Board reasonably believes should be served with the notice.

(2) The notice must —

- (a) identify the law practice and the manager; and
- (b) indicate that the external intervention is by way of appointment of a manager; and
- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the manager; and
- (e) specify any conditions imposed by the Board when the appointment is made; and
- (f) include a statement that the law practice may apply for a review of the decision to appoint the manager under section 508; and
- (g) contain or be accompanied by other information or material prescribed by the regulations.

**484. Effect of service of notice of appointment**

- (1) After service on a law practice of a notice of the appointment of a manager for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice except under the direct supervision of the manager.

Penalty: a fine of \$10 000.



- (2) After service on an ADI of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless —
- (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by —
    - (i) the manager; or
    - (ii) a receiver appointed for the practice; or
    - (iii) a nominee of the manager or receiver;or
  - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities by —
    - (i) the manager; or
    - (ii) a receiver appointed for the practice; or
    - (iii) a nominee of the manager or receiver;or
  - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by —
    - (i) the manager; or
    - (ii) a receiver appointed for the practice; or
    - (iii) a nominee of the manager or receiver.
- (3) After service on a person of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the person must not —
- (a) deal with any of the practice's trust money; or
  - (b) sign any cheque or other instrument drawn on a trust account of the practice; or

- (c) authorise the withdrawal or transfer of funds from a trust account of the practice,

but this subsection does not apply to a legal practitioner associate referred to in subsection (1), an ADI or the manager or receiver for the practice.

Penalty: a fine of \$10 000.

- (4) A manager may, for the purposes of subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be recovered from the ADI concerned by the manager, or a receiver for the law practice, as a debt in a court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the practice or another trust account nominated by the manager or receiver.

**485. Role of manager**

- (1) A manager for a law practice may carry on the practice and may do all things that the practice or a legal practitioner associate of the practice might lawfully have done, including but not limited to the following —
  - (a) transacting any urgent business of the practice;
  - (b) transacting, with the approval of any or all of the existing clients of the practice, any business on their behalf, including either or both of the following —
    - (i) commencing, continuing, defending or settling any proceedings;
    - (ii) receiving, retaining and disposing of property;
  - (c) accepting instructions from new clients and transacting any business on their behalf, including —
    - (i) commencing, continuing, defending or settling any proceedings; and



- (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to the manager's appointment.
- (3) If the manager takes anything from the premises, the manager must issue a receipt in the approved form and —
  - (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (4) If the manager is refused access to the premises or the premises are unoccupied, the manager may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the Police Force to assist entry.

**486. Records and accounts of law practice under management and dealings with trust money**

- (1) The manager for a law practice must maintain the records and accounts of the practice that he or she manages —
  - (a) separately from the management of the records and accounts of the practice before his or her appointment as manager; and
  - (b) separately from the records and accounts of any other law practice for which he or she is manager; and
  - (c) in the manner prescribed by the regulations.
- (2) Subject to subsection (1), the manager for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

**487. Deceased estates**

- (1) It is the duty of the manager for a law practice to cooperate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.

- (2) The manager is not, in the performance of functions or the exercise of powers as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from performing functions or exercising powers as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment and functions are not affected by the death.

**488. Termination of manager's appointment**

- (1) The appointment of a manager for a law practice terminates in the following circumstances —
  - (a) the term of the appointment comes to an end;
  - (b) the appointment is set aside under section 508;
  - (c) the appointment of a receiver for the practice takes effect, where the terms of appointment indicate that the receiver is authorised to exercise the functions of a manager;
  - (d) the manager has wound-up the affairs of the practice;
  - (e) a determination of the Board that the appointment be terminated takes effect.
- (2) The Board may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) If the appointment terminates in the circumstances referred to in subsection (1)(a), (c) or (e), the former manager must, as soon as practicable after the termination, transfer and deliver the regulated property and client files of the law practice to —
  - (a) another external intervener appointed for the practice; or
  - (b) the practice, if another external intervener is not appointed for the practice.

- (4) The former manager need not transfer regulated property and files to the law practice in compliance with subsection (3) unless the manager's expenses have been paid to the Board.
- (5) The Board must serve a written notice of the termination on all persons originally served with notice of the appointment.

### **Division 5 — Receivers**

#### **489. Appointment of receiver**

- (1) This section applies if the Board determines to apply to the State Administrative Tribunal for the appointment of a receiver for a law practice.
- (2) The State Administrative Tribunal may, on the application of the Board, appoint a person as receiver for the law practice.
- (3) The State Administrative Tribunal may make the appointment whether or not the law practice or a principal of the practice concerned has been notified of the application and whether or not the practice or principal is a party to the proceedings.
- (4) The appointee must be —
  - (a) an Australian legal practitioner who holds an unrestricted practising certificate; or
  - (b) a person holding accounting qualifications with experience in law practices' trust accounts,and may (but need not) be an employee of the Board.
- (5) The instrument of appointment must —
  - (a) identify the law practice and the receiver; and
  - (b) indicate that the external intervention is by way of appointment of a receiver; and
  - (c) specify any conditions imposed by the State Administrative Tribunal when the appointment is made; and

- (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out the receiver's duties in relation to the external intervention; and
  - (e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.
- (6) The instrument of appointment may —
- (a) specify the term (if any) of the appointment; and
  - (b) specify any reporting requirements to be observed by the receiver.

**490. Notice of appointment**

- (1) As soon as possible after an appointment of a receiver for a law practice is made, the Board must serve a notice of the appointment on —
- (a) the practice; and
  - (b) any person authorised to operate a trust account of the practice; and
  - (c) any external examiner appointed to examine the practice's trust records; and
  - (d) the ADI with which any trust account of the practice is maintained; and
  - (e) any person who the State Administrative Tribunal directs should be served with the notice; and
  - (f) any person whom the Board reasonably believes should be served with the notice.
- (2) The notice must —
- (a) identify the law practice and the receiver; and
  - (b) indicate that the external intervention is by way of appointment of a receiver; and
  - (c) specify the term (if any) of the appointment; and

- (d) indicate the extent to which the receiver has the powers of a manager for the practice; and
- (e) specify any reporting requirements to be observed by the receiver; and
- (f) specify any conditions imposed by the State Administrative Tribunal when the appointment was made; and
- (g) contain or be accompanied by other information or material prescribed by the regulations.

**491. Effect of service of notice of appointment**

- (1) After service on a law practice of a notice of the appointment of a receiver for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice.

Penalty: a fine of \$10 000.

- (2) After service on an ADI of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless —
  - (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by —
    - (i) the receiver; or
    - (ii) a manager appointed for the practice; or
    - (iii) a nominee of the receiver or manager;or
  - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by —
    - (i) the receiver; or
    - (ii) a manager appointed for the practice; or





**492. Role of receiver**

- (1) The role of a receiver for a law practice is —
  - (a) to be the receiver of regulated property of the practice;  
and
  - (b) to wind-up and terminate the affairs of the practice.
- (2) For the purpose of winding-up the affairs of the law practice and in the interests of the practice's clients, the State Administrative Tribunal may, by order, authorise —
  - (a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds an unrestricted practising certificate; or
  - (b) an Australian legal practitioner who holds an unrestricted practising certificate, or a law practice whose principals are or include one or more Australian legal practitioners who hold unrestricted practising certificates, specified in the instrument to carry on the legal practice on behalf of the receiver.
- (3) Subject to any directions given by the State Administrative Tribunal, the person authorised to carry on the legal practice engaged in by a law practice has all the powers of a manager under this Part and is taken to have been appointed as manager for the law practice.
- (4) The State Administrative Tribunal may, by order, terminate an authorisation to carry on a legal practice granted under this section.
- (5) For the purposes of exercising the receiver's powers under this section, the receiver may exercise any or all of the following powers —
  - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;

- (b) to require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the receiver —
    - (i) access to the files and documents the receiver reasonably requires; and
    - (ii) information relating to client matters the receiver reasonably requires;
  - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the receiver's appointment;
  - (d) to take possession of any relevant material and retain it for as long as may be necessary;
  - (e) to secure any relevant material found on the premises against interference, if the material cannot conveniently be removed;
  - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to the receiver's appointment.
- (6) If the receiver takes anything from the premises, the receiver must issue a receipt in the approved form and —
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
  - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is necessary to enter the premises and may be accompanied by a member of the Police Force to assist entry.

**493. Records and accounts of, and dealing with trust money of, law practice under receivership**

- (1) The receiver for a law practice must maintain the records and accounts of the practice that he or she manages —
  - (a) separately from the management of the records and accounts of the practice before his or her appointment as receiver; and
  - (b) separately from the records and accounts of any other law practice that the receiver is managing; and
  - (c) in the manner prescribed by the regulations.
- (2) Subject to subsection (1), the receiver for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

**494. Power of receiver to take possession of regulated property**

- (1) The receiver for a law practice may take possession of regulated property of the law practice.
- (2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.
- (3) If a person contravenes subsection (2), the State Administrative Tribunal may, on application by the receiver, order the person to deliver the regulated property to the receiver.
- (4) If, on application made by the receiver, the State Administrative Tribunal is satisfied that an order made under subsection (3) has not been complied with, the Tribunal may order the seizure of any regulated property of the law practice that is located on the premises specified in the order and may make any further orders it thinks fit.
- (5) An order under subsection (4) operates to authorise —
  - (a) any member of the Police Force; or



**497. Power of receiver to require documents or information**

- (1) A receiver for a law practice may require —
- (a) a person who is an associate or former associate of the practice; or
  - (b) a person who has or has had control of documents relating to the affairs of the practice; or
  - (c) a person who has information relating to regulated property of the practice or property that the receiver believes on reasonable grounds to be regulated property of the practice,
- to give the receiver either or both of the following —
- (d) access to the documents relating to the affairs of the practice the receiver reasonably requires;
  - (e) information relating to the affairs of the practice the receiver reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.  
Penalty: a fine of \$10 000.
- (3) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on the ground that compliance with the requirement may tend to incriminate the person.
- (4) If, before complying with the requirement, the person objects to the receiver on the ground that compliance may tend to incriminate the person, the information given or the information in the documents to which access is given is inadmissible in evidence against the person in any proceedings for an offence, other than —
- (a) an offence against this Act; or
  - (b) any other offence relating to the keeping of trust accounts or the receipt of trust money; or



give the receiver within a specified period of not less than one month —

- (a) particulars sufficient to identify the regulated property; and
  - (b) a detailed bill of costs.
- (3) If the law practice or legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided.
- (4) If a requirement of a notice under this section is not complied with, the receiver may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

**500. Regulated property not to be attached**

Regulated property of a law practice for which a receiver has been appointed (including regulated property held by the receiver) is not liable to be taken, levied on or attached under any judgment, order or process of any court or any other process.

**501. Recovery of regulated property where there has been breach of trust**

- (1) This subsection applies if regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been taken by, paid or transferred to a person (the *transferee*) in breach of trust, improperly or unlawfully and the transferee —
- (a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or
  - (b) did not provide to the practice or any other person any or any adequate consideration for the taking, payment or transfer; or





receiver may recover from the debtor the amount of the debt or liability so discharged less any consideration provided by the debtor for the discharge.

- (6) A person authorised by the Board to do so may give a certificate in relation to all or any of the following facts —
- (a) the receipt of regulated property by the law practice concerned from any person, the nature and value of the property, the date of receipt and the identity of the person from whom it was received;
  - (b) the taking, payment or transfer of regulated property, the nature and value of the property, the date of the taking, payment or transfer and the identity of the person by whom it was taken or to whom it was paid or transferred;
  - (c) the entries made in the trust account and in other ledgers, books of account, vouchers or records of the practice and the truth or falsity of those entries;
  - (d) the money and securities held by the practice at the specified time.
- (7) If the receiver brings a proceeding under subsection (2), (4) or (5), a certificate given under subsection (6) is evidence and, in the absence of evidence to the contrary, is proof of the facts specified in it.

**502. Improperly destroying property**

A person must not, with intent to defeat the operation of this Part, and whether before or after appointment of a receiver, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any regulated property of a law practice for which a receiver has been or is likely to be appointed.

Penalty: a fine of \$24 000 and imprisonment for 2 years.

**503. Deceased estates**

- (1) It is the duty of a receiver for a law practice to cooperate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.
- (2) The receiver is not, in the exercise or performance of powers and duties as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from exercising or performing powers or duties as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the receiver's appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment, powers and duties are not affected by the death.

**504. Termination of receiver's appointment**

- (1) The appointment by the State Administrative Tribunal of a receiver for a law practice terminates in the following circumstances —
  - (a) the term (if any) of the appointment comes to an end;
  - (b) the appointment is set aside on review under section 508;
  - (c) a determination of the State Administrative Tribunal that the appointment be terminated takes effect.
- (2) The State Administrative Tribunal may, on application by the Board or the receiver made at any time, determine that the appointment be terminated immediately or with effect from a specified date.
- (3) A receiver for a law practice must apply to the State Administrative Tribunal for termination of the appointment when the affairs of the practice have been wound-up and terminated, unless the term (if any) of the appointment has already come to an end.

- (4) The appointment of a receiver is not stayed by the making of an application for termination of the receiver's appointment, and the receiver may accordingly continue to exercise his or her functions as receiver pending the State Administrative Tribunal's decision on the application except to the extent (if any) that the Tribunal otherwise directs.
- (5) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice to —
  - (a) another external intervener appointed for the practice within the period of 14 days beginning with the day after the date of the termination; or
  - (b) the practice, if another external intervener is not appointed for the practice within that period and if paragraph (c) does not apply; or
  - (c) another person in accordance with arrangements approved by the State Administrative Tribunal, if it is not practicable to transfer and deliver the regulated property to the practice.
- (6) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (5) unless the expenses of receivership have been paid.
- (7) The Board must serve a written notice of the termination on all persons originally served with notice of the appointment.

### **Division 6 — General**

#### **505. Conditions on appointment of external intervener**

- (1) In this section —

*appropriate authority* means —

  - (a) in the case of a supervisor or manager — the Board; or
  - (b) in the case of a receiver — the State Administrative Tribunal.

- (2) An appointment of an external intervener is subject to —
  - (a) any conditions imposed by the appropriate authority;  
and
  - (b) any conditions imposed under the regulations.
- (3) The appropriate authority may impose conditions —
  - (a) when the appointment is made; or
  - (b) during the term of the appointment.
- (4) The appropriate authority may revoke or vary conditions imposed under subsection (3).

**506. Status of acts of external intervener**

- (1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of —
  - (a) any proceedings; or
  - (b) any transaction that relies on that act or omission,taken to have been done or omitted to be done by the practice.
- (2) Nothing in this section subjects the law practice or an associate of the law practice to any personal liability.

**507. Eligibility for reappointment or authorisation**

A person who has been appointed as an external intervener for a law practice is eligible for reappointment as an external intervener for the practice, whether the later appointment is made in respect of the same type of external intervention or is of a different type.

**508. Review of appointment**

The following persons may apply to the State Administrative Tribunal for the review of a decision to appoint an external intervener for a law practice —

- (a) the practice;

- (b) an associate of the practice;
- (c) any person authorised to operate a trust account of the practice;
- (d) any other person whose interests may be adversely affected by the appointment.

**509. Directions of SAT**

On application by —

- (a) an external intervener for a law practice; or
- (b) a principal of a law practice; or
- (c) any other person affected by an external intervention,

the State Administrative Tribunal may give directions about the functions of the external intervener or a matter affecting the external intervention.

**510. Manager and receiver appointed for law practice**

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

**511. ADI disclosure requirements**

- (1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener without charge —
  - (a) whether or not the practice, or an associate of the practice specified by the intervener, maintains or has maintained an account at the ADI during a period specified by the intervener; and
  - (b) details identifying every account so maintained.

Penalty: a fine of \$5 000.

- (2) An ADI at which an account of a law practice or associate of a law practice is or has been maintained must, at the request of an external intervener for the law practice, and without charge —
- (a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such account or money deposited in any such account; and
  - (b) provide the intervener with full details of any transactions relating to any such account or money.

Penalty: a fine of \$5 000.

- (3) If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener without charge —
- (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener; and
  - (b) the details of any such account.

Penalty: a fine of \$5 000.

- (4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.
- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any legislation or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

**512. Fees, legal costs and expenses**

- (1) An external intervener is entitled to be paid, in accordance with the instrument of appointment —
  - (a) fees by way of remuneration; and
  - (b) the legal costs and the expenses incurred in relation to the external intervention.
- (2) An account of the external intervener for fees, costs and expenses may, on the application of the Board, be taxed or assessed.
- (3) The fees, costs and expenses are payable by and recoverable by the Board from the law practice.
- (4) Fees, costs and expenses not paid to the external intervener by the law practice are recoverable from the Guarantee Fund.
- (5) The Trust may recover any unpaid fees, costs and expenses from the law practice that are paid from the Guarantee Fund.
- (6) Fees, costs and expenses paid by or recovered from the law practice after they have been paid from the Guarantee Fund are to be paid to the Guarantee Fund.

**513. Reports by external intervener**

- (1) In this section —  
*instrument of appointment*, in relation to a receiver, means the order of the State Administrative Tribunal appointing the receiver.
- (2) An external intervener must provide written reports in accordance with any reporting requirements to be observed by the intervener as specified in the instrument of appointment.
- (3) If the instrument of appointment does not specify any reporting requirements, an external intervener must provide —
  - (a) written reports as required from time to time by the Board; and



- (b) a written report to the Board at the termination of the appointment.
- (4) An external intervener must also keep the Board informed of the progress of the external intervention, including reports to the Board about any significant events occurring or state of affairs existing in connection with the intervention or with any of the matters to which the intervention relates.
- (5) Nothing in this section affects any other reporting obligations that may exist in respect of the law practice concerned.

**514. Confidentiality**

- (1) An external intervener must not disclose information obtained as a result of his or her appointment except —
  - (a) as far as is necessary for performing the external intervener's functions; or
  - (b) as provided in subsection (2).
- (2) An external intervener may disclose information to any of the following —
  - (a) a court, tribunal or other person acting judicially;
  - (b) a regulatory authority of any jurisdiction;
  - (c) any officer of, or Australian legal practitioner instructed by —
    - (i) a regulatory authority of any jurisdiction; or
    - (ii) the Commonwealth or a State or Territory of the Commonwealth; or
    - (iii) an authority of the Commonwealth or a State or Territory of the Commonwealth,in relation to any proceedings, inquiry or other matter pending or contemplated arising out of an investigation or examination for the purposes of this Part;
  - (d) a member of the Police Force of any jurisdiction if the Board or external intervener believes on reasonable

grounds that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;

- (e) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;
- (f) a client or former client of the law practice concerned if the information relates to the client or former client;
- (g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener;
- (h) any external examiner carrying out an external examination of the trust records of the law practice concerned.

**515. Provisions relating to requirements under this Part**

- (1) This section applies to a requirement imposed on a person under this Part to give an external intervener access to documents or information.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.
- (3) The external intervener imposing the requirement may —
  - (a) inspect any document provided pursuant to the requirement; and
  - (b) make copies of the document or any part of the document; and
  - (c) retain the document for a period the intervener thinks necessary for the purpose of the external intervention in relation to which it was produced.
- (4) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.

- (5) A failure of an Australian lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (6) The Board may suspend a local legal practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

**516. Obstruction of external intervener**

- (1) In this section —  
*obstruct* includes hinder, delay, resist and attempt to obstruct.
- (2) A person must not, without reasonable excuse, obstruct an external intervener exercising a power under this Act.  
Penalty: a fine of \$10 000.

## **Part 15 — Provisions relating to investigations**

### **Division 1 — Preliminary**

#### **517. Terms used**

- (1) In this Part —

***complaint investigation*** means an investigation initiated by the Complaints Committee under Part 13 or the investigation of a complaint under that Part;

***ILP compliance audit*** means an audit conducted under section 118 in relation to an incorporated legal practice;

***investigator*** means —

- (a) a Complaints Committee member; or
- (b) the Law Complaints Officer or a person nominated by the Law Complaints Officer; or
- (c) in relation to an ILP compliance audit — the person appointed by the Board or Complaints Committee under section 118 to conduct the audit; or
- (d) an investigator under Part 9 Division 3; or
- (e) an external examiner under Part 9 Division 4;

***trust account examination*** means the external examination of the trust records of a law practice under Part 9 Division 4;

***trust account investigation*** means the investigation of the affairs of law practices under Part 9 Division 3.

- (2) A reference in this Part to ***trust records*** includes a reference to the affairs of a law practice that may be examined under section 238 for the purposes of and in connection with an examination of the practice's trust records.

**Division 2 — Requirements relating to documents, information  
and other assistance**

**518. Application of Division**

This Division applies to the following activities —

- (a) trust account investigations;
- (b) trust account examinations;
- (c) complaint investigations;
- (d) ILP compliance audits.

**519. Requirement to provide access to documents and  
information relating to affairs of law practice**

- (1) For the purpose of carrying out a trust account investigation, trust account examination or ILP compliance audit in relation to a law practice, an investigator may, on production of evidence of his or her appointment, require the practice or an associate or former associate of the practice, or any other person (including, for example, an ADI, auditor or liquidator), to give the investigator either or both of the following —
  - (a) access to the documents relating to the affairs of the practice the investigator reasonably requires;
  - (b) information relating to the affairs of the practice the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.  
Penalty: a fine of \$5 000.

**520. Requirements in relation to complaint investigations**

- (1) For the purpose of carrying out a complaint investigation in relation to an Australian lawyer, an investigator may, by notice

or summons served on the lawyer, require the lawyer to do any one or more of the following —

- (a) to produce, at or before a specified time and at a specified place, any specified document (or a copy of the document);
  - (b) to produce, at a specified time and at a specified place, any specified document (or a copy of the document);
  - (c) to provide written information on or before a specified date;
  - (d) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.
- (2) For the purpose of carrying out a complaint investigation in relation to an Australian lawyer, an investigator may, by notice or summons served on the person, require an associate or former associate of a law practice of which the lawyer is or was an associate or any other person (including, for example, an ADI, auditor or liquidator but not including the lawyer) to give the investigator either or both of the following —
- (a) access to the documents relating to the affairs of the lawyer the investigator reasonably requires;
  - (b) information relating to the affairs of the lawyer the investigator reasonably requires.
- (3) An investigator may require that information required to be given under subsection (1) or (2) be verified on oath or affirmation or by statutory declaration.
- (4) An investigator may administer an oath or affirmation for the purposes of subsection (3).
- (5) A person who is subject to a requirement under subsection (1), (2) or (3) must comply with the requirement.

Penalty: a fine of \$5 000.

- (6) A requirement imposed on a person under subsection (1), (2) or (3) must be notified in writing to the person and must specify a reasonable time for compliance.
- (7) A summons issued under this section has the same effect as a *subpoena ad test* or *duces tecum*, as the case may be, issued by the Supreme Court for the attendance of a witness for examination or production of documents in a civil action.
- (8) Obedience to, or non-observance of, a summons issued under this section may be enforced and punished by a judge in chambers in the same manner as in the case of obedience to, or non-observance of, a subpoena issued by the Supreme Court.

**521. Provisions relating to requirements under this Division**

- (1) This section applies to a requirement imposed on a person under this Division.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on —
  - (a) the ground that the giving of the information or access to information may tend to incriminate the person; or
  - (b) the ground that a law practice or Australian lawyer has a lien over a particular document or class of documents.
- (3) If, before complying with the requirement, the person objects to the investigator on the ground that giving the information may tend to incriminate the person, the information is inadmissible in evidence in any proceeding against the person for an offence, other than —
  - (a) an offence against this Act; or
  - (b) any other offence relating to the keeping of trust accounts or the receipt of trust money; or
  - (c) an offence relating to the falsity of the answer.

- (4) The investigator imposing the requirement may —
  - (a) inspect any document provided pursuant to the requirement; and
  - (b) make copies of the document or any part of the document; and
  - (c) retain the document for a period the investigator thinks necessary for the purposes of the investigation in relation to which it was produced.
- (5) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.
- (6) The Board may suspend a local legal practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

### **Division 3 — Entry and search of premises**

#### **522. Application of Division**

This Division applies to the following investigations —

- (a) trust account investigations;
- (b) complaint investigations,

but does not apply to —

- (c) trust account examinations; or
- (d) ILP compliance audits.

#### **523. Investigator's power to enter premises**

- (1) For the purpose of carrying out an investigation to which this Division applies, an investigator may enter and remain on premises to exercise the powers referred to in section 525.
- (2) In the case of a trust account investigation, the investigator may enter premises —
  - (a) at any time with the consent of the occupier; or



- (b) under the authority of a search warrant issued under this Division; or
  - (c) at any time without the consent of the occupier and without a warrant, but only if the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with any relevant material.
- (3) In the case of a complaint investigation, the investigator may enter any premises —
- (a) at any time with the consent of the occupier; or
  - (b) under the authority of a search warrant issued under this Division.
- (4) The investigator must not exercise the power referred to in subsection (2)(c) unless the Board or the Complaints Committee, as the case requires, has authorised the investigator to do so.
- (5) The investigator must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce evidence of his or her appointment.
- Penalty: a fine of \$2 000.

**524. Search warrant**

- (1) An investigator may apply to a justice for the issue of a search warrant in respect of any premises if the investigator believes on reasonable grounds that any relevant material is located at the premises.
- (2) The application must be in writing and must be made by the investigator in person.
- (3) A justice to whom an application for a search warrant is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an investigator —
  - (a) to enter and inspect the premises specified in the warrant; and

- (b) to exercise the powers referred to in section 525, at the times and during the period stated in the search warrant.
- (4) A search warrant may be executed by the investigator to whom it is issued or by any other investigator.
- (5) An investigator executing a warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce the warrant.  
Penalty: a fine of \$2 000.

**525. Powers of investigator while on premises**

- (1) An investigator who enters premises under this Part may exercise any or all of the following powers —
  - (a) search the premises and examine anything on the premises;
  - (b) search for any information, document or other material relating to the matter to which the investigation relates;
  - (c) operate equipment or facilities on the premises for a purpose relevant to the investigation;
  - (d) take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;
  - (e) make copies of any relevant material or any part of any relevant material;
  - (f) seize and take away any relevant material or any part of any relevant material;
  - (g) use (free of charge) photocopying equipment on the premises for the purpose of copying any relevant material;
  - (h) with respect to any computer or other equipment that the investigator suspects on reasonable grounds may contain any relevant material —
    - (i) inspect and gain access to the computer or equipment; and

- (ii) download or otherwise obtain any documents or information; and
  - (iii) make copies of any documents or information held in it; and
  - (iv) seize and take away any computer or equipment or any part of it;
  - (i) if any relevant material found on the premises cannot be conveniently removed, secure it against interference;
  - (j) request any person who is on the premises to do any of the following —
    - (i) state the person's full name, date of birth and address;
    - (ii) answer (orally or in writing) questions asked by the investigator relevant to the investigation;
    - (iii) produce relevant material;
    - (iv) operate equipment or facilities on the premises for a purpose relevant to the investigation;
    - (v) provide access (free of charge) to photocopying equipment on the premises the investigator reasonably requires to enable the copying of any relevant material;
    - (vi) give other assistance the investigator reasonably requires to carry out the investigation;
  - (k) do anything else reasonably necessary to obtain information or evidence for the purposes of this investigation.
- (2) A person requested to do anything under subsection (1) must not, without reasonable excuse, fail to comply with the request.  
Penalty: a fine of \$10 000.
- (3) Any documents, information or anything else obtained by the investigator may be used for the purpose of the investigation.

- (4) If an investigator takes anything away from the premises, the investigator must issue a receipt in the approved form and —
  - (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
  - (b) otherwise, leave it on the premises in an envelope addressed to the occupier.
- (5) An investigator may be accompanied by any assistants the investigator requires, including persons with accounting expertise and persons to assist in finding and gaining access to electronically stored information.

**Division 4 — Additional powers in relation to incorporated legal practices**

**526. Application of Division**

This Division applies to —

- (a) trust account investigations; or
- (b) complaint investigations; or
- (c) ILP compliance audits,

conducted in relation to an incorporated legal practice.

**527. Powers relating to investigations and audits to which this Division applies**

An investigator conducting an investigation or audit to which the Division applies may exercise the powers set out in this Division.

**528. Examination of persons**

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by Part 3 Division 2 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

- (2) Part 3 Division 2 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth applies to the exercise of those powers with the following modifications (and any other necessary modifications) —
- (a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the Board, the Complaints Committee or the investigator;
  - (b) a reference to a matter that is being or is to be investigated under Part 3 Division 1 of that Act is taken to be a reference to a matter that is being or is to be investigated, examined or audited by the investigator;
  - (c) a reference in section 19 of that Act to a person is taken to be a reference to an Australian legal practitioner or an incorporated legal practice;
  - (d) a reference to a prescribed form is taken to be a reference to an approved form;
  - (e) any modifications prescribed by the regulations.
- (3) Sections 22(2) and (3), 25(2) and (2A), 26 and 27 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth do not apply in respect of the exercise of the powers conferred by this section.

#### **529. Inspection of books**

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by sections 30(1), 34 and 37 to 39 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (2) Those provisions apply to the exercise of those powers with the following modifications (and any other necessary modifications) —
- (a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a

reference to the Board, the Complaints Committee or the investigator;

- (b) a reference to a body corporate (including a body corporate that is not an exempt public authority) is taken to be a reference to an incorporated legal practice;
- (c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice;
- (d) a reference to a member or staff member is taken to be a reference to the Board, the Complaints Committee, the Law Complaints Officer or a person appointed by the Board who is an officer or employee of the Board;
- (e) a reference in section 37 of that Act to a proceeding is taken to be a reference to an investigation, examination or audit to which this Part applies;
- (f) any modifications prescribed by the regulations.

**530. Power to hold hearings**

- (1) The investigator may hold hearings for the purposes of an investigation or audit to which this Division applies.
- (2) Sections 52, 56(1), 58, 59(1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth apply to a hearing with the following modifications (and any other necessary modifications) —
  - (a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the Board, the Complaints Committee or the investigator;
  - (b) a reference to a member or staff member is taken to be a reference to the Board, the Complaints Committee, the Law Complaints Officer or a person appointed by the Board who is an officer or employee of the Board;

- (c) a reference to a prescribed form is taken to be a reference to an approved form;
- (d) any modifications prescribed by the regulations.

### **Division 5 — Miscellaneous**

#### **531. Obstruction or misleading of investigator**

- (1) In this section —  
*obstruct* includes hinder, delay, resist or attempt to obstruct.
- (2) A person must not, without reasonable excuse, obstruct or mislead an investigator exercising a power under this Act.  
Penalty: a fine of \$10 000.

#### **532. Obligations of Australian lawyers**

- (1) The duties imposed on an Australian lawyer by this section are additional to obligations imposed under other provisions of this Part, whether or not the lawyer is the subject of the investigation, examination or audit concerned.
- (2) An Australian lawyer must not mislead an investigator, the Board or the Complaints Committee in the exercise of —
  - (a) any function under this Part; or
  - (b) any function under a provision of a corresponding law that corresponds to this Part.
- (3) An Australian lawyer who is subject to —
  - (a) a requirement under section 520; or
  - (b) a requirement under provisions of a corresponding law that correspond to that section,must not, without reasonable excuse, fail to comply with the requirement.

**533. Permitted disclosure of confidential information**

- (1) The Board, the Complaints Committee or an investigator may disclose information obtained in the course of a trust account investigation, trust account examination, complaint investigation or ILP compliance audit to any of the following —
- (a) any court, tribunal or other person acting judicially;
  - (b) the Attorney General;
  - (c) any body regulating legal practitioners in any jurisdiction;
  - (d) any officer of or Australian legal practitioner instructed by —
    - (i) any body regulating legal practitioners in any jurisdiction; or
    - (ii) the Commonwealth or a State or Territory of the Commonwealth; or
    - (iii) an authority of the Commonwealth or of a State or Territory of the Commonwealth,in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation, examination or audit;
  - (e) an investigative or prosecuting authority established by or under legislation (for example, the Australian Securities and Investments Commission);
  - (f) a police officer — if the Board, the Complaints Committee or the investigator suspects on reasonable grounds that the information relates to an offence that may have been committed by —
    - (i) if a law practice is the subject of the investigation, examination or audit — the law practice or an associate or former associate of the law practice; or
    - (ii) if an Australian lawyer is the subject of the investigation, examination or audit — the lawyer



or an associate or former associate of the law practice of which the lawyer is or was an associate;

- (g) if the subject of the investigation, examination or audit is or was —
  - (i) a law practice — a principal of the law practice; or
  - (ii) an incorporated legal practice — a director or shareholder in the practice; or
  - (iii) an Australian lawyer — the lawyer or a principal of the law practice of which the lawyer is or was an associate;
- (h) if the subject of the investigation, examination or audit is or was —
  - (i) a law practice — a client or former client of the law practice; or
  - (ii) an Australian lawyer — a client or former client of the law practice of which the lawyer is or was an associate,  
but only if the information relates to the client or former client;
- (i) if the subject of the investigation, examination or audit is or was —
  - (i) a law practice — a supervisor, manager or receiver appointed in relation to the law practice; or
  - (ii) an Australian lawyer — a supervisor, manager or receiver appointed in relation to the law practice of which the lawyer is or was an associate,  
or an Australian legal practitioner or accountant employed by the supervisor, manager or receiver;
- (j) an investigator carrying out another investigation, examination or audit in relation to the law practice or

Australian lawyer who is or was the subject of the investigation, examination or audit;

- (k) any other person to the extent that it is necessary for the purposes of properly conducting the investigation, examination or audit and making a report on the matter.
- (2) A reference in subsection (1) to information obtained in connection with any such investigation, examination or audit includes a reference to any finding, opinion or recommendation of the investigator in relation to the investigation, examination or audit.
- (3) No liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information under this section.
- (4) In subsection (3) —  
***protected person*** means any of the following —
  - (a) the Board or a Board member;
  - (b) the Complaints Committee or a Complaints Committee member;
  - (c) an investigator;
  - (d) a member of staff or a person acting at the direction of any person or entity referred to in this definition.

## **Part 16 — Regulatory authorities**

### **Division 1 — Legal Practice Board**

#### **Subdivision 1 — Establishment**

**534. Board established**

- (1) A body called the Legal Practice Board is established.
- (2) The Board is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Board in its corporate name.

**535. Relationship to Crown**

The Board does not represent, and is not an agent of, the Crown.

**536. Board members**

- (1) The Board consists of —
  - (a) the Attorney General; and
  - (b) the Solicitor General or, if there is no Solicitor General, the State Solicitor; and
  - (c) subject to section 538, each Queen’s Counsel, and each Senior Counsel —
    - (i) whose principal place of practice is in this State; and
    - (ii) who is not a full-time judicial officer; and
    - (iii) who has, in writing, nominated himself or herself as a member;and
  - (d) 12 local legal practitioners of at least 3 years’ standing and practice who are elected as members.
- (2) Subject to section 538 and the legal profession rules, an elected Board member holds office for a term of 2 years from the date of becoming a member and is eligible for re-election.

**537. Who may vote in election**

Any local legal practitioner is eligible to vote in an election for a member under section 536(1)(d).

**538. Vacation of office by member**

- (1) A Board member may resign from office by notice in writing delivered to the Board.
- (2) The Attorney General may remove a Board member from office if the member is absent without leave of the Board from 3 consecutive meetings of the Board of which the member has had notice.
- (3) The Board may grant leave of absence to a Board member on such terms and conditions as it thinks fit.

**539. Functions**

The Board has the functions conferred on it by this or any other Act.

**540. Powers**

- (1) The Board has all the powers it needs to perform its functions.
- (2) Without limiting subsection (1), the Board may for the purpose of performing its functions —
  - (a) acquire, hold, manage, improve, develop and dispose of any real or personal property; and
  - (b) enter into leases, contracts and arrangements; and
  - (c) provide, take and arrange security; and
  - (d) employ and engage staff; and
  - (e) do anything incidental to any of its powers.

**541. Chairperson and deputy chairperson**

- (1) The Board members are to elect a chairperson of the Board and a deputy chairperson of the Board from amongst their number.

- (2) The chairperson and deputy chairperson each holds office for one year except where he or she sooner resigns or ceases to be a member.
- (3) A Board member —
  - (a) may not hold office as chairperson for more than 5 consecutive annual terms; and
  - (b) may not hold office as deputy chairperson for more than 5 consecutive annual terms.
- (4) Subject to the direction of the chairperson, or in the absence of the chairperson, the deputy chairperson has and may exercise all of the functions of the chairperson.
- (5) An act or omission of the deputy chairperson acting in the chairperson's place cannot be questioned on the ground that the occasion to act in the chairperson's place had not arisen or had ceased.
- (6) The chairperson of the Board is to be paid such remuneration and allowances (if any) as the Board determines from time to time.

**542. Casual vacancies**

If a casual vacancy occurs in the office of an elected Board member, the Board may appoint a local legal practitioner to act as a Board member for the balance of the term of that elected member.

**Subdivision 2 — Performance**

**543. Presiding at meetings**

- (1) The chairperson of the Board, if present, is to preside at a meeting of the Board.
- (2) If neither the chairperson nor the deputy chairperson acting as the chairperson, is presiding under subsection (1), the members present at the meeting are to appoint one of their number to preside.

**544. Quorum**

Any 4 Board members form a quorum.

**545. Voting**

- (1) Each Board member has one vote.
- (2) In the case of an equality of votes, the person presiding has a casting vote in addition to a deliberative vote.
- (3) All questions at a meeting of the Board are to be decided by a majority of the votes of the members present.

**546. Procedures**

Subject to this Act, the Board may determine its own procedures.

**547. Delegation**

- (1) The Board may delegate any power or duty of the Board under another provision of this Act to —
  - (a) a Board member; or
  - (b) a committee established under section 552; or
  - (c) an officer or employee of the Board.
- (2) The delegation must be in writing executed by the Board.
- (3) A committee or person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A committee or person exercising or performing a power or duty that has been delegated to that committee or person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Board to perform a function through an officer or agent in the normal course of business.

- (6) This section does not apply to the execution of documents but authority to execute documents on behalf of the Board can be given under section 554.

**Subdivision 3 — Financial and reporting provisions**

**548. Application of funds**

- (1) The money received by the Board under this Act must be applied by the Board for the purposes of this Act, which include —
- (a) providing services and facilities for the purposes of section 557(5);
  - (b) the administration and enforcement of the regulations, the admission rules and the legal profession rules; and
  - (c) the provision and maintenance of the Law Library at the Supreme Court.
- (2) The books, furniture, pictures and all other things in or used in, or acquired after the commencement of this section for the purposes of, the Law Library at the Supreme Court are vested in and are the property of the Board.

**549. Accounts and records**

- (1) The Board must —
- (a) cause to be kept proper accounts of the financial transactions of the Board; and
  - (b) cause to be kept proper records of the business of the Board; and
  - (c) prepare financial statements in accordance with Australian Accounting Standards.
- (2) Unless the Board determines otherwise, the financial statements must be prepared on an accrual basis.

**550. Audit**

The accounts and financial statements of the Board must be audited at least once a year, at the expense of the Board, by an

auditor appointed by the Board with the prior approval of the Attorney General.

**551. Annual and other reports**

- (1) On or before 31 December in each year the Board must make and submit to the Attorney General an annual report of its proceedings for the preceding year ending on 30 June together with a copy of the financial statements and the auditor's report.
- (2) The annual report must include details of —
  - (a) the number, nature, and outcome of —
    - (i) inquiries undertaken by the Board; and
    - (ii) matters that have been brought before the State Administrative Tribunal by the Board under this Act;
  - and
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding; and
  - (c) any trends or special problems that may have emerged; and
  - (d) a forecast of the workload of the Board in the year after the year to which the report relates; and
  - (e) any proposals for improving the operation of the Board.
- (3) The executive officer of the State Administrative Tribunal must provide the Board with information it may request for the purpose of making its annual report.
- (4) The Attorney General must within 14 days after the day on which a copy of an annual report, financial statement or auditor's report is received by the Attorney General cause a copy of the report or statement to be laid before each House of Parliament or dealt with under section 595.
- (5) The Board may from time to time report to the Attorney General its views as to the jurisdiction conferred and the carrying out of



the functions required by Part 13, or any matter connected with that jurisdiction or that Part.

#### **Subdivision 4 — Miscellaneous**

##### **552. Committees**

- (1) The Board may —
  - (a) appoint committees of Board members; and
  - (b) discharge, alter or reconstitute any committee.
- (2) A committee must comply with any direction or requirement of the Board.
- (3) A committee may, with the approval of the Board, invite any person, including a member of staff, to participate in a meeting of the committee but such a person cannot vote on any resolution before the committee.
- (4) Subject to subsection (2), a committee may determine its own procedures.
- (5) This section does not apply in relation to the Complaints Committee.

##### **553. Secretary of Board**

- (1) The Board may engage or employ a person to be the secretary to the Board.
- (2) The secretary has the functions that the Board directs the secretary to perform.

##### **554. Execution of documents by Board**

- (1) The Board is to have a common seal.
- (2) A document is duly executed by the Board if —
  - (a) the common seal of the Board is affixed to it in accordance with subsections (3) and (4); or

- (b) it is signed on behalf of the Board by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Board must not be affixed to any document except as authorised by the Board.
- (4) The common seal of the Board must be affixed to a document in the presence of 2 Board members, each of whom must sign the document to attest that the common seal was so affixed.
- (5) The Board may, by writing under its seal, authorise one or more of its members or staff members to sign documents on behalf of the Board, either generally or subject to the conditions that are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Board, it is to be presumed that the seal is the common seal of the Board unless the contrary is shown.

## **Division 2 — Legal Profession Complaints Committee**

### **Subdivision 1 — Establishment**

#### **555. Legal Profession Complaints Committee established**

- (1) A Legal Profession Complaints Committee is established.
- (2) The Complaints Committee is a committee of the Board.

#### **556. Complaints Committee members**

- (1) The Complaints Committee consists of the following members —
  - (a) a chairperson, and not less than 6 other legal practitioners, appointed by the Board from amongst its members from time to time;

- (b) not less than 2 representatives of the community, none of whom is to be a person who is or has been an Australian lawyer.
- (2) The Attorney General is to appoint the members as representatives of the community after consultation with the Minister responsible for consumer affairs.
- (3) The number of persons to be appointed to the Complaints Committee as representatives of the community must not exceed one quarter of the total membership of the Complaints Committee at the time of appointment.

**557. Functions of Complaints Committee**

- (1) The Complaints Committee has the functions conferred on it by this or any other Act.
- (2) Without limiting subsection (1), it is a function of the Complaints Committee —
  - (a) to supervise the conduct of legal practitioners; and
  - (b) to inquire into complaints received under Part 13 Division 4 and, where the Complaints Committee so determines whether for cause or not and whether the Complaints Committee has received a complaint or not, any —
    - (i) conduct on the part of a legal practitioner; or
    - (ii) matters relating to legal practice,for the purpose of determining whether it may constitute unsatisfactory professional conduct or professional misconduct; and
  - (c) if the Complaints Committee considers it appropriate to do so, to institute professional disciplinary proceedings against a legal practitioner in the State Administrative Tribunal; and
  - (d) to supervise and direct the Law Complaints Officer in the performance of the functions of that officer; and

- (e) to comment upon, and make recommendations in respect of, this Act, the regulations and the legal profession rules insofar as they may affect the functions of the Complaints Committee.
- (3) In addition to the functions set out in this section, a member appointed by the Attorney General may report independently, as an individual, to the Attorney General on any aspect of —
  - (a) an alleged complaint; or
  - (b) an inquiry as to disciplinary matters under Part 13; or
  - (c) the legal profession rules as they relate to disciplinary matters or the conduct of legal practice; or
  - (d) the activities of the Law Complaints Officer or the Complaints Committee.
- (4) The Board must not direct or impose any requirement on the Complaints Committee as to the performance of its functions.
- (5) The Board must ensure that the Complaints Committee is provided with such services and facilities as are reasonably necessary to enable the Complaints Committee to perform its functions.

**558. Term of appointment — representative of community**

Subject to this Act, a Complaints Committee member appointed by the Attorney General —

- (a) holds office for a term of not more than 3 years specified in the instrument of appointment; and
- (b) is eligible for reappointment,

but is not eligible to hold office for more than 6 years in total.

**559. Deputy chairperson**

- (1) The Board may from time to time appoint a Board member as deputy chairperson of the Complaints Committee.

- (2) The deputy chairperson may act as chairperson —
  - (a) in the absence of the chairperson of the Complaints Committee; or
  - (b) if so requested by the chairperson of the Complaints Committee; or
  - (c) during a vacancy in the office of chairperson of the Complaints Committee.
- (3) While acting as chairperson of the Complaints Committee the deputy chairperson has, and may perform, the functions of chairperson.

**560. Deputies of representatives of community**

- (1) One or more persons may be appointed as deputies of the representatives of the community on the Complaints Committee.
- (2) A person appointed as a deputy representative of the community is to be appointed on terms applicable to, and is to be selected from persons eligible to be, a representative of the community.
- (3) A person appointed as a deputy representative of the community may, with the concurrence of the chairperson of the Complaints Committee, act in the place of a representative of the community at a meeting of the Complaints Committee.
- (4) While acting as a deputy representative of the community, the deputy has and may perform the functions of a representative of the community on the Complaints Committee.

**561. Removal or resignation**

- (1) The Attorney General may remove a Complaints Committee member appointed by the Attorney General from office —
  - (a) if the member is an insolvent under administration; or
  - (b) on the grounds of —
    - (i) mental or physical incapacity to carry out the member's duties in a satisfactory manner; or

- (ii) neglect of duty; or
    - (iii) misconduct;
  - or
  - (c) if the member is absent without leave of the Complaints Committee from 3 consecutive meetings of which the member has had notice.
- (2) The Board may remove a Complaints Committee member appointed by the Board from office if the member is absent without leave of the Complaints Committee from 3 consecutive meetings of which the member has had notice.
- (3) The Complaints Committee may grant leave of absence to a Complaints Committee member on such terms and conditions as the Board thinks fit.
- (4) A Complaints Committee member appointed by the Attorney General may resign office by notice in writing delivered to the Attorney General.
- (5) A Complaints Committee member appointed by the Board may resign office by notice in writing delivered to the Board.
- (6) A reference in this section (other than in subsection (1)(c)) to a member includes a reference to a deputy member.

**562. Leave of absence**

The Attorney General may grant leave of absence to a Complaints Committee member on such terms and conditions as the Attorney General thinks fit.

**563. Termination of office may be deferred**

Despite the term of office of a Complaints Committee member having expired by effluxion of time, the member continues in office —

- (a) until the member is reappointed, or a successor is appointed; and

- (b) in any event for the purpose of completing any part-heard proceedings,

unless the Attorney General otherwise directs.

**564. Remuneration and allowances**

A person appointed to the Complaints Committee as a representative of the community is to be paid such remuneration and allowances as the Attorney General from time to time, after consultation with the Public Sector Commissioner, may determine.

*[Section 564 amended by No. 39 of 2010 s. 89.]*

**565. Saving**

No act or omission of a person acting in the place of another under section 559 or 560 is to be questioned on the ground that the occasion for acting had not arisen or had ceased.

**Subdivision 2 — Performance**

**566. Quorum**

- (1) At any meeting of the Complaints Committee a quorum is constituted by 3 members, of whom —
  - (a) 2 are persons appointed under section 556(1)(a); and
  - (b) one is a representative of the community.
- (2) If an investigation by the Complaints Committee under Part 13 Division 6 is commenced and —
  - (a) a member present at that commencement fails to continue to participate in the proceedings; or
  - (b) upon the failure of a representative of the community to continue to participate in the proceedings, no quorum can be convened,

the determination of the matter may be completed by the remaining members.

**567. Meetings**

- (1) Meetings of the Complaints Committee may be convened —
  - (a) by the chairperson of the Complaints Committee; or
  - (b) by the Law Complaints Officer; or
  - (c) at such times and places as the Complaints Committee determines.
- (2) The chairperson presides at all meetings of the Complaints Committee at which the chairperson is present.
- (3) If the chairperson and deputy chairperson are absent from a meeting of the Complaints Committee the members present may appoint one of their number to act as chairperson.
- (4) A person appointed under subsection (3) has, and may perform, the functions of chairperson.

**568. Divisions**

- (1) The Complaints Committee may sit and exercise jurisdiction as one or more Divisions where a quorum is present.
- (2) A reference in this Act, unless the context otherwise requires, to a meeting of the Complaints Committee includes a reference to a meeting when the Complaints Committee is constituted by a Division.
- (3) A determination made by the Complaints Committee when sitting as a Division is taken to be a determination of the Complaints Committee as a whole.

**569. Voting**

- (1) At a meeting of the Complaints Committee, subject to subsection (2), each member present is entitled to a deliberative vote.
- (2) Any question must be determined by a majority of the votes lawfully cast but when the deliberative votes cast on a question



are equally divided the chairperson of the Complaints Committee has a casting vote in addition to a deliberative vote.

**570. Complaints Committee may determine its own procedures**

Subject to this Act, the Complaints Committee may determine its own procedures and is not required to conduct any proceedings in a formal manner.

**571. Reports**

- (1) The chairperson of the Complaints Committee must on or before 31 December in each year cause an annual report in relation to the activities of the Complaints Committee in the year ending on the preceding 30 June to be made and submitted to the Attorney General.
- (2) The annual report must include details of —
  - (a) the number, nature, and outcome of —
    - (i) inquiries undertaken by the Complaints Committee; and
    - (ii) matters that have been brought before the State Administrative Tribunal by the Complaints Committee under this Act;
  - and
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding; and
  - (c) any trends or special problems that may have emerged; and
  - (d) a forecast of the workload of the Complaints Committee in the year after the year to which the report relates; and
  - (e) any proposals for improving the operation of the Complaints Committee.
- (3) The Law Complaints Officer is to provide the Complaints Committee with information it may request for the purpose of making its annual report.

- (4) The Attorney General must within 14 days after the day on which a copy of an annual report is received by the Attorney General cause a copy of the report or statement to be laid before each House of Parliament or dealt with under section 595.
- (5) In addition to the annual report under subsection (1), the Complaints Committee must report —
  - (a) at such other times and in such manner as may be requested, to the Attorney General; and
  - (b) at such other times and in such manner as may be requested, to the Board,on matters relating to its functions and the operation of the provisions of this Act regulating the conduct and discipline of legal practitioners.
- (6) The Complaints Committee may make a report under subsection (5) of its own volition.
- (7) Where a report is to be made under subsection (5) any Complaints Committee member may request that the report include such matters as that member considers appropriate, and effect must be given to the request.

### **Division 3 — Law Complaints Officer and staff**

#### **572. Law Complaints Officer**

- (1) An office of Law Complaints Officer is established.
- (2) The Board must appoint to the office of Law Complaints Officer an Australian legal practitioner with experience in the conduct of a legal practice.
- (3) The Law Complaints Officer may appear at any investigation, inquiry or hearing under Part 5 either in person or represented by an Australian legal practitioner.

**573. Delegation to Law Complaints Officer**

- (1) The Complaints Committee may, subject to this section, delegate any power or duty of the Complaints Committee under another provision of this Act to the Law Complaints Officer.
- (2) The Complaints Committee must not delegate its powers under section 426.
- (3) The delegation must be in writing executed by the Complaints Committee.
- (4) The delegation may expressly authorise the Law Complaints Officer to further delegate in writing the power or duty to a member of staff referred to in section 574.
- (5) A person to whom a power or duty is delegated as authorised under subsection (4) cannot delegate that power or duty.
- (6) A person exercising or performing a power or duty that has been delegated to the person under or as authorised under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) A person exercising or performing a power or duty that has been delegated to the person under or as authorised under this section must do so in accordance with —
  - (a) in the case of a delegation to the Law Complaints Officer — any directions given to the Law Complaints Officer by the Complaints Committee; or
  - (b) in the case of a delegation to a member of staff — any directions given to the member by the Law Complaints Officer.
- (8) Nothing in this section limits the ability of the Complaints Committee to perform a function through an officer or agent.

**574. Staff**

The Board may employ or engage staff for the purpose of assisting the Complaints Committee and the Law Complaints Officer in their functions.

## **Part 17 — Rules**

### **Division 1 — Admission rules**

#### **575. Admission rules**

- (1) The Board may make rules for the admission of persons to the legal profession under this Act.
- (2) Without limiting subsection (1), rules may be made about any of the following —
  - (a) the procedure for admission, including —
    - (i) how an application is to be made;
    - (ii) giving notice of the application to an entity or public notice of the application;
    - (iii) the affidavits or certificates the applicant must provide with or for the application;
  - (b) admission requirements regarding, and the approval of, academic qualifications and practical legal training;
  - (c) the examination of applicants for admission and the assessment of their qualifications;
  - (d) the disclosure of matters that may affect consideration of the eligibility of an applicant for admission, or affect consideration of the question of whether the applicant is a fit and proper person to be admitted, including convictions that must be disclosed and those that need not be disclosed;
  - (e) applications for admission under the trans-Tasman mutual recognition legislative scheme;
  - (f) the assessment of the qualifications and practical legal training of overseas qualified or trained applicants;
  - (g) the conferral of a right of objection to an applicant's admission;
  - (h) the procedure in the conduct of inquiries under Part 4;

- (i) fees and costs payable under the admission rules and the refund or remission of fees.
- (3) Without limiting subsection (1), the rules may provide for abridging, in specified circumstances, any period of practical legal training required by the rules.

### **Division 2 — Legal profession rules**

#### **576. Subject-matter of legal profession rules**

- (1) Legal profession rules may make provision for or with respect to any aspect of legal practice, including standards of conduct expected of Australian legal practitioners or Australian-registered foreign lawyers to whom the rules apply.
- (2) The power to make rules is not limited to matters for which this Act specifically authorises the making of legal profession rules.

#### **577. Rules for Australian legal practitioners**

The Board may make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners.

#### **578. Rules for Australian-registered foreign lawyers**

The Board may make rules about engaging in legal practice in this jurisdiction as an Australian-registered foreign lawyer.

#### **579. Rules for incorporated legal practices and multi-disciplinary partnerships**

- (1) The Board may make rules for or with respect to the following matters —
  - (a) the provision of legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, and in particular the provision of legal services by —
    - (i) officers or employees of incorporated legal practices; or

- (ii) partners or employees of multi-disciplinary partnerships;
  - (b) the provision of services that are not legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, but only if the provision of those services by —
    - (i) officers or employees of incorporated legal practices; or
    - (ii) partners or employees of multi-disciplinary partnerships,may give rise to a conflict of interest relating to the provision of legal services.
- (2) Without limiting subsection (1), rules may be made for or with respect to professional obligations relating to legal services provided by or in connection with incorporated legal practices or multi-disciplinary partnerships.
- (3) However, the rules made under this section cannot —
  - (a) regulate any services that an incorporated legal practice may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or
  - (b) regulate or prohibit the conduct of officers or employees of an incorporated legal practice (other than in connection with the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or
  - (c) regulate any services that a multi-disciplinary partnership or partners or employees of a multi-disciplinary partnership may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or

- (d) regulate or prohibit the conduct of partners or employees of a multi-disciplinary partnership (other than in connection with the provision of legal services or services that may give rise to a conflict of interest relating to the provision of legal services).
- (4) The regulations may make provision for or with respect to the making of legal profession rules under this section.

**580. Rules for Board, Law Library and Complaints Committee**

- (1) The Board may make rules for or with respect to the following matters —
  - (a) the election of Board members;
  - (b) the annual election of the chairperson and deputy chairperson of the Board;
  - (c) the meetings and proceedings of the Board;
  - (d) the control and use of the Law Library at the Supreme Court, the persons permitted to use the Library, and the removal of books from the Library;
  - (e) matters relevant to the functions of the Complaints Committee.
- (2) The Board may prescribe a scale of fees to be charged for or in respect of proceedings under this Act other than proceedings before the State Administrative Tribunal.

**Division 3 — General provisions**

**581. Binding nature of legal profession rules**

Legal profession rules are binding on Australian legal practitioners and locally registered foreign lawyers to whom they apply.

**582. Rules inconsistent with regulations**

Rules made under this Act do not have effect to the extent that they are inconsistent with regulations made under this Act.

**583. Rules are subsidiary legislation**

Rules made under this Act are subsidiary legislation as defined in the *Interpretation Act 1984*.



## **Part 18 — General provisions**

### **584. Liability of principals**

- (1) If a law practice contravenes any provision of this Act imposing an obligation on the practice, each principal of the practice is taken to have contravened the same provision, unless the principal establishes that —
  - (a) the practice contravened the provision without the knowledge actual, imputed or constructive of the principal; or
  - (b) the principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision; or
  - (c) the principal, if in that position, used all due diligence to prevent the contravention by the practice.
- (2) Subsection (1) does not affect the liability of the law practice for the contravention.
- (3) A contravention of a requirement imposed on a law practice by this Act is capable of constituting unsatisfactory professional conduct or professional misconduct by a principal of the practice.

### **585. Injunctions**

- (1) The Board may apply to the Supreme Court for an injunction under this section if a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute —
  - (a) a contravention of this Act; or
  - (b) attempting to contravene this Act; or
  - (c) aiding, abetting, counselling or procuring a person to contravene this Act; or

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- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
  - (f) conspiring with others to contravene this Act.
- (2) On an application under subsection (1), the Supreme Court may grant an injunction, on any terms the Court thinks appropriate, restraining the person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring the person to do any act or thing.
- (3) If an application has been made under subsection (1), the Supreme Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceeding, whether or not the Court is satisfied that subsection (1) applies.
- (4) If in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (5) The Supreme Court may vary or discharge an injunction granted under subsection (1) or (4).
- (6) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised —
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

- (7) The Supreme Court must not require the Board or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

**586. Disclosure of information by local regulatory authorities**

- (1) A local regulatory authority may disclose information to another local regulatory authority about any matter relating to or arising under this Act or a corresponding law.
- (2) A local regulatory authority may disclose information to an interstate regulatory authority about any matter relating to or arising under this Act or a corresponding law.
- (3) The regulations may authorise a local regulatory authority to disclose information to a person or body prescribed, or of a class prescribed, by the regulations relating to or arising under this Act or a corresponding law, subject to any conditions specified in the regulations.

**587. Confidentiality of personal information**

- (1) In this section —

***personal information*** means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about a natural person whose identity is apparent, or can be reasonably ascertained, from the information or opinion, but does not include information or an opinion of a kind prescribed by the regulations;

***relevant person*** means —

- (a) a local regulatory authority; or
- (b) a member or former member of a local regulatory authority; or
- (c) a person currently or previously employed by or acting at the direction of a local regulatory authority.

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- (2) A relevant person must not disclose to any other person, whether directly or indirectly, any personal information obtained by reason of being a relevant person.  
Penalty: a fine of \$5 000.
- (3) Subsection (2) does not apply to the disclosure of information —
- (a) to the extent the disclosure is reasonably required to perform functions under this Act or under any other Act; or
  - (b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Act or any other Act; or
  - (c) with the prior consent in writing of the person to whom the information relates; or
  - (d) to a court or tribunal in the course of legal proceedings; or
  - (e) pursuant to an order of a court or tribunal under any Act or law; or
  - (f) to the extent that the disclosure is reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter.
- (4) Subsection (2) extends to the disclosure of information that was disclosed under a corresponding law to a local regulatory authority or a relevant person.

**588. Professional privilege or duty of confidence does not affect validity or compliance with certain requirements**

- (1) This section applies to a requirement under —
- (a) section 227 to give written notice of an irregularity in connection with a trust account, a trust ledger account or trust money; or
  - (b) section 497 to give access to documents or information; or

- (c) section 519 to produce documents, provide information or otherwise assist in, or cooperate with, an investigation.
- (2) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on the ground of legal professional privilege or any other duty of confidence.

**589. Duty to report suspected offences**

- (1) This section applies if the Board or the Complaints Committee suspects on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any Act or law.
- (2) The Board or Complaints Committee must —
  - (a) report the suspected offence to the appropriate prosecuting authority; and
  - (b) make available to the authority the information and documents relevant to the suspected offence in its possession or under its control.
- (3) The obligation under subsection (2)(b) to make available the information and documents continues while the Board or Complaints Committee holds the relevant suspicion.
- (4) This section does not apply to —
  - (a) offences against this Act or the *Legal Practice Act 2003*; or
  - (b) offences specified, or of a class or description specified, by the regulations for the purposes of this section.

**590. Contempt of Supreme Court**

The imposition of a penalty for a contravention of a provision of this Act does not affect the power of the Supreme Court to punish a contempt of the Court.

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**591.     Protection from liability**

(1) In this section —

*protected person* means —

- (a) the Minister; or
- (b) the Board; or
- (c) a Board member; or
- (d) an employee of the Board; or
- (e) the Complaints Committee; or
- (f) a Complaints Committee member; or
- (g) the Law Complaints Officer; or
- (h) a person conducting a mediation under Part 13 Division 5; or
- (i) an investigator under Part 15 or an investigator's assistant under that Part; or
- (j) an external intervener (as defined in section 471); or
- (k) the Legal Costs Committee established under section 310; or
- (l) a member of the Legal Costs Committee established under section 310; or
- (m) the Trust; or
- (n) a trustee of the Trust; or
- (o) an employee of the Trust; or
- (p) the Law Society; or
- (q) an employee of the Law Society; or
- (r) the PII management committee referred to in section 331 or any member of that committee; or
- (s) any committee, or member of a committee, of the Board, the Trust or the Law Society.

(2) An action in tort does not lie against a protected person for anything that the protected person has done, in good faith, in the

performance or purported performance of a function under this Act.

- (3) The protection given by subsection (2) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.
- (5) A person who —
  - (a) performs any function in relation to an inquiry before the Board under this Act; or
  - (b) is otherwise concerned in an inquiry before the Board under this Act,

has, in respect of any such function or concern, the same protection and immunity as a member or an officer of the Supreme Court, or a witness or a party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

**592. Legal proceedings**

- (1) Any proceedings for an offence against this Act may be taken in the name of the Board by a person authorised in that behalf by the Board.
- (2) All proceedings for offences against this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.

**593. Evidentiary certificates**

- (1) A certificate issued by the Board, specifying that, on a date or during a period specified in the certificate —
  - (a) a person held or did not hold a local practising certificate; or

- (b) the local practising certificate of a person was subject to a specified condition,

is, in the absence of proof to the contrary, proof of the matters stated in it.

- (2) A certificate issued by an interstate regulatory authority specifying that, on a date or during a period specified in the certificate —

- (a) a person held or did not hold an interstate practising certificate; or
- (b) the interstate practising certificate of a person was subject to a specified condition,

is, in the absence of proof to the contrary, proof of the matters stated in it.

- (3) A certificate issued by the Board, specifying that, on a date or during a period specified in the certificate —

- (a) a person was or was not registered as a locally registered foreign lawyer; or
- (b) a specified locally registered foreign lawyer was subject to a specified condition,

is, in the absence of proof to the contrary, proof of the matters stated in it.

- (4) A certificate issued by a foreign registration authority, as defined in section 150, specifying that, on a date specified in the certificate, specified foreign regulatory action was taken in relation to a person is, in the absence of proof to the contrary, proof of the matters stated in it.

- (5) A certificate issued by the Board, specifying that a matter specified in the certificate is, or was at any time specified in the certificate on the register is, in the absence of proof to the contrary, proof that the matter is, or was at the specified time, on that register.



- (6) A certificate issued by the Board, specifying that, on a date or during a period specified in the certificate a person specified in the certificate was the holder of an office as —
- (a) a Board member; or
  - (b) a Complaints Committee member; or
  - (c) the secretary to the Board; or
  - (d) the Law Complaints Officer,

is, in the absence of proof to the contrary, proof of the matters stated in it.

- (7) A document signed by —
- (a) the Law Complaints Officer; or
  - (b) the chairperson of, or any 2 members present at, a meeting of, the Complaints Committee,

and purporting to be a record or copy of a finding, order or report of the Complaints Committee, or to set out the nature of the power exercised and the manner in which it was exercised, is, in the absence of proof to the contrary, proof of the matters stated in it.

- (8) A document purporting to be a copy of the admission rules or legal profession rules and certified as such by the Board is, in the absence of proof to the contrary, proof of the due making, existence and content of the rules.

**594. Approved forms**

An authority having a power or function under this Act may approve application forms for use in connection with that power or function.

**595. Laying documents before House of Parliament that is not sitting**

- (1) If section 389(2), 551(4) or 571(4) requires the Attorney General to cause the text of a document to be laid before each

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House of Parliament, or dealt with under this section, within a period and —

- (a) at the commencement of the period, a House of Parliament is not sitting; and
- (b) the Attorney General is of the opinion that the House will not sit during that period,

the Attorney General must transmit a copy of the document to the Clerk of that House.

- (2) A copy of the document transmitted to the Clerk of a House under subsection (1) is taken to have been laid before the House.
- (3) The laying of a copy of the report before a House that is taken to have occurred under subsection (2) is to be reported to the House by the Clerk, and recorded in the Votes and Proceedings or Minutes of Proceedings, on the first sitting day of the House after the Clerk received the copy.

**596. Regulations**

- (1) The Governor may make regulations for or with respect to any matter or thing that is required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations —
  - (a) providing for fees; and
  - (b) imposing a penalty for a contravention of a regulation, not exceeding a fine of \$5 000.
- (3) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to matters for or with respect to which admission rules or legal profession rules have been or may be made.

- (4) A regulation may provide that an application may be made to the State Administrative Tribunal for a review of a specified decision or class of decisions made by a specified person or body in the exercise of functions conferred or imposed under the regulations.

**597. Review of Act**

- (1) The Attorney General must review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review must be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 5 years from the date of assent to this Act.

## **Part 19 — Repeal, savings, transitional and other provisions**

### **Division 1 — Repeals**

**598. *Legal Practice Act 2003* repealed**

The *Legal Practice Act 2003* is repealed.

**599. *Legal Contribution Trust Act 1967* repealed**

The *Legal Contribution Trust Act 1967* is repealed.

**600. *Interpretation Act 1984* not affected**

Except where the contrary intention appears, this Part does not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to a repeal effected by section 598 or 599.

### **Division 2 — Savings and transitional provisions relating to repeal of *Legal Practice Act 2003***

**601. Terms used**

In this Division —

*1893 Act* means the *Legal Practitioners Act 1893*;

*2003 Act* means the *Legal Practice Act 2003*;

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

**602. Articles and other practical legal training**

The admission rules may include transitional provisions in relation to practical legal training being undertaken on the commencement day.

**603. Admission**

- (1) On the commencement day, a person admitted to legal practice in this jurisdiction becomes a local lawyer as if the person had been admitted to the legal profession under this Act.
- (2) Despite anything to the contrary in subsection (1), the day of admission of a person referred to in that subsection is the day the person was admitted to legal practice in this jurisdiction.

**604. Existing applications for admission**

- (1) This section applies to an application for admission as a legal practitioner made by an applicant before the commencement day that has not been heard by the Supreme Court before the commencement day (an *existing application*).
- (2) The applicant may be admitted as a lawyer under this 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 this Act are taken to have been satisfied in relation to the applicant.
- (3) Without limiting subsection (2), a certificate referred to in section 28(1)(c) of the 2003 Act and issued by the Board before the commencement day is taken to be a compliance certificate for the purposes of this Act.

**605. Roll**

The Roll of Practitioners kept under section 31 of the 2003 Act immediately before the commencement day continues as the local roll under this Act.

**606. Practising certificates**

- (1) A practice certificate in force under the 2003 Act immediately before the commencement day is taken, on and after that day, to be a local practising certificate issued under this Act and may be renewed, suspended, cancelled or amended accordingly.

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- (2) If a person has applied under the 2003 Act for the grant or renewal of a practice certificate and the application has not been determined before the commencement day —
  - (a) the application is to be determined as if it were an application under this Act for the grant or renewal of a local practising certificate; and
  - (b) the practice certificate already held by the applicant remains in force as if it were a local practising certificate issued under this Act until a new certificate is issued or the application is refused.
- (3) Any conditions or restrictions attaching to a practice certificate issued under the 2003 Act continue to attach to the certificate on and after the commencement day.
- (4) Within 28 days after the commencement day, a person referred to in subsection (2) must give the Board a written statement —
  - (a) about any show cause event in relation to the person that happened after the person was first admitted as a legal practitioner, barrister, barrister and solicitor, or solicitor, under an Act of this or another jurisdiction; and
  - (b) explaining why, despite the event, the applicant is a suitable person to hold, or continue to hold, a local practising certificate.
- (5) Subsection (4) applies whether or not the person has been granted a practising certificate, the person's practising certificate has been renewed, or the Board is continuing to deal with the person's application.
- (6) A contravention of subsection (4) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (7) Section 37(3) does not apply in relation to an interstate practising certificate granted or renewed before the commencement day.

- (8) Subsection (7) has effect only in relation to the period commencing on the commencement day and ending 6 months after that day.

**607. Actions before commencement day that continue to have effect**

- (1) This section applies to an action taken, however described, by —
- (a) the Board, in relation to a person or the person's practice certificate before the commencement day, other than an action dealt with in another section of this Part; or
  - (b) the Complaints Committee or the Law Complaints Officer in relation to a person whether the action is taken before or after the commencement day.
- (2) The action, and any rights or entitlements the person has in relation to that action, continue to have effect under this Act subject to —
- (a) any conditions stated in a document by which the action was taken in relation to the person, or in a notice given to the person about the action; and
  - (b) this Act.
- (3) To the extent of any inconsistency among provisions applying to the action, this Act prevails.
- (4) In subsections (2) and (3) —
- (a) if the action, right or entitlement involves an appeal to the Supreme Court or a proceeding before the Court started before the commencement day — without limiting the power of the Supreme Court, the Court may direct how that action, right, entitlement or proceeding should be continued; or
  - (b) if the action, right or entitlement involves an application for review to the State Administrative Tribunal or a proceeding before the Tribunal started before the

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commencement day — without limiting the power of the State Administrative Tribunal, the Tribunal may direct how that action, right, entitlement or proceeding should be continued; or

- (c) otherwise — a regulation made under section 637 may provide for the way the action, right or entitlement is to continue under this Act.

**608. Restricted legal practice**

- (1) A legal practitioner who immediately before the commencement day was entitled to practise on his or her own account under the 2003 Act is taken to have the required experience for the purposes of section 50.
- (2) A legal practitioner who —
  - (a) before the commencement day commenced a term as an employed legal practitioner in accordance with section 33(1) or (2) of the 2003 Act; and
  - (b) completes the term specified in section 33(1) of the 2003 Act, or the term specified by the Board under section 33(2) of the 2003 Act, on or after the commencement day,is taken to have the required experience for the purposes of section 50.
- (3) A legal practitioner who has not commenced a term as an employed legal practitioner in accordance with section 33(1) or (2) of the 2003 Act before the commencement day must comply with section 50, irrespective of whether or not the legal practitioner was granted a practising certificate before the commencement day.

**609. Foreign lawyers**

- (1) Registration as a foreign lawyer under the 2003 Act and in force immediately before the commencement day, or expressed to



take effect on or after the commencement day, is taken to be registration as a locally registered foreign lawyer under this Act.

- (2) Notice seeking registration as a foreign lawyer under the 2003 Act that was pending immediately before the commencement day is taken to be an application for registration as a locally registered foreign lawyer under this Act.

**610. Incorporated legal practices**

- (1) An incorporated legal practice that was, immediately before the commencement day, an incorporated legal practice under the 2003 Act is taken to have complied with section 102.
- (2) An order made under section 69 of the 2003 Act in force immediately before the commencement day continues in force on and after that day according to its terms as if it were an order under section 119.
- (3) An order made under section 70 of the 2003 Act in force immediately before the commencement day continues in force on and after that day according to its terms as if it were an order under section 120.

**611. Orders in relation to multi-disciplinary partnerships**

An order made under section 87 of the 2003 Act in force immediately before the commencement day continues in force on and after that day according to its terms as if it were an order under section 145.

**612. Approvals under section 133 of 2003 Act**

An approval given under section 133 of the 2003 Act in force immediately before the commencement day continues in force on and after that day as if it were an approval given under section 15(3).

**613. Authority to receive trust money**

Subject to any conditions or restrictions attaching to the local practising certificate, a local practising certificate referred to in section 606(1) is taken, on and after the commencement day, to authorise the holder to receive trust money.

**614. Deficiencies in trust accounts**

Sections 226 and 227 apply to a deficiency in a trust account or a failure to pay or deliver trust money whether the deficiency or failure to pay or deliver relates to money received before, on or after the commencement day.

**615. Investigations**

An investigation may be undertaken under Part 9 Division 3 in relation to a trust account or trust money received by a law practice whether that account was established, or that money was received, before, on or after the commencement day.

**616. Client information and legal costs**

- (1) Subject to subsection (2), Part 10 applies to a matter if the client first instructs the law practice on or after the commencement day and Part 13 of the 2003 Act continues to apply to a matter if the client first instructed the law practice in the matter before the commencement day.
- (2) Part 10 does not apply in respect of a law practice that is retained by another law practice on behalf of a client on or after the commencement day in relation to a matter in which the other law practice was retained by the client before the commencement day and in that case Part 13 of the 2003 Act continues to apply.
- (3) If—
  - (a) a bill of costs was lodged for taxation with a taxing officer under Part 13 Division 3 of the 2003 Act before the commencement day; and

- (b) the taxation was not commenced or completed before that day,

the application may be dealt with under that Part as if that Part had not been repealed.

**617. Legal costs determinations and Legal Costs Committee**

- (1) A legal costs determination made under the 2003 Act that was in force immediately before the commencement day —
  - (a) continues in force on and after that day as if it were a legal costs determination made under this Act; and
  - (b) is to be reviewed under section 276 in the period of 2 years after it was last reviewed under the 2003 Act.
- (2) A person who was a Legal Costs Committee member under the 2003 Act immediately before the commencement day continues on and after that day to be a Legal Costs Committee member under this Act.

**618. Legal Practice Board continued**

The Legal Practice Board established under this Act is the same legal entity as, and a continuation of, the Legal Practice Board established under the 2003 Act, and the rights and liabilities of or in relation to the Board established under the 2003 Act continue as rights and liabilities of the Board established under this Act.

**619. Membership of Board**

- (1) Subject to subsection (2), a person who was a Legal Practice Board member under the 2003 Act immediately before the commencement day continues on and after that day to be a Legal Practice Board member under this Act.
- (2) A Queen's Counsel or Senior Counsel who has not nominated himself or herself under section 536(1)(c) as a Board member within the period of 6 months after commencement day ceases to be a Board member at the end of that period.

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**620. Complaints Committee continued**

- (1) The Legal Profession Complaints Committee established under this Act is the same entity as, and a continuation of, the Legal Practitioners Complaints Committee established under the 2003 Act.
- (2) A person who was a Legal Practitioners Complaints Committee member under the 2003 Act immediately before the commencement day continues on and after that day to be a Legal Profession Complaints Committee member under this Act.

**621. Complaints and investigations under Act of prior conduct**

- (1) A complaint made to the Complaints Committee under Part IV of the 1893 Act or Part 13 of the 2003 Act or an inquiry commenced under either of those Parts before the commencement day that has not been finally dealt with before that day may be dealt with under this Act.
- (2) Subject to a regulation under section 637, the Complaints Committee or the State Administrative Tribunal, as the case requires, may change the way the complaint or inquiry is dealt with under this Act in order to prevent duplication or unreasonable delay.
- (3) A complaint may be made under Part 13 on or after the commencement day in relation to conduct of a law practice or an Australian legal practitioner occurring before that day, so long as a complaint has not been made under Part IV of the 1893 Act or Part 12 of the 2003 Act in relation to the same conduct.
- (4) An investigation may be commenced under Part 13 on or after the commencement day in relation to conduct of an Australian legal practitioner occurring before that day, so long as the same conduct had not been the subject of an inquiry before that day under Part IV of the 1893 Act or Part 12 of the 2003 Act.

**622. Discipline**

- (1) Part 13 applies in relation to conduct of Australian lawyers, former Australian lawyers, Australian legal practitioners and former Australian legal practitioners whether the conduct occurred before or after the commencement day.
- (2) Part 13 applies to conduct consisting of a contravention of the 1893 Act or the 2003 Act or the rules in force under those Acts before the commencement of this section as if the conduct consisted of a contravention of this Act or the legal profession rules.

**623. Examiners**

If a person was appointed as an examiner under section 142 of the 2003 Act, and the appointment had not ended before the commencement day, that person may continue to act as an examiner under that appointment and, for that purpose, sections 142 to 145 of the 2003 Act continue to apply to and in relation to the examiner.

**624. Orders under section 149 of 2003 Act**

- (1) An order made under section 149 of the 2003 Act in force immediately before the commencement day —
  - (a) continues in force on and after that day according to its terms; and
  - (b) may be varied or revoked by the State Administrative Tribunal.
- (2) Section 149(4) of the 2003 Act continues to apply in relation to an order made under that section.

**625. Orders under section 150 of 2003 Act**

- (1) An order made under section 150 of the 2003 Act in force immediately before the commencement day —
  - (a) continues in force on and after that day according to its terms; and

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(b) may be varied or revoked by the State Administrative Tribunal.

(2) Section 150(2) of the 2003 Act continues to apply in relation to an order made under that section.

**626. Appointments and authorisations under section 151 of 2003 Act**

If a person was appointed as a supervising solicitor of a practice under section 151 of the 2003 Act, and the appointment had not ended before the commencement day —

- (a) the person is taken to have been appointed as a manager for the law practice; and
- (b) any authorisation given by the Board under that section continues to apply until revoked or varied by the Board.

**627. Appointments under section 154 of 2003 Act**

A person appointed to conduct an inquiry under section 154 of the 2003 Act who has not yet reported to the Board on that inquiry may continue the inquiry and report to the Board under that section.

**628. Appointments and orders under section 156 of 2003 Act**

If a person was appointed as a supervising solicitor of a practice under an authorisation under section 156 of the 2003 Act, and the appointment had not ended before the commencement day —

- (a) the person is taken to have been appointed under this Act as a manager for the law practice; and
- (b) any order given by the State Administrative Tribunal under section 156 of the 2003 Act continues to apply until revoked or varied by the State Administrative Tribunal.

**629. Board may give directions**

- (1) For the purposes of sections 623 to 628, the Board may give written directions to a person about how the person may proceed under this Act.
- (2) Subsection (1) does not prevent a person from making an application under section 509, including in relation to a direction given under subsection (1).

**630. References to 1893 and 2003 Acts and related matters**

- (1) In an Act or document, a reference to the *Legal Practice Act 2003* or the *Legal Practitioners Act 1893* may, if the context permits, be taken to be a reference to this Act.
- (2) A reference in an Act to any of the following may, if the context permits, be read as a reference to an Australian lawyer —
  - (a) legal practitioner;
  - (b) solicitor;
  - (c) solicitor and barrister;
  - (d) barrister;
  - (e) counsel;
  - (f) lawyer.
- (3) However, if, under that reference, a person is entitled to engage in legal practice in this jurisdiction, the reference is to be read subject to sections 12 and 13 of this Act.
- (4) Subsection (3) does not affect the appointment of a person before the commencement of this subsection if the appointment was valid when made.

**Division 3 — Savings and transitional provisions relating to repeal of *Legal Contribution Trust Act 1967***

**631. Terms used**

In this Division —

*commencement day* means the day on which section 599 comes into operation.

*LCT Act* means the *Legal Contribution Trust Act 1967*.

**632. Legal Contribution Trust continued**

The Legal Contribution Trust established under this Act is the same legal entity as, and a continuation of, the Legal Contribution Trust established under the LCT Act, and the rights and liabilities of or in relation to the Trust established under the LCT Act continue as rights and liabilities of the Trust established under this Act.

**633. Solicitors' Guarantee Fund**

The Solicitors' Guarantee Fund established under this Act is a continuation of the Solicitors' Guarantee Fund established under the LCT Act.

**634. Contributions**

In calculating the contributions paid to the Guarantee Fund by a local legal practitioner or an interstate legal practitioner under this Act, account must be taken of any contribution paid by the practitioner under section 93 or 146 of the *Legal Practice Act 2003* or under any previous enactment corresponding to either of those sections.

**635. Claims for acts happening before the commencement day**

- (1) If a person made a claim against the Guarantee Fund as it existed before the commencement day in relation to an act before the commencement day, the claim is to be dealt with



under the LCT Act as in force immediately before the commencement day and the law governing the liability of the Guarantee Fund, and the amount of the reimbursement, is the law as in force immediately before the commencement day.

- (2) If a person did not make a claim against the Guarantee Fund as it existed before the commencement day in relation to an act before the commencement day, the claim may be made under Part 12 Division 3 but the liability of the Guarantee Fund, and the amount of the reimbursement, is governed by the LCT Act as in force immediately before the commencement day.

**636. References to *Legal Contribution Trust Act 1967***

In an Act or document, a reference to the *Legal Contribution Trust Act 1967* may, if the context permits, be taken to be a reference to this Act.

**Division 4 — Transitional regulations**

**637. Transitional regulations**

- (1) If this Act does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of —
- (a) the repeal of the *Legal Practice Act 2003* or the *Legal Contribution Trust Act 1967* and the enactment of this Act; or
  - (b) the amendments effected by this Act,

the Governor may make regulations (*transitional regulations*) prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.

- (2) If the transitional regulations provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.

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- (3) If the regulations contain a provision referred to in subsection (2), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; and
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

*[Part 20 (s. 638-714) omitted under the Reprints Act 1984 s. 7(4)(e).]*

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**Notes**

<sup>1</sup> This is a compilation of the *Legal Profession Act 2008* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

Short title	Number and year	Assent	Commencement
<i>Legal Profession Act 2008</i>	21 of 2008	27 May 2008	Pt. 1: 27 May 2008 (see s. 2(a)); Act other than Pt. 1: 1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Electronic Transactions Act 2011</i> s. 25	46 of 2011	25 Oct 2011	1 Aug 2012 (see s. 2(c) and <i>Gazette</i> 31 Jul 2012 p. 3683)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 27	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
<i>Business Names (Commonwealth Powers) Act 2012</i> Pt. 4 Div. 3	6 of 2012	10 Apr 2012	28 May 2012 (see s. 2(c) and <i>Cwlth Gazette</i> 19 Apr 2012 ref. F2012L00891)
<b>Reprint 1: The <i>Legal Profession Act 2008</i> as at 13 Dec 2013</b> (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2014</i> s. 15	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and <i>Gazette</i> 5 Sep 2014 p. 3213)

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

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