

Queensland



# **LEGAL PROFESSION ACT 2003**

**Act No. 97 of 2003**



Queensland



**LEGAL PROFESSION ACT 2003**

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Queensland



## **Legal Profession Act 2003**

**Act No. 97 of 2003**

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**An Act to provide for admission to, and the regulation of, the legal profession, and for other purposes**

*[Assented to 3 December 2003]*

The Parliament of Queensland enacts—

## CHAPTER 1—INTRODUCTION

### PART 1—PRELIMINARY

#### 1 Short title

This Act may be cited as the *Legal Profession Act 2003*.

#### 2 Commencement

(1) Section 380 and schedule 1, to the extent it amends the *Coroners Act 2003* and the *Cremations Act 2003*, commence or are taken to have commenced on 30 November 2003.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

#### 3 Main purposes of this Act

The main purposes of this Act are as follows—

- (a) to promote the administration of justice;
- (b) to provide for the protection of consumers of legal services and the public generally;
- (c) to regulate legal practice in this jurisdiction;
- (d) to facilitate the regulation of legal practice on a national basis.



## PART 2—INTERPRETATION

### *Division 1—Dictionary*

#### 4 Definitions

The dictionary in schedule 5 defines particular words used in this Act.

### *Division 2—Meaning of particular terms involving a legal title and related matters*

#### 5 Meaning of terms involving “lawyer”

(1) An “**Australian lawyer**” is an individual who is admitted as a legal practitioner under this Act or a corresponding law.

(2) A “**local lawyer**” is an individual who is admitted as a legal practitioner under this Act, whether or not the individual is also admitted under a corresponding law.

(3) Each of the following is admitted as a legal practitioner under this Act—

- (a) an individual whose name, immediately before the commencement of this section, appeared on the roll of barristers as kept by the Supreme Court before the commencement;
- (b) an individual whose name, immediately before the commencement of this section, appeared on the roll of solicitors as kept by the Supreme Court before the commencement.

(4) An “**interstate lawyer**” is an individual who is admitted as a legal practitioner under a corresponding law, but not under this Act.

(5) A reference to a person who is admitted as a legal practitioner includes a reference to a person who is admitted in another jurisdiction as a barrister and solicitor.

#### 6 Meaning of terms involving “legal practitioner”

(1) An “**Australian legal practitioner**” is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate.

(2) A **“local legal practitioner”** is an Australian lawyer who holds a current local practising certificate.

(3) An **“interstate legal practitioner”** is an Australian lawyer who holds a current interstate practising certificate, but does not hold a local practising certificate.

## **7 Meaning of “barrister”**

A **“barrister”** is—

- (a) a local legal practitioner who holds a current local practising certificate to practise as a barrister granted or renewed by the bar association; or
- (b) an interstate legal practitioner who holds an interstate practising certificate that entitles the certificate holder to practise only as a barrister or in the manner of a barrister.

## **8 Meaning of “solicitor”**

A **“solicitor”** is—

- (a) a local legal practitioner who holds a current local practising certificate to practise as a solicitor granted or renewed by the law society; or
- (b) an interstate legal practitioner who holds an interstate practising certificate that is not subject to a condition that allows the legal practitioner to practise only as a barrister or in the manner of a barrister.

## **9 Meaning of “government legal officer” and related matters**

(1) A **“government legal officer”** is an individual whose employment or appointment in any of the following includes or may include engaging in legal practice—

- (a) a department of this jurisdiction, the commission or an agency prescribed under a regulation for this paragraph;
- (b) a department of government of the Commonwealth;
- (c) a department of government of another jurisdiction;

- (d) an agency of another jurisdiction if, under a corresponding law of that jurisdiction, an individual engaging in legal practice for the agency is exempted from holding a practising certificate or otherwise does not require a practising certificate.

(2) A government legal officer is **“engaged in government work”** when the government legal officer is engaged in legal practice for the purposes of the entity in relation to which the individual is an employee or appointee.

(3) However, for an agency prescribed for subsection (1)(a), a regulation may specify activities that are, or are not, government work.

(4) If a provision under a relevant law does not apply to a government legal officer engaged in government work, the provision applies to the individual who is the government legal officer if the individual is engaging in legal practice other than being engaged in government work.

(5) If a government legal officer holds a practising certificate from the bar association, a condition of the barrister’s practising certificate about only practising as a barrister does not apply to the government legal officer to the extent that the government legal officer practises as a solicitor as part of engaging in government work.

(6) The provisions of a relevant law about the fidelity fund do not apply to a government legal officer in his or her capacity as a government legal officer engaged in government work even if the government legal officer is the holder of a practising certificate.

(7) For an individual whose employment or appointment in a department of government of the Commonwealth includes or may include engaging in legal practice as mentioned in subsection (1)(b), this Act is subject to the *Judiciary Act 1903* (Cwlth).

### *Division 3—Meaning of other terms for this Act*

## **10 Meaning of “suitability matter”**

(1) Each of the following is a **“suitability matter”** in relation to an individual—

- (a) whether the individual is currently of good fame and character;
- (b) whether the individual is or has been an insolvent under administration;

- (c) whether the individual 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 individual's age when the offence was committed;
- (d) whether the individual engaged in legal practice in Australia—
  - (i) when not admitted, or not holding a practising certificate, as required under a relevant law or a corresponding law; or
  - (ii) if admitted, in contravention of a condition on which admission was granted; or
  - (iii) while the individual's practising certificate is or was suspended or in contravention of a condition applicable to the certificate;
- (e) whether the individual 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 individual is currently subject to an unresolved complaint, investigation, charge or order under any of the following—
  - (i) a relevant law as in force at any time before or after the commencement of this section;
  - (ii) a corresponding law or a foreign law about persons engaging in legal practice;
- (g) whether the individual—
  - (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 the other profession or occupation that involved a finding of guilt;
- (h) whether the individual's name has been removed from—
  - (i) the roll of barristers or the roll of solicitors, but has not been restored to the roll of barristers or the roll of solicitors; or

- (ii) the roll of barristers or the roll of solicitors, but has not been relocated to the roll of solicitors or the roll of barristers; or
- (iii) an interstate roll, but has not been restored; or
- (iv) a foreign roll;
- (i) whether the individual's right to engage in legal practice has been cancelled or suspended in Australia or a foreign country;
- (j) whether the individual has contravened, in Australia or a foreign country, a law about trust money or trust accounts;
- (k) whether, under a relevant law, 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 individual;
- (l) whether the individual is or has been subject to an order under a relevant law, a law of the Commonwealth or a corresponding law, disqualifying the applicant from being employed by, or a partner of, an Australian lawyer or from managing a corporation that is an incorporated legal practice;
- (m) whether the individual currently has a material physical or mental infirmity.

(2) A matter is a suitability matter even if it happened before the commencement of this section.

## **11 Meaning of “serious offence”**

A “**serious offence**” is an offence whether committed in or outside this jurisdiction that is—

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

## 12 Meaning of “conviction” and “quashing a conviction”

(1) A “**conviction**”, for an offence, includes either of the following whether or not a conviction is recorded on sentence—

- (a) a finding of guilt;
- (b) the acceptance of a guilty plea.

(2) Without limiting subsection (1), “**quashing a conviction**”, for an offence—

- (a) includes quashing—
  - (i) a finding of guilt for the offence; or
  - (ii) the acceptance of a guilty plea for the offence; and
- (b) does not include quashing a conviction if—
  - (i) a finding of guilt in relation to the offence remains unaffected; or
  - (ii) the acceptance of a guilty plea in relation to the offence remains unaffected.

(3) A conviction includes a conviction before the commencement of this section.

*Note—*

See also *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 9A, table, items 24 and 25.

## 13 Meaning of “information notice”

(1) An “**information notice**” is a written notice to a person about a decision relating to the person stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) whether or not the person may appeal under this Act against the decision to a stated court or entity; and
- (d) if the person may appeal under this Act, the date by which the appeal must be started.

(2) A provision under this Act may provide that an information notice for the purposes of the provision must include other stated information.

(3) If a person may appeal within a number of days after the date an information notice is given to the person, a defect in the notice does not affect the person's right to appeal in relation to the matters dealt with in the information notice.

#### *Division 4—Other matters relating to interpretation*

### **14 Notes in text**

A note in the text of this Act is part of this Act.

### **15 Timing for doing things**

(1) If no time is provided or allowed for doing something under this Act, the thing is to be done as soon as practicable, and as often as the relevant occasion happens.

(2) If a provision of this Act provides that a person has a stated number of days to appeal to the Supreme Court or the tribunal (the “**appeal period**”), the court or tribunal may allow a person who may appeal within the appeal period to appeal after that appeal period if the court or tribunal considers it appropriate having regard to the extent and reasons for the delay.

### **16 Grounds that are reasonable in the circumstances**

(1) If a person is required, under this Act, to be satisfied or not satisfied of, or have a belief or suspicion about, a particular matter before the person may do or refrain from doing an act, or make a decision, the person must be satisfied or not satisfied or have the belief or suspicion on grounds that are reasonable in the circumstances.

(2) If, under this Act, a person who is satisfied or not satisfied of, or has a belief or suspicion about, a particular matter is required to do or refrain from doing an act, or make a decision, the person must be satisfied or not satisfied, or have the belief or suspicion, on grounds that are reasonable in the circumstances.

(3) If an entity is required under this Act to consider that a particular matter is appropriate, including, for example, the following entities, before the entity may do or refrain from doing an act or make a decision, the entity must not do or refrain from doing the act, or make the decision, unless the

entity considers the particular matter is appropriate on grounds that are reasonable in the circumstances—

- (a) a disciplinary body;
- (b) the board;
- (c) the commissioner;
- (d) a regulatory authority;
- (e) an investigator.

## **CHAPTER 2—ENGAGING IN LEGAL PRACTICE**

### **PART 1—PRELIMINARY**

#### **17 Simplified outline of ch 2**

Generally, this chapter seeks to achieve the main purposes of this Act by providing that—

- (a) legal practice is engaged in only by individuals who are properly qualified and hold a current practising certificate; and
- (b) only individuals who are eligible and suitable for admission are admitted by the Supreme Court as legal practitioners in this jurisdiction; and
- (c) an Australian lawyer may obtain a local practising certificate from the law society or bar association and become a local legal practitioner; and
- (d) corporations may engage in legal practice as incorporated legal practices while they have a lawyer director; and
- (e) accounts are to be kept by solicitors and interest payable on those accounts is to be treated in a particular way; and
- (f) rules about engaging in legal practice are to be made by the Governor in Council after a process involving the law society or bar association; and



- (g) the regulation of legal practice on a national basis is promoted by providing for inter-jurisdictional provisions regarding admission and practising certificates.

## **PART 2—RESERVATION OF LEGAL WORK AND RELATED MATTERS**

### **18 Main purpose of ch 2, pt 2**

The main purpose of this part is to ensure legal practice is engaged in only by individuals who are properly qualified and hold a current practising certificate.

### **19 Part does not generally apply to a government legal officer**

This part does not apply to a government legal officer engaged in government work.

### **20 Prohibition on engaging in legal practice when not entitled**

(1) An individual must not engage in legal practice in this jurisdiction unless the individual is an Australian legal practitioner.

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) Subsection (1)—

- (a) is subject to a relevant law, or a law of the Commonwealth that authorises a person to engage in legal practice; and
- (b) does not apply to preparing or assisting in the preparation of the following—
  - (i) a will if prepared in the course of the individual's employment with a trustee company;
  - (ii) a contract if prepared by a real estate agent for another person.

(3) An individual is not entitled to recover any amount for anything the individual did in contravention of subsection (1).

(4) A person may recover from an individual, as a debt due to the person, any amount the person paid to the individual for anything the individual did in contravention of subsection (1).

(5) This section is subject to chapter 2, part 4, division 8.<sup>1</sup>

(6) In this section—

“**real estate agent**” see the *Property Agents and Motor Dealers Act 2000*, schedule 2.

“**trustee company**” see the *Trustee Companies Act 1968*, section 4.

## **21 Prohibition on representing or advertising entitlement to engage in legal practice when not entitled**

(1) An individual must not, without a reasonable excuse, represent or advertise that the individual is entitled to engage in legal practice unless the individual is an Australian legal practitioner.

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) This section does not apply to a representation or advertisement about being entitled to engage in legal practice of a kind mentioned in section 20(2)(b).<sup>2</sup>

(3) A reference in this section to an individual representing or advertising that the individual is entitled to engage in legal practice includes the individual doing anything that states or implies that the individual is entitled to engage in legal practice.

(4) This section is subject to chapter 2, part 4, division 8.<sup>3</sup>

## **22 Professional discipline**

(1) A contravention of section 20 or 21 by an Australian lawyer who is not an Australian legal practitioner is capable of constituting unsatisfactory professional conduct or professional misconduct.

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1 Chapter 2 (Engaging in legal practice), part 4 (Legal practice by Australian legal practitioners), division 8 (Interstate legal practitioners)

2 Section 20 (Prohibition on engaging in legal practice when not entitled)

3 Chapter 2 (Engaging in legal practice), part 4 (Legal practice by Australian legal practitioners), division 8 (Interstate legal practitioners)

(2) This part does not affect any liability that a individual who is an Australian lawyer but not an Australian legal practitioner may have under chapter 3.<sup>4</sup>

(3) An individual may be punished for an offence under section 20 or 21 as well as being dealt with under chapter 3 in relation to the same matters.

## PART 3—ADMISSION OF LEGAL PRACTITIONERS

### *Division 1—Preliminary*

#### **23 Main purpose of ch 2, pt 3**

The main purpose of this part is to provide for individuals who are eligible and suitable for admission to be admitted by the Supreme Court as legal practitioners in this jurisdiction.

#### **24 Definitions for ch 2, pt 3**

In this part—

**“admission rules”** means the rules for the admission of legal practitioners and associated matters under the *Supreme Court of Queensland Act 1991*, section 118.<sup>5</sup>

**“applicant for admission”** means an individual who has applied for admission as a legal practitioner.

**“Supreme Court”**, in relation to an exercise of power of the court, means—

- (a) if the admission rules provide that the power may be exercised by a single Supreme Court judge—a single Supreme Court judge; or
- (b) otherwise—the Court of Appeal.

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4 Chapter 3 (Complaints, investigation matters and discipline)

5 *Supreme Court of Queensland Act 1991*, section 118 (Rule-making power)

**Division 2—Eligibility and suitability for admission as legal practitioners****25 Eligibility for admission**

(1) An individual is eligible for admission as a legal practitioner only if the individual—

- (a) is 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.

(2) In this section—

**“approved academic qualifications”** means academic qualifications that are approved under the admission rules.

**“approved practical legal training requirements”** means legal training requirements that are approved under the admission rules.

**“corresponding academic qualifications”** means academic qualifications that would qualify the individual for admission as a legal practitioner 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 individual for admission as a legal practitioner 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.

*Note—*

The board is the Legal Practitioners Admissions Board established under section 304.<sup>6</sup>

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6 Section 304 (Establishment of board)

## **26 Suitability for admission**

(1) An individual is suitable for admission as a legal practitioner only if the individual is a fit and proper person to be admitted as a legal practitioner.

(2) In deciding if the individual is a fit and proper person to be admitted as a legal practitioner, the Supreme Court must consider—

- (a) each of the suitability matters in relation to the individual to the extent a suitability matter is appropriate; and
- (b) any other matter it considers relevant.

(3) However, the Supreme Court may consider an individual suitable for admission despite a suitability matter because of the circumstances relating to the matter.

### *Division 3—Application for admission*

## **27 Main purposes of ch 2, pt 3, div 3**

The main purposes of this division are—

- (a) to allow an individual who considers himself or herself eligible for admission and suitable for admission to apply to the Supreme Court for admission as a legal practitioner; and
- (b) to provide for the board's role in relation to an application for admission.

## **28 Application for admission**

(1) An individual may apply (an “**application for admission**”) to the Supreme Court to be admitted under this Act as a legal practitioner.

(2) The application must be made in the approved form and under the admission rules.

## **29 Role of the board relating to application for admission**

(1) The board's role is to help the Supreme Court by making a recommendation about each application for admission.

(2) The board must consider each application and, in particular, whether or not—

- (a) the application is made under the admission rules; and
- (b) the applicant is eligible for admission; and
- (c) the applicant is suitable for admission, including having regard to all suitability matters in relation to the applicant to the extent appropriate; and
- (d) there are other matters the Supreme Court may consider relevant.

(3) As part of considering the application, the board may, by notice to the applicant, require—

- (a) the applicant to give it stated documents or information; or
- (b) the applicant to cooperate with any inquiries by the board that it considers appropriate.

(4) An applicant's failure to comply with a notice under subsection (3) by the date stated in the notice and in the way required by the notice is a ground for recommending to the Supreme Court that the applicant not be admitted.

(5) The board makes a recommendation to the Supreme Court about the application by giving the recommendation to the Brisbane registrar and a copy of it to the applicant.

(6) However, if the board considers it appropriate to apply to the Supreme Court for a direction about a matter concerning an application, the board may do so.

### **30 Role of Supreme Court relating to application for admission**

(1) The Supreme Court must hear and decide each application for admission in a way that it considers appropriate.

(2) Without limiting subsection (1), the court may—

- (a) if satisfied that the applicant for admission is eligible and suitable for admission as a legal practitioner—make an order admitting the applicant as a legal practitioner; or
- (b) otherwise—refuse the application.

(3) The court's order as mentioned in subsection (2)(a) may be made unconditionally or on conditions the court considers appropriate.

(4) In deciding the application, the Supreme Court may rely on a recommendation of the board under section 29(5).<sup>7</sup>

(5) Also, the Supreme Court may hear and decide an application for a direction as mentioned in section 29(6) and give a direction to the board as the court considers appropriate.

#### *Division 4—Early consideration of suitability*

### **31 Main purpose of ch 2, pt 3, div 4**

The main purpose of this division is to allow an individual, including someone undertaking a course of legal studies, to apply for a declaration by the board, or a direction of the Supreme Court, about whether an issue relating to the individual, including a suitability matter, may affect a current or future application for admission.

### **32 Early consideration of suitability**

(1) This section applies if an individual considers an issue may adversely affect an assessment of the individual's suitability for admission as a local legal practitioner, including, for example, a suitability matter.

(2) The individual may apply, in the approved form, to the board for a declaration that the matter will not, without more, adversely affect the board's assessment of the individual's suitability for admission.

(3) The board must consider the application and do 1 of the following—

- (a) make the declaration;
- (b) refer the application to the Supreme Court for a direction if the board considers a direction would be appropriate;
- (c) refuse to make the declaration.

(4) A declaration made under subsection (3)(a), or under a direction mentioned in subsection (3)(b), 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) If the board decides to refuse to make the declaration sought—

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<sup>7</sup> Section 29 (Role of the board relating to application for admission)

- (a) the board must give the applicant an information notice about the refusal to make the declaration; and
- (b) the applicant may appeal to the Supreme Court against the refusal within 28 days after the date the information notice is given to the applicant.

### **33 Involvement of Supreme Court whether by referral or on appeal**

(1) If an application under section 32(2) is referred to the Supreme Court as mentioned in section 32(3)(b), the court may give a direction to the board as the court considers appropriate.

(2) If the applicant appeals to the Supreme Court against the decision of the board to refuse to make the declaration, the appeal is to be by way of rehearing, and fresh evidence or evidence in addition to or in substitution for the evidence before the board may be given on the appeal.

(3) On an appeal under this section, the Supreme Court may make an order as it considers appropriate.

### *Division 5—Roll of legal practitioners*

### **34 Roll of legal practitioners**

(1) The Supreme Court must keep a roll of legal practitioners (the “**local roll**”).

(2) The local roll must include the roll of barristers, and the roll of solicitors, as kept by the Supreme Court before the commencement of this section.

(3) After the Supreme Court makes an order admitting an individual as a legal practitioner—

- (a) the registrar for the Supreme Court district at which the Supreme Court is sitting must, under the admission rules, enter the legal practitioner’s name on the local roll; and
- (b) the individual must sign the local roll.

(4) The admission of an individual as a legal practitioner takes effect when the individual signs the local roll.



### **35 Local legal practitioner is officer of Supreme Court**

An individual becomes an officer of the Supreme Court on being admitted under this Act as a legal practitioner.

#### *Division 6—Miscellaneous*

### **36 Conditional admission**

(1) This section applies to the following—

- (a) an individual admitted by the Supreme Court as a legal practitioner on conditions;
- (b) an individual who is a local legal practitioner under section 5(3) if the individual's admission is subject to a condition.

(2) The Supreme Court may do any of the following in relation to the conditions—

- (a) revoke or vary the conditions on which the individual is admitted, whether on application of the individual or on the court's own initiative;
- (b) order the removal of the individual's name from the local roll for contravening a condition.

(3) Without limiting subsection (2)(b), a contravention of a condition is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **37 Board may appear before Supreme Court**

The board, by a member of the board or by an Australian legal practitioner acting for the board, is entitled to appear before and be heard by the Supreme Court at a hearing about any application made under this part.

### **38 Fees payable**

The board must charge the fee prescribed under a regulation for matters under this part or for matters dealt with in the admission rules.

## **PART 4—LEGAL PRACTICE BY AUSTRALIAN LEGAL PRACTITIONERS**

### *Division 1—Preliminary*

#### **39 Main purposes of ch 2, pt 4**

The main purposes of this part are as follows—

- (a) to provide a system for the law society to grant or renew a local practising certificate to an individual who practises or intends to practise as a solicitor;
- (b) to provide a system for the bar association to grant or renew a local practising certificate to an individual who practises or intends to practise only as a barrister;
- (c) to facilitate the national practice of law by allowing an interstate legal practitioner to engage in legal practice in this jurisdiction or an interstate lawyer to obtain a local practising certificate.

#### **40 Meaning of “relevant regulatory authority”**

A “relevant regulatory authority” is—

- (a) if the individual in relation to whom the expression is used practises, or intends to practise, only as a barrister—the bar association; or
- (b) otherwise—the law society.

#### **41 How suitability relating to holding local practising certificate is to be decided in this part**

(1) Suitability in relation to holding or continuing to hold a local practising certificate is to be decided by reference to whether the applicant or certificate holder is a fit and proper person to hold the certificate.

(2) A regulatory authority, in considering whether an individual is, or is no longer, a fit and proper person to hold a local practising certificate, may take into account any suitability matter relating to the individual and any of the following whether happening before or after the commencement of this section—

- (a) whether the local practising certificate, or any other practising certificate held or previously held by the individual, was obtained because of incorrect or misleading information;
- (b) whether the individual has contravened a relevant law, a condition of any certificate mentioned in paragraph (a) or an order of a disciplinary body, a corresponding tribunal or the solicitors complaints tribunal;
- (c) whether the individual has failed to pay an amount for which the individual is or was liable under a relevant law, including, for example, an amount payable to the fidelity fund under a relevant law;
- (d) whether, without limiting paragraph (c), the individual has contravened a provision of a relevant law about professional indemnity insurance;
- (e) another matter the authority considers it is appropriate to take account of because of the public interest in the integrity of the legal profession.

(3) Even though the regulatory authority considers a matter mentioned in subsection (2) in relation to an individual, the authority may consider the individual is suitable to hold a local practising certificate after considering the circumstances of the matter mentioned in that subsection.

(4) If a matter was—

- (a) disclosed in an application for admission as a legal practitioner in this or another jurisdiction; and
- (b) the Supreme Court or a corresponding authority decided it was not sufficient to refuse the application;

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

### *Division 2—Legal practice in this jurisdiction*

#### **42 Entitlement to practise in this jurisdiction**

(1) Subject to this Act, an Australian legal practitioner is entitled to engage in legal practice in this jurisdiction.

(2) Also, a government legal officer engaged in government work is entitled to engage in legal practice in this jurisdiction even though the government legal officer is not an Australian legal practitioner.

(3) Subsection (2) does not prevent a government legal officer from being the holder of a local practising certificate.

***Division 3—Matters relating to applications for grant or renewal of local practising certificates***

**43 Application for grant or renewal of local practising certificate**

(1) An Australian lawyer may apply to a regulatory authority for the grant or renewal of a local practising certificate if eligible to do so.

(2) An Australian lawyer is eligible to apply for the grant or renewal of a local practising certificate if the lawyer complies with any regulation relating to eligibility for the practising certificate and—

- (a) for an Australian lawyer who is not an Australian legal practitioner at the time of making the application—
  - (i) the lawyer's place of residence in Australia is this jurisdiction; or
  - (ii) the lawyer reasonably expects to be engaged in legal practice principally from an office in this jurisdiction during the whole of the currency of the certificate applied for; or
  - (iii) the lawyer does not have a place of residence in Australia; or
- (b) for an Australian 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 principally is in this jurisdiction; or
  - (ii) the lawyer holds a current local practising certificate and engages in legal practice principally in another jurisdiction under an arrangement that is of a temporary nature; or
  - (iii) the lawyer reasonably expects to be engaged in legal practice principally in this jurisdiction during the whole of the currency of the certificate applied for; or

- (iv) the lawyer does not have a place of residence in Australia;  
or
- (v) the lawyer's place of residence in Australia is in this jurisdiction.

(3) For subsection (2)(b), the jurisdiction in which an Australian lawyer engages in legal practice 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 must not apply for the grant or renewal of a local practising certificate if the lawyer is not eligible to make the application.

(5) An Australian lawyer who engages in legal practice principally in this jurisdiction during a financial year and intends to engage in legal practice in the following financial year must apply for the grant or renewal of a local practising certificate for the following financial year.

(6) Subsection (5) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that—

- (a) the practitioner reasonably expected to engage in legal practice principally in this jurisdiction under an arrangement that is of a temporary nature; or
- (b) the practitioner reasonably expected to engage in legal practice principally in another jurisdiction during the whole of the currency of the interstate practising certificate.

(7) A contravention of this section is capable of constituting unsatisfactory professional conduct or professional misconduct.

#### **44 Manner of application**

(1) An application for the grant or renewal of a local practising certificate must be—

- (a) made in the way provided for under the relevant regulatory authority's administration rules, including in the approved form; and
  - (b) for an application for renewal—made within the period stated in an administration rule of the authority.
- (2) An approved form for an application for the grant or renewal of a local practising certificate—
- (a) may require information relating to suitability matters in relation to the applicant; and
  - (b) if the form requires information relating to suitability matters—must direct the attention of the applicant to section 55(3)<sup>8</sup> in relation to information that need not be disclosed.

#### **45 Professional indemnity insurance**

- (1) A relevant regulatory authority must not grant or renew a local practising certificate unless the authority—
- (a) for an application by an individual who is a government legal officer engaged in government work—imposes a condition on the certificate that the individual is not to engage in legal practice other than as a government legal officer engaged in government work; or
  - (b) for an application by an individual who is employed by a corporation, that is not an incorporated legal practice, and who provides only in-house legal services—imposes a condition on the certificate that the individual is not to engage in legal practice other than for providing in-house legal services; or
  - (c) for an application by anyone else—is satisfied the applicant will, during the currency of the practising certificate, be covered by professional indemnity insurance that complies with this Act.

(2) Professional indemnity insurance complies with this Act in relation to a practising certificate if it complies with the requirements prescribed under a regulation.

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<sup>8</sup> Section 55 (Application for local practising certificate if show cause event since first admission)

(3) The regulation may, for example, require professional indemnity insurance to be of a kind approved, or provided under a scheme approved, or provided by an insurer approved, or arranged, by the relevant regulatory authority for the practising certificate.

(4) An approval mentioned in subsection (3) may relate to professional indemnity insurance approved under a corresponding law.

#### **46 Continuing obligation for professional indemnity insurance**

(1) An individual mentioned in section 45(1)(a) must notify the regulatory authority, in the approved form, if the individual ceases to be—

- (a) a government legal officer; or
- (b) a government legal officer only engaged in government work.

(2) An individual mentioned in section 45(1)(b) must notify the regulatory authority, in the approved form, if the individual ceases to be employed by a corporation, that is not an incorporated legal practice, in providing only in-house legal services to the corporation.

(3) An individual mentioned in section 45(1)(c) must notify the regulatory authority, in the approved form, if the individual becomes aware that the individual will not be covered by professional indemnity insurance that complies with the requirements prescribed under a regulation mentioned in section 45(2).

(4) A local 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 has professional indemnity insurance that complies with the requirements prescribed under a regulation mentioned in section 45(2).<sup>9</sup>

Maximum penalty—300 penalty units or imprisonment for 2 years.

(5) A contravention of subsection (1), (2), (3) or (4) is capable of constituting unsatisfactory professional conduct or professional misconduct.

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9 Section 45 (Professional indemnity insurance)

***Division 4—Grant or renewal of local practising certificates*****47 Grant or renewal of local practising certificate**

(1) A regulatory authority 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 regulatory authority may refuse to consider the application, or refuse to grant or renew a local practising certificate, if the application is not made under this Act and is not made in the way required by a relevant administration rule of the authority.

(3) The authority must not grant or renew a local practising certificate if the authority considers—

- (a) the applicant was not eligible to apply for the grant or renewal of the certificate when the application was made; or
- (b) the applicant's circumstances have changed since the application was made and, having regard to information that has come to the authority's attention, the applicant would not have been eligible to make the application had the information been known when the application was made; or
- (c) the applicant is not suitable to hold the certificate.

(4) If the authority grants or renews a local practising certificate, the authority must 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.

(5) If the authority refuses to grant or renew a local practising certificate—

- (a) the authority must give the applicant an information notice about the decision to refuse the application; and
- (b) the applicant may appeal to the Supreme Court against the refusal within 28 days after the date the information notice is given to the applicant.



#### **48 Conditions imposed by law society or bar association**

(1) A regulatory authority may impose any reasonable and relevant condition on a local practising certificate when the authority grants it.

(2) Without limiting subsection (1), the condition may be about any of the following—

- (a) requiring the certificate holder to undertake and complete an academic or training course;
- (b) limiting the certificate holder to supervised legal practice in the way stated in the condition;
- (c) controlling or otherwise regulating the operation of a trust account;
- (d) if the practising certificate authorises the certificate holder to practise in a particular branch of the legal profession or in a particular style of legal practice—restricting the certificate holder to particular conditions concerning employment or supervision;
- (e) a matter agreed to by the certificate holder.

(3) However, the regulatory authority must not impose a condition as mentioned in subsection (2)(a) unless—

- (a) the authority, having regard to the certificate holder's previous academic studies, legal training, experience or conduct, considers that clients of the certificate holder may be at risk of harm if the condition is not imposed; or
- (b) the condition is one that is imposed on a class of certificate holders.

*Note—*

A class of certificate holders might comprise lawyers returning to legal practice after suspension or an extended break.

#### **49 Applications relating to conditions**

(1) This section applies if a regulatory authority imposes a condition on a practising certificate.

(2) If the applicant did not apply for a practising certificate subject to the condition—

- (a) the regulatory authority must give the applicant an information notice about the decision to impose the condition; and

- (b) the applicant may appeal to the Supreme Court against the imposition within 28 days after the date the information notice is given to the applicant.

(3) The regulatory authority may revoke a condition imposed under this section on application of the certificate holder in the approved form, or on its own initiative, by giving written notice about the revocation to the certificate holder.

(4) If an application is made by a certificate holder for the revocation of a condition and the relevant regulatory authority refuses to grant the application—

- (a) the authority must give the applicant an information notice about the decision refusing the application; and
- (b) the applicant may appeal to the Supreme Court against the imposition of the condition within 28 days after the date the information notice is given to the applicant.

## **50 Local legal practitioner is officer of Supreme Court**

An individual who is not already an officer of the Supreme Court becomes an officer of the court on being granted a local practising certificate.

### *Division 5—Conditions applying to local practising certificates*

## **51 Conditions generally**

A local practising certificate is subject to the following—

- (a) a condition imposed by the relevant regulatory authority under division 4<sup>10</sup> at the time the certificate is granted unless the condition is revoked at a later time;

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10 Division 4 (Grant or renewal of local practising certificates)

- (b) a statutory condition as mentioned in section 52 or 53;<sup>11</sup>
- (c) a condition imposed under chapter 3<sup>12</sup> or under a corresponding law;
- (d) a condition imposed under a legal profession rule or regulation.

## **52 Statutory condition regarding notification of offence**

(1) It is a statutory condition of a local practising certificate that the certificate holder must give notice in the approved form to the relevant regulatory authority if the certificate holder is convicted of an offence that would have to be disclosed under the admission rules for an application for admission as a legal practitioner.

(2) The notice must be given to the regulatory authority within 7 days after the conviction.

(3) The regulatory authority's administration rules may specify the person to whom, or the address to which, the notice is to be given or sent.

(4) This section does not apply to a show cause event to which division 6<sup>13</sup> applies.

## **53 Statutory condition regarding legal practice as solicitor**

(1) Each local practising certificate granted or renewed by the law society must state whether the certificate holder—

- (a) may only engage in supervised legal practice; or
- (b) may engage in unsupervised legal practice.

(2) An administration rule may provide for the requirements for an individual to be eligible for a practising certificate that states that the certificate holder may engage in unsupervised legal practice.

(3) However, the administration rule may not provide that an individual is eligible for the certificate unless—

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11 Section 52 (Statutory condition regarding notification of offence) or 53 (Statutory condition regarding legal practice as solicitor)

12 Chapter 3 (Complaints, investigation matters and discipline)

13 Division 6 (Special powers relating to local practising certificates)

- (a) if the individual completed practical legal training under articles of clerkship—the individual has undertaken a period of or periods equivalent to 18 months supervised legal practice, worked out under the regulation, after the day a practising certificate is first granted; or
- (b) if the individual completed other practical legal training—the individual has undertaken a period of or periods equivalent to 2 years supervised legal practice, worked out under the regulation, after the day a practising certificate is first granted.

#### **54 Compliance with conditions**

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

*Example—*

If an individual engages in unsupervised legal practice and the relevant practising certificate states the certificate holder may only engage in supervised legal practice, the person contravenes a condition of the certificate.

(2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.

#### *Division 6—Special powers relating to local practising certificates*

#### **55 Application for local practising certificate if show cause event happened after first admission**

(1) This section applies if—

- (a) an individual is applying for the grant of a local practising certificate under this Act; and
- (b) a show cause event in relation to the individual happened, whether before or after the commencement of this section, after the individual was first admitted as a legal practitioner in this or another jurisdiction, however the admission was expressed at the time of the admission.

(2) As part of the application, the individual must give to the relevant regulatory authority a written statement—

- (a) about the show cause event; and

(b) explaining why, despite the event, the applicant is a suitable person to hold a local practising certificate.

(3) However, an individual need not give a statement under subsection (2) if the individual has previously given the regulatory authority a statement under this section, or a notice and statement under section 56, for the event stating why, despite the event, the individual is, or continues to be, a suitable person to hold a local practising certificate.

(4) The regulatory authority must give a copy of a statement under subsection (2) to the commissioner.

(5) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.

## **56 Requirement if show cause event**

(1) This section applies to a show cause event that happens in relation to a local legal practitioner.

(2) The local legal practitioner must give to the relevant regulatory authority both of the following—

- (a) within 7 days after the day of the event—notice, in the approved form, that the event happened;
- (b) within 28 days after the day of the event—a written statement explaining why, despite the event, the practitioner continues to be a suitable person to hold a local practising certificate.

(3) The regulatory authority must give a copy of a notice and a statement under subsection (2) to the commissioner.

(4) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct.

(5) However, if a written statement is given after the 28 days mentioned in subsection (2)(b), the regulatory authority may accept the statement and take it into consideration.

## **57 Refusal, cancellation or suspension of local practising certificate because of failure to show cause**

(1) The relevant regulatory authority may refuse to grant or renew, or may cancel or suspend, a local practising certificate if the applicant or certificate holder—

- (a) is required by section 55 or 56<sup>14</sup> to give a written statement relating to a matter to the regulatory authority and the applicant has not done so; or
- (b) has given a written statement under section 55 or 56 but the authority does not consider that the applicant or certificate holder has shown in the statement that the individual is a suitable person to hold a local practising certificate.

(2) For the purposes of this section only, a written statement given to the regulatory authority after the period prescribed under a regulation and accepted by it, as mentioned in section 56(5), is given under section 56.

(3) If the regulatory authority decides to refuse to grant or renew, or to cancel or suspend, a local practising certificate—

- (a) the authority must give the applicant or certificate holder an information notice about the decision to refuse to grant or renew, or to cancel or suspend, the certificate; and
- (b) the applicant or certificate holder may appeal to the Supreme Court against the decision within 28 days after the date the information notice is given to the applicant or certificate holder.

(4) Also, the regulatory authority must give a copy of the information notice to the commissioner.

## **58 Restriction on making further application**

(1) This section applies if a regulatory authority decides under section 57<sup>15</sup> to refuse to grant or renew a local practising certificate to an individual or to cancel or suspend an individual's local practising certificate.

(2) The authority may also decide that the individual is not entitled to apply for the grant of a local practising certificate for a stated period not exceeding 5 years.

(3) If the authority makes a decision under subsection (2), the authority must include the decision in the information notice required under section 57(3)(a) and the applicant or certificate holder may also appeal to

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14 Section 55 (Application for local practising certificate if show cause event since first admission) or 56 (Requirement if show cause event)

15 Section 57 (Refusal, cancellation or suspension of local practising certificate because of failure to show cause)

the Supreme Court against the decision within 28 days after the date the information notice is given to the applicant or certificate holder.

(4) An individual about 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 stated in the decision.

### **59 Relationship of this division with ch 5, pt 2**

(1) An investigator nominated by a regulatory authority for appointment as an investigator may exercise powers under chapter 5, part 2<sup>16</sup> for a matter under this division as if the matter were the subject of a complaint.

(2) Accordingly, the provisions of chapter 5, part 2 apply in relation to a matter under this division, and so apply with any necessary changes.

(3) Nothing in this division—

- (a) prevents a regulatory authority from making a complaint about a matter to which this division relates; or
- (b) the commissioner investigating or referring a matter for investigation as mentioned in section 182.<sup>17</sup>

### ***Division 7—Amendment, cancellation or suspension of local practising certificates***

### **60 Application of ch 2, pt 4, div 7**

This division does not apply to a show cause event to which division 6<sup>18</sup> applies.

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16 Chapter 5 (Suitability reports and investigations), part 2 (Investigators and their powers)

17 Section 182 (Referral by commissioner to law society or bar association)

18 Division 6 (Special powers relating to local practising certificates)

## 61 Grounds for amending, cancelling or suspending a local practising certificate

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

- (a) the certificate holder is no longer a fit and proper person to hold the certificate;
- (b) the certificate holder does not have, or no longer has, professional indemnity insurance that complies with this Act in relation to the relevant practising certificate;
- (c) if a condition of the certificate is that the certificate holder is limited to legal practice stated in the certificate—the certificate holder is engaging in legal practice that the holder is not entitled to engage in under this Act.

*Note for paragraph (a)—*

Section 41<sup>19</sup> states how a decision about a person being fit and proper is to be made.

## 62 Amending, cancelling or suspending local practising certificate

(1) If the relevant regulatory authority believes a ground exists to amend, cancel or suspend an individual's local practising certificate (the **“proposed action”**), the authority must give the individual a notice (the **“show cause notice”**) that states—

- (a) the proposed action and—
  - (i) if the proposed action is to amend the certificate in a way, including by imposing a condition on the certificate or by changing an existing condition that may be imposed under section 48<sup>20</sup>—states the proposed amendment; and
  - (ii) if the proposed action is to suspend the certificate—states the proposed period of suspension; and
- (b) the grounds for proposing to take the proposed action; and
- (c) an outline of the facts and circumstances that form the basis for the authority's belief; and

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19 Section 41 (How suitability relating to holding local practising certificate is to be decided in this part)

20 Section 48 (Conditions imposed by law society or bar association)



- (d) an invitation to the certificate holder to make representations to the authority, within a stated time of not less than 28 days, why the proposed action should not be taken.

(2) If, after considering all representations made within the stated time or, in its discretion, after the stated time, the regulatory authority still believes a ground exists to take the proposed action, the authority may—

- (a) if the show cause notice stated the proposed action was to amend the practising certificate—amend the certificate in the way stated, or in another way the authority considers appropriate because of the representations; or
- (b) if the show cause notice stated the proposed action was to cancel the practising certificate—cancel the certificate or suspend the certificate for a period; or
- (c) if the show cause notice stated the proposed action was to suspend the practising certificate for a stated period—suspend the certificate for a period no longer than the stated period or amend the certificate in a way the authority considers appropriate because of the representations.

(3) If the regulatory authority decides to amend, cancel or suspend the local practising certificate—

- (a) the authority must give the certificate holder an information notice about the decision to amend, cancel or suspend the certificate; and
- (b) the certificate holder may appeal to the Supreme Court against the decision within 28 days after the date the information notice is given to the certificate holder.

### **63 Operation of amendment, cancellation or suspension of local practising certificate**

(1) This section applies if a decision is made to amend, cancel or suspend a local practising certificate under section 62.<sup>21</sup>

(2) Subject to subsections (3) and (4), the amendment, cancellation or suspension takes effect on the later of the following—

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<sup>21</sup> Section 62 (Amending, cancelling or suspending a local practising certificate)

- (a) the day that the information notice about the decision is given to the certificate holder;
- (b) the day stated in the information notice.

(3) If the practising certificate is amended, cancelled or suspended because the certificate holder has been convicted of an offence—

- (a) the Supreme Court may, on the application of the certificate holder, order that the amendment, cancellation or suspension 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, cancellation or suspension does not have effect during any period for which the stay is in force.

(4) If the practising certificate is amended, cancelled or suspended because the certificate 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.

#### **64 Return of amended, cancelled or suspended local practising certificate**

(1) This section applies if a local legal practitioner's local practising certificate is amended, cancelled or suspended by the relevant regulatory authority.

(2) The regulatory authority may—

- (a) give the certificate holder a notice requiring the practitioner to return the certificate to the authority in the way stated in the notice within a stated period of not less than 7 days; or
- (b) include in an information notice that the authority must give to the certificate holder under this part a further notice requiring the holder to return the certificate to the authority in the way stated in the notice within a stated period of not less than 7 days.

(3) The certificate holder must comply with the requirement, unless the holder has a reasonable excuse.

Maximum penalty—50 penalty units.

(4) The regulatory authority must return the practising certificate to the certificate holder—

- (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.

## **65 Other ways of amending or cancelling a local practising certificate**

(1) This section applies if—

- (a) a local legal practitioner applies, in the approved form, to the regulatory authority to amend or cancel the local legal practitioner's practising certificate; or
- (b) the regulatory authority proposes to amend a local legal practitioner's practising certificate—
  - (i) only for a formal or clerical reason or in another way that does not adversely affect the legal practitioner's interests; and
  - (ii) the local legal practitioner agrees in writing to the amendment; or
- (c) the regulatory authority considers cancellation of the local legal practitioner is appropriate because the practitioner's name has been removed from the local roll.

(2) The authority may amend or cancel the local practising certificate as mentioned in subsection (1) by written notice given to the legal practitioner.

## **66 Relationship of this division with ch 3**

Nothing in this division prevents—

- (a) a regulatory authority from making a complaint about a matter to which this division relates; or

- (b) the commissioner investigating or referring a matter for investigation as mentioned in section 182.<sup>22</sup>

### *Division 8—Interstate legal practitioners*

#### **67 Requirement for interstate practising certificate and 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) complies with the requirements prescribed under a regulation, being requirements that are no more onerous than the requirements under section 45(2);<sup>23</sup> 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.

Maximum penalty—300 penalty units or imprisonment for 2 years.

(2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.

(3) A regulation may require an interstate legal practitioner to disclose information about professional indemnity insurance to clients or prospective clients.

#### **68 Extent of entitlement of certificate holder of interstate practising certificate 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 may be authorised under a local practising certificate to engage in legal practice in this jurisdiction.

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22 Section 182 (Referral by commissioner to law society or bar association)

23 Section 45 (Professional indemnity insurance)

(2) Also, the interstate legal practitioner's right to engage in legal practice in this jurisdiction—

- (a) is subject to any conditions imposed by the relevant regulatory authority under section 69;<sup>24</sup> and
- (b) to the greatest practicable extent and with all necessary changes—
  - (i) is the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and
  - (ii) is subject to any condition applicable to the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on the practitioner's admission.

(3) 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 mentioned in this section.

(4) A contravention of this section is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **69 Additional condition on interstate legal practitioner engaging in legal practice in this jurisdiction**

(1) The relevant regulatory authority may impose a condition on an interstate legal practitioner engaged in legal practice in this jurisdiction that it may impose under this Act on a local practising certificate at the time the certificate is granted or renewed.

(2) However, conditions imposed under this section must not be more onerous than conditions applying to local legal practitioners.

(3) If the regulatory authority imposes a condition on an interstate legal practitioner engaged in legal practice in this jurisdiction—

- (a) the authority must give the interstate legal practitioner an information notice about the decision to impose the condition; and

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24 Section 69 (Additional condition on interstate legal practitioner engaging in legal practice in this jurisdiction)

- (b) the interstate legal practitioner may appeal to the Supreme Court against the decision within 28 days after the date the information notice is given to the certificate holder.

## **70 Special provision about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction**

An interstate legal practitioner may not engage in unsupervised legal practice in this jurisdiction unless—

- (a) if the interstate legal practitioner completed practical legal training under articles of clerkship—the practitioner has undertaken a period of or periods equivalent to 18 months supervised legal practice, worked out under the regulation, after the day the practitioner’s first practising certificate was granted; or
- (b) if the interstate legal practitioner completed other practical legal training—the practitioner has undertaken a period of or periods equivalent to 2 years supervised legal practice, worked out under the regulation, after the day the practitioner’s first practising certificate was granted.

## **71 Interstate legal practitioner is officer of Supreme Court**

An interstate legal practitioner has all the duties and obligations of an officer of the Supreme Court, and for those duties and obligations is subject to the jurisdiction of the Supreme Court.

### ***Division 9—Miscellaneous provisions about local practising certificates and other matters***

## **72 Immediate suspension of local practising certificate**

(1) This section applies whether or not action in relation to a local legal practitioner has been started under division 6.<sup>25</sup>

(2) If the relevant regulatory authority considers it necessary in the public interest to immediately suspend a local practising certificate for any

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25 Division 6 (Special powers relating to local practising certificates)

of the following reasons, whether they happened before or after the commencement of this section, the authority may, by information notice given to the local legal practitioner about the decision to suspend the certificate, immediately suspend the practising certificate—

- (a) the local legal practitioner has become an insolvent under administration;
- (b) the local legal practitioner has been convicted of a serious offence or tax offence;
- (c) a ground exists on which the certificate could be cancelled or suspended under section 62.<sup>26</sup>

(3) Subject to subsection (7), the practising certificate continues to be suspended until the earlier of the following—

- (a) the time at which the regulatory authority informs the local legal practitioner of the authority's decision by information notice under section 62(3);
- (b) the end of 56 days after the information notice is given to the local legal practitioner under this section.

(4) The information notice mentioned in subsection (2) must also state that the local legal practitioner may make representations to the regulatory authority about the suspension.

(5) If the local legal practitioner makes representations to the regulatory authority about the suspension, the authority must consider the representations.

(6) The regulatory authority may revoke the suspension at any time, whether or not because of representations made to it by the local legal practitioner.

(7) Also, the regulatory authority may apply to the Supreme Court for an order extending the period of the suspension and, if the court considers it appropriate and the suspension has not ended under subsection (3), the court may extend the period of the suspension for a further period of not more than a further 56 days after the date of the court order.

(8) The regulatory authority must give the certificate holder an information notice about its decision to apply under subsection (7) for an order extending the period of the suspension.

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<sup>26</sup> Section 62 (Amending, cancelling or suspending local practising certificate)

### **73 Duration of local practising certificates**

(1) A local practising certificate granted under this Act is in force from the date stated in it until the end of the financial year in which it is granted, unless the certificate is sooner cancelled or suspended.

(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 the certificate is sooner cancelled or suspended.

(3) If a local legal practitioner applies for the renewal of a local practising certificate before the time stated in the regulatory authority's administration rule for applying for a renewal and the authority has not decided the application by the following 1 July, the certificate—

- (a) continues in force on and after that 1 July until 1 of the following happens—
  - (i) the authority renews or refuses to renew the certificate;
  - (ii) the local legal practitioner withdraws the application for renewal;
  - (iii) the certificate is cancelled or suspended; and
- (b) if renewed, is taken to have been renewed on that 1 July.

### **74 Surrender and cancellation of local practising certificate**

(1) The holder of a local practising certificate may surrender the certificate to the relevant regulatory authority.

(2) The authority may cancel a practising certificate surrendered under subsection (1).

### **75 Protocols**

(1) A regulatory authority may enter into arrangements (“**protocols**”) with regulatory authorities of other jurisdictions about deciding—

- (a) the jurisdiction from which an Australian lawyer practises law principally or can reasonably expect to practise law principally; or
- (b) the circumstances in which an arrangement under which an Australian legal practitioner practises in a jurisdiction—
  - (i) may be regarded as being of a temporary nature; or



- (ii) ceases to be of a temporary nature; or
- (c) the circumstances in which an Australian legal practitioner may reasonably expect to practise law principally in a jurisdiction during the currency of the practitioner's local practising certificate or interstate practising certificate.

(2) For the purposes of this Act, and to the extent that the protocols are relevant, a matter mentioned in subsection (1)(a), (b) or (c) is to be decided under the protocols.

(3) The regulatory authority may enter into an arrangement that amends, revokes or replaces a protocol.

(4) A protocol has effect in this jurisdiction only to the extent it is approved under a regulation.

## **76 Consideration of applicant for local practising certificate and certificate holder**

(1) The purpose of this section is to enable a regulatory authority to obtain a document or information, or a person's cooperation, to the extent necessary for the authority to consider whether or not to grant, renew, cancel or suspend a local practising certificate, or to impose conditions on a local practising certificate.

(2) The relevant regulatory authority may, by written notice to the applicant or certificate holder, ask the applicant or certificate holder—

- (a) to give it a stated document or information that the authority believes is necessary for the authority's consideration about a local practising certificate; or
- (b) to cooperate in a stated way with the authority in an investigation or inquiry that the authority believes is necessary for the authority's consideration about a local practising certificate.

(3) The regulatory authority may decide to not grant or renew, to cancel or suspend or to impose conditions on, a local practising certificate, if the applicant or the certificate holder fails—

- (a) to give the stated documents or information as requested under subsection (2); or
- (b) to cooperate with the authority in its investigations or inquiries as requested under subsection (2).

**77 Register of local practising certificates**

(1) A regulatory authority must, in the way it considers appropriate, keep a register of the names of Australian lawyers to whom it grants local practising certificates.

(2) The register must—

- (a) state conditions, if any, imposed on a local practising certificate relating to the certificate holder engaging in legal practice; and
- (b) include other particulars prescribed under a regulation.

(3) A regulatory authority must keep its register—

- (a) available for inspection, without charge, at the authority's principal place of business during normal business hours; or
- (b) on the authority's internet site or an internet site identified on the authority's internet site.

**78 Regulatory authority may charge reasonable fees**

(1) A regulatory authority may charge fees for the services that it provides.

(2) The fees must be reasonable having regard to the funding that the regulatory authority receives under this Act and the cost to the authority of performing its functions under a relevant law.

(3) The fees set by a regulatory authority may be included in an administration rule.

(4) Despite subsection (1), a regulatory authority may not charge a fee for a service provided to another entity that has functions under a relevant law.

## PART 5—INCORPORATED LEGAL PRACTICES

### *Division 1—Preliminary*

#### **79 Main purpose of ch 2, pt 5**

The main purpose of this part is to regulate the provision of legal services by corporations in this jurisdiction, whether or not the legal services are provided in conjunction with other services.

#### **80 Meaning of “incorporated legal practice”**

(1) A corporation is an “**incorporated legal practice**” if it engages in legal practice in this jurisdiction, whether or not it provides services that are not legal services.

(2) However, a corporation is not an incorporated legal practice if the legal services provided by it are only either or both the following services—

- (a) in-house legal services;
- (b) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or employee of the corporation who is not an Australian legal practitioner.

(3) Also, a corporation that provides legal services is not an incorporated legal practice if—

- (a) the corporation is prescribed under a regulation as a corporation that is not an incorporated legal practice; and
- (b) the corporation complies with provisions of that regulation applying provisions of this part, with or without changes.

(4) Nothing in this part affects or applies to the provision by an incorporated legal practice of legal services in 1 or more other jurisdictions under a corresponding law or corresponding laws.

#### **81 Definitions**

In this part—

**“corporation”** means—

- (a) a company within the meaning of the Corporations Act; or
- (b) a body corporate prescribed under a regulation.

**“director”** means—

- (a) in relation to a company within the meaning of the Corporations Act—a director as defined in section 9 of that Act; or
- (b) in relation to another body corporate prescribed under a regulation—a person stated or described in a regulation as a director.

**“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 part—

- (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 as a lawyer under a relevant law or a corresponding law;
- (b) a person whose practising certificate has been cancelled or suspended under a relevant law 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 a practising certificate under a relevant law or a corresponding law, and to whom a practising certificate has not been granted at a later time;
- (d) a person who is the subject of an order under a relevant law 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 a corresponding law prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the provision of legal services;
- (f) a person who is the subject of an order under section 110,<sup>27</sup> a corresponding law or a provision of a corresponding law relating to prohibitions on partnerships with non-legal partners.

**“ILP authority”** means—

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27 Section 110 (Disqualification from managing incorporated legal practice)

- (a) the commissioner; or
- (b) the law society; or
- (c) the commissioner and the law society acting jointly under an arrangement made between the commissioner and law society.

**“lawyer director”** means a director of an incorporated legal practice who is an Australian legal practitioner who holds an unrestricted practising certificate.

**“officer”** means—

- (a) in relation to a company within the meaning of the Corporations Act—an officer as defined in section 9 of that Act; or
- (b) in relation to another body corporate prescribed under a regulation—a person stated or described in the regulation as an officer.

**“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 the legal practitioner must observe.

**“related body corporate”** means—

- (a) in relation to a company within the meaning of the Corporations Act—a related body corporate within the meaning of section 50 of that Act; or
- (b) in relation to any other body corporate prescribed under a regulation—a person stated or described in the regulation as a related body corporate.

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

## **82 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 must not conduct a managed investment scheme within the meaning of the Corporations Act, chapter 5C.<sup>28</sup>

(3) Also if a regulation prohibits an incorporated legal practice, or a related body corporate of the practice, from providing a service or conducting a business of a kind stated in the regulation, the practice must not provide the service or conduct the business.

*Note—*

Contravention of this section or the regulation is a ground for banning an incorporated legal practice under section 109.<sup>29</sup>

### **83 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—

- (a) this Act; or
- (b) a law of the Commonwealth under which it is incorporated or its affairs are regulated; or
- (c) an Act, or a law of another jurisdiction, under which it is incorporated or its affairs are regulated.

(3) An incorporated legal practice is not required to hold a practising certificate.

### **84 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 law society 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 has not given a notice under subsection (1).

Maximum penalty—

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28 Corporations Act, chapter 5C (Managed investment schemes)

29 Section 109 (Banning of incorporated legal practices)

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence or for section 369<sup>30</sup>—300 penalty units; or
- (b) for a corporation—1 500 penalty units.

(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 law society 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, as a debt due to the person, any amount the person paid to the corporation for anything the corporation did in contravention of subsection (2).

## **85 Prohibition on directors etc representing that corporation is incorporated legal practice**

(1) A director, officer, employee or agent of a corporation must not, without a 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 84.

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) A reference in this section to a director, officer, employee or agent of a corporation representing or advertising that the corporation is an incorporated legal practice includes the director, officer, employee or agent doing anything that states or implies that the corporation is entitled to engage in legal practice.

## **86 Notice of termination of provision of legal services**

A corporation must, within the period prescribed under a regulation after it stops engaging in legal practice in this jurisdiction as an incorporated legal practice, give the law society written notice in the approved form of that fact.

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30 Section 369 (Executive officers must ensure corporation complies with Act)

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence or for section 369<sup>31</sup>—20 penalty units; or
- (b) for a corporation—100 penalty units.

***Division 3—Lawyer directors, and other legal practitioners employed by incorporated legal practices***

**87 Incorporated legal practice must have lawyer director**

(1) An incorporated legal practice is required to have at least 1 lawyer director.

(2) Each lawyer 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 lawyer 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) under the professional obligations of Australian legal practitioners and other obligations imposed under this Act; and
- (b) so that the obligations of the Australian legal practitioners who are officers or employees of the practice are not affected by other officers or employees of the practice.

(4) Nothing in this part derogates from the obligations or liability of a director of an incorporated legal practice under any other law.

**88 Obligations of lawyer director relating to misconduct**

(1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a lawyer director—

- (a) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the incorporated legal practice;

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31 Section 369 (Executive officers must ensure corporation complies with Act)



- (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 lawyer director of an incorporated legal practice must ensure that all reasonable action available to the lawyer director is taken to deal with any unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the practice.

(3) A contravention of subsection (2) is capable of constituting unsatisfactory professional conduct or professional misconduct by the lawyer director.

### **89 Incorporated legal practice without lawyer director**

(1) An incorporated legal practice contravenes this subsection if it does not have a lawyer director for the corporation for a period exceeding 7 days.

(2) If an incorporated legal practice stops having a lawyer director, the incorporated legal practice must notify the law society of that fact, by notice in the approved form given to the law society within 7 days after the practice stops having a lawyer director.

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence or for section 369<sup>32</sup>—60 penalty units; or
- (b) for a corporation—300 penalty units.

(3) An incorporated legal practice that contravenes subsection (1) is taken to be in default of lawyer director requirements under this section for the period from the end of the period of 7 days until—

- (a) it has at least 1 lawyer director; or
- (b) an individual is appointed under this section, or the provisions of a corresponding law, in relation to the practice.

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32 Section 369 (Executive officers must ensure corporation complies with Act)

(4) An incorporated legal practice must not provide legal services in this jurisdiction during any period it is in default of lawyer director requirements as mentioned in subsection (3).

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence or for section 369<sup>33</sup>—180 penalty units; or
- (b) for a corporation—900 penalty units.

(5) The law society may, if it considers it appropriate, appoint an Australian legal practitioner who is an employee of the incorporated legal practice, or another individual nominated by the society, in the absence of a lawyer director, to exercise or perform the functions or duties conferred or imposed on a lawyer 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 an individual to exercise or perform functions or duties of a lawyer director does not, for any other purpose, confer or impose on the individual 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 an individual holds an appointment under subsection (5) in relation to the practice.

## **90 Obligations and privileges of an Australian legal practitioner who is an officer or employee**

(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 of an Australian legal practitioner, or any obligations as an Australian legal practitioner under any law; and
- (b) does not lose the professional privileges of an Australian legal practitioner.

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33 Section 369 (Executive officers must ensure corporation complies with Act)

(2) For the purpose only of subsection (1), the professional obligations and professional privileges of an Australian legal practitioner apply as if—

- (a) for an incorporated legal practice with 2 or more lawyer directors—the practice were a partnership of the lawyer directors and the employees of the practice were employees of the lawyer directors; and
- (b) for an incorporated legal practice with only 1 lawyer director—the practice were a sole practitioner and the employees of the practice were employees of the lawyer director.

(3) To remove any doubt, it is declared that 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 without fee or reward by the Australian legal practitioners employed by the practice.

*Division 4—Particular matters including application of other provisions of relevant laws*

**91 Insurance obligations**

(1) The provisions of this Act, including provisions of an administration rule, relating to insurance apply with any necessary changes to incorporated legal practices in relation to the provision of legal services in the same way that the provisions apply to Australian legal practitioners.

(2) However, this section does not affect an obligation 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 an administration rule relating to insurance.

**92 Conflicts of interest**

(1) For the purposes of the application of any law, including the common law or a legal profession rule relating to conflicts of interest, to the conduct of—

- (a) a lawyer director of an incorporated legal practice; or

- (b) an Australian legal practitioner who is 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 concerned (in addition to any interests that the practitioner has apart from this subsection).

(2) A legal profession rule may be made for additional duties and obligations in connection with conflicts of interest arising out of the conduct of an incorporated legal practice.

*Note—*

Under section 90,<sup>34</sup> a legal practitioner who is an officer or employee of an incorporated legal practice must comply with the same professional obligations as other practitioners in connection with conflicts of interest.

### **93 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 lawyer director of the incorporated legal practice, and any Australian legal practitioner who is an employee and who provides the services on behalf of the practice, must ensure that a disclosure is made to the person about the services that complies with the requirements of this section and a regulation made for this section.

Maximum penalty—100 penalty units.

- (3) The disclosure must be made by giving the person a written notice—
- (a) setting out—
    - (i) the legal services, if any, to be provided; and
    - (ii) the services other than legal services, if any, to be provided in connection with the provision of legal services; and
  - (b) stating whether or not all the legal services will be provided by an Australian legal practitioner; and

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<sup>34</sup> Section 90 (Obligations and privileges of an Australian legal practitioner who is an officer or employee)

- (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 services that are not legal services.

(4) A regulation may provide for the following matters—

- (a) the way in which disclosure is to be made;
- (b) additional matters required to be disclosed in connection with the provision of legal services, or services other than 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<sup>35</sup> 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 1 occasion or on more than 1 occasion.

## **94 Effect of non-disclosure of provision of particular services**

(1) If—

- (a) a legal service provided by an incorporated legal practice is of a kind that may legally be provided by a person other than an Australian legal practitioner; and
- (b) no disclosure is made under section 93<sup>36</sup> that the officer or employee providing the service is not an Australian legal practitioner;

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.

(2) The reference in subsection (1) to a legal service includes a service that the person who engaged the incorporated legal practice to provide the service might reasonably assume to be a legal service.

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<sup>35</sup> See section 91 (Insurance obligations).

<sup>36</sup> Section 93 (Disclosure obligations)

## **95 Application of a legal profession rule**

A legal profession rule, so far as it applies to an Australian legal practitioner, applies to an Australian legal practitioner who is an officer or employee of an incorporated legal practice, unless the rule otherwise provides.

## **96 Advertising restrictions**

A restriction imposed under this or any other Act in connection with advertising by Australian legal practitioners applies to advertising by an incorporated legal practice in relation to the provision of legal services.

## **97 Advertising by incorporated legal practice**

An advertisement by an incorporated legal practice about the provision of legal services is, for the purposes of disciplinary proceedings taken against an Australian legal practitioner, taken to have been authorised by each lawyer director of the incorporated legal practice.

## **98 Requirements relating to trust accounts and particular moneys**

A provision under a relevant law relating to trust moneys or trust accounts applies to an incorporated legal practice in the same way as the provision applies to a solicitor within the meaning of the *Trust Accounts Act 1973*.

## **99 Requirements relating to fidelity fund**

(1) The provisions of relevant law relating to the fidelity fund apply, subject to this section, with any necessary adaptations to incorporated legal practices in the same way that they apply to Australian legal practitioners.

(2) Nothing in this section affects any obligation of an Australian legal practitioner who is an officer or employee of an incorporated legal practice to comply with the provisions of a relevant law relating to the fidelity fund.

(3) An incorporated legal practice is required to make payments to or on account of the fidelity fund under a relevant law as if it were an Australian lawyer applying for or holding a local practising certificate.

(4) The law society may suspend the local practising certificate of a lawyer director of the practice if any payment is not made by the due date.

(5) The amounts payable to the fidelity fund by an incorporated legal practice may be worked out by reference to the total number of Australian legal practitioners employed by the practice and other relevant matters.

### **100 Extension to incorporated legal practice of vicarious liability relating to failure to account and dishonesty**

(1) This section applies to any of the following, 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 other 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 other property under the direct or indirect control of the practice;
- (b) civil proceedings for any other debt owed, or damages payable, to a client because 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, apart from 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.

### **101 Sharing of receipts**

(1) Nothing under this Act prevents an Australian legal practitioner from sharing with an incorporated legal practice receipts arising from the provision of legal services by the practitioner.

(2) This section does not extend to the sharing of receipts in contravention of section 102,<sup>37</sup> and has effect subject to section 135.<sup>38</sup>

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37 Section 102 (Disqualified persons)

38 Section 135 (Particular provision about barristers rule)

**102 Disqualified persons**

(1) An incorporated legal practice commits an offence if a person who is 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 of 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.

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence or for section 369<sup>39</sup>—60 penalty units; or
- (b) for a corporation—300 penalty units.

(2) Failure by a lawyer director of an incorporated legal practice to ensure that the incorporated legal practice complies with subsection (1) is capable of constituting professional misconduct.

***Division 5—Ensuring compliance with this Act by incorporated legal practices***

**103 Commissioner or law society may audit incorporated legal practice**

(1) An ILP authority may conduct an audit of an incorporated legal practice about—

- (a) the compliance of the practice, and of its officers and employees, with the requirements of—
  - (i) this part; or
  - (ii) a regulation so far as the regulation applies to incorporated legal practices; or

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39 Section 369 (Executive officers must ensure corporation complies with Act)



- (iii) an incorporated legal practice rule; 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) An audit may be conducted whether or not a complaint has been made involving legal services provided by the incorporated legal practice, however that complaint is expressed, including, for example, as a complaint about the practice, a lawyer director of the practice, or an employee of the practice who is engaged in providing, or associated with the provision of, legal services.

(3) A report of the audit—

- (a) must be given to the incorporated legal practice concerned; and
- (b) may be given to another ILP authority; and
- (c) may be taken into account in connection with—
  - (i) discipline application involving an Australian lawyer or law practice employee; or
  - (ii) the grant, renewal, amendment, cancellation or suspension of a practising certificate of an Australian legal practitioner.

### **104 Investigative powers relating to audits and other matters**

(1) An ILP authority or, if both ILP authorities are acting jointly, both ILP authorities may exercise the powers set out in sections 105, 106 and 107<sup>40</sup> for the following purposes—

- (a) an audit conducted under this division;
- (b) an investigation under a relevant law relating to the trust accounts of an incorporated legal practice;
- (c) an investigation relating to a complaint made under a relevant law involving legal services provided by an incorporated legal practice however that complaint is expressed.

(2) This section does not limit the powers under chapter 3, or chapter 5, part 2, in relation to a lawyer director, or an employee, of an ILP.

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40 Sections 105 (Examination of persons), 106 (Inspection of books) and 107 (Power to hold hearings)

## 105 Examination of persons

(1) Each ILP authority has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by the *Australian Securities and Investments Commission Act 2001* (Cwlth), part 3, division 2.<sup>41</sup>

(2) The *Australian Securities and Investments Commission Act 2001* (Cwlth), part 3, division 2, applies to and in relation to the exercise of those powers with the necessary changes, including the following changes—

- (a) a reference to the Australian Securities and Investments Commission, however expressed, is taken to be a reference to an ILP authority;
- (b) a reference to a matter that is being or is to be investigated under part 3, division 1<sup>42</sup> of that Act is taken to be a reference to a matter that is being or is to be investigated by an ILP authority;
- (c) a reference in section 19<sup>43</sup> 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 an inspector is taken to be a reference to an investigator under section 333;<sup>44</sup>
- (e) a reference to a prescribed form is taken to be a reference to an approved form that is approved by an ILP authority.

(3) The *Australian Securities and Investments Commission Act 2001* (Cwlth), sections 22(2) and (3), 25(2) and (2A), 26 and 27<sup>45</sup> do not apply in relation to the exercise of the powers conferred on an ILP authority by this section.

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41 *Australian Securities and Investments Commission Act 2001* (Cwlth), part 3 (Investigations and information-gathering), division 2 (Examination of persons)

42 *Australian Securities and Investments Commission Act 2001* (Cwlth), part 3 (Investigations and information-gathering), division 1 (Investigations)

43 *Australian Securities and Investments Commission Act 2001* (Cwlth), section 19 (Notice requiring appearance for examination)

44 Section 333 (Appointment, qualifications etc. of investigators)

45 *Australian Securities and Investments Commission Act 2001* (Cwlth), sections 22 (Examination to take place in private), 25 (Giving to other persons copies of record), 26 (Copies given subject to conditions) and 27 (Record to accompany report)

## 106 Inspection of books

(1) An ILP authority has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by the *Australian Securities and Investments Commission Act 2001* (Cwlth), sections 30(1), 34 and 37 to 39.<sup>46</sup>

(2) Those provisions apply in relation to the exercise of those powers, with the necessary changes, including the following changes—

- (a) a reference to the Australian Securities and Investments Commission, however expressed, is taken to be a reference to the ILP authority;
- (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 ILP authority or a person authorised by the authority who is an officer or employee of the authority;
- (e) a reference in section 37 of that Act to a proceeding is taken to be a reference to an investigation.

## 107 Power to hold hearings

(1) An ILP authority may hold hearings for the purposes of an investigation.

(2) The *Australian Securities and Investments Commission Act 2001* (Cwlth), sections 52, 56(1), 58, 59(1), (2), (5), (6) and (8) and 60

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<sup>46</sup> *Australian Securities and Investments Commission Act 2001*, sections 30 (Notice to produce books about affairs of body corporate or registered scheme), 34 (ASIC may authorise persons to require production of books), 37 (Powers where books produced or seized), 38 (Powers where books not produced) and 39 (Power to require person to identify property of body corporate)

(paragraph (b) excepted)<sup>47</sup> apply in relation to a hearing with any necessary changes, including the following changes—

- (a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to an ILP authority;
- (b) a reference to a member or staff member is taken to be a reference to an ILP authority, or a person authorised by an ILP authority who is an officer or employee of the authority;
- (c) a reference to a prescribed form is taken to be a reference to a form approved by an ILP authority.

### **108 Failure to comply with investigation**

The following acts or omissions are capable of constituting unsatisfactory professional conduct or professional misconduct—

- (a) a failure by an Australian legal practitioner to comply with any requirement made by an ILP authority, or a person authorised by the authority, in the exercise of powers conferred by sections 105, 106 and 107;<sup>48</sup>
- (b) a contravention by an Australian legal practitioner of any condition imposed by an ILP authority in the exercise of powers conferred by those sections;
- (c) a failure by a lawyer director of an incorporated legal practice to ensure that the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following—
  - (i) any requirement made by an ILP authority, or a person authorised by the ILP authority, in the exercise of powers conferred by sections 105, 106 and 107;

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<sup>47</sup> *Australian Securities and Investments Commission Act 2001*, sections 52 (General discretion to hold hearing in public or private), 56 (Who may be present when hearing takes place in private), 58 (Power to summon witnesses and take evidence), 59 (Proceedings at hearings) and 60 (ASIC to take account of evidence and submissions)

<sup>48</sup> Sections 105 (Examination of persons), 106 (Inspection of books) and 107 (Power to hold hearings)

- (ii) any condition imposed by an ILP authority in the exercise of powers conferred by those sections.

### **109 Banning of incorporated legal practices**

(1) The Supreme Court may, on the application of an ILP authority, make an order disqualifying a corporation from providing legal services in this jurisdiction for the period the court considers appropriate if the court is satisfied that—

- (a) a ground for disqualifying the corporation under this section has been established; and
- (b) the disqualification is justified.

(2) If the Supreme Court considers it appropriate, an order under this section may 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 or employees of the incorporated legal practice.

(3) Action may be taken against an incorporated legal practice on any of the following grounds—

- (a) a lawyer director or an Australian legal practitioner who is an officer or employee of the corporation is found guilty of professional misconduct under a relevant law or a corresponding law;
- (b) an ILP authority 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) the incorporated legal practice, or a related body corporate, has contravened section 82<sup>49</sup> or a regulation made under that section;
- (d) the incorporated legal practice has contravened section 102;<sup>50</sup>

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49 Section 82 (Non-legal services and businesses of incorporated legal practices)

50 Section 102 (Disqualified persons)

- (e) a person is acting in the management of the incorporated legal practice who is the subject of an order under—
- (i) section 110<sup>51</sup> or under provisions of a corresponding law; or
  - (ii) a provision of a corresponding law relating to prohibitions on partnerships with non-legal partners.

(4) If a corporation is disqualified under this section, the ILP authority that applied for the order must 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 commissioner may decide 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 an ILP authority 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.

Maximum penalty—

- (a) for an individual guilty under the Criminal Code, chapter 2 of an offence or for section 369<sup>52</sup>—180 penalty units; or
- (b) for a corporation—900 penalty units.

(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 being unsatisfactory professional conduct or professional misconduct if the practitioner ought reasonably to have known that the corporation is disqualified under this section.

(9) A regulation may provide for the publication and notification of orders made under this section, including notification of corresponding authorities of other jurisdictions.

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51 Section 110 (Disqualification from managing incorporated legal practice)

52 Section 369 (Executive officers must ensure corporation complies with Act)

## 110 Disqualification from managing incorporated legal practice

(1) The Supreme Court may, on the application of an ILP authority, make an order disqualifying a person from managing a corporation that is an incorporated legal practice for the period the court considers appropriate if the court is satisfied that—

- (a) the person is a person who could be disqualified under the Corporations Act, section 206C, 206D, 206E or 206F<sup>53</sup> from managing corporations; and
- (b) the disqualification is justified.

(2) The Supreme Court may, on the application of a person subject to a disqualification order under this section, revoke the order.

(3) A disqualification order made under subsection (1) has effect for the purposes only of this Act and does not affect the application or operation of the Corporations Act.

(4) A regulation may provide for 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 disqualified from managing a corporation that is an incorporated legal practice.

## 111 Disclosure of information to the Australian Securities and Investments Commission

(1) This section applies if an ILP authority, in connection with performing functions or exercising powers under this Act, acquired information concerning a corporation that is or was an incorporated legal practice.

(2) The ILP authority may disclose to the Australian Securities and Investments Commission information concerning the corporation that is relevant to the commission's functions.

(3) Information may be provided under subsection (2) despite any law relating to secrecy or confidentiality, including any provisions of this Act.

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53 Corporations Act, sections 206C (Court power of disqualification—contravention of civil penalty provision), 206D (Court power of disqualification—insolvency and non-payment of debts), 206E (Court power of disqualification—repeated contraventions of Act) and 206F (ASIC's power of disqualification)

***Division 6—External administration*****112 External administration proceedings under Corporations Act**

(1) This section applies to proceedings in any court under the Corporations Act, chapter 5<sup>54</sup>—

- (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) Each ILP authority is entitled to intervene in the proceedings, unless the court decides 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) 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.

*Note—*

The Corporations Act, section 5G, provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**113 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 112<sup>55</sup> applies.

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54 Corporations Act, chapter 5 (External administration)

55 Section 112 (External administration proceedings under Corporations Act)



(2) Each ILP authority is entitled to intervene in the proceedings, unless the court decides 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.

#### **114 Incorporated legal practice that is subject to receivership under the QLS Act and external administration under Corporations Act**

(1) This section applies if an incorporated legal practice is the subject of both—

- (a) the appointment of a QLS receiver; and
- (b) the appointment of a Corporations Act administrator.

(2) The QLS receiver is under a duty to notify the Corporations Act administrator of the appointment of the QLS receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.

(3) The QLS 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 connection with the dual appointments and their respective powers, except if proceedings mentioned in section 112<sup>56</sup> have been started.

(4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the QLS receiver or the Corporations Act administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting under the orders.

(5) Each ILP authority is entitled to intervene in the proceedings, unless the court decides that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.

(6) The provisions of subsections (3) and (4) are declared to be Corporations legislation displacement provisions for the purposes of the

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56 Section 112 (External administration proceedings under Corporations Act)

Corporations Act, section 5G in relation to the provisions of chapter 5 of that Act.

(7) 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 that Act and who is prescribed under a regulation for this definition.

**“QLS receiver”** means a receiver appointed under the *Queensland Law Society Act 1952*, section 11A.<sup>57</sup>

### **115 Incorporated legal practice that is subject to receivership under the QLS Act and external administration under other local legislation**

(1) This section applies if an incorporated legal practice is the subject of both—

- (a) the appointment of a QLS receiver; and
- (b) the appointment of an external administrator.

(2) The QLS receiver is under a duty to notify the external administrator of the appointment of the QLS receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.

(3) The QLS 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 connection with the dual appointments and their respective powers.

(4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the QLS receiver or the external administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting under the orders.

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<sup>57</sup> *Queensland Law Society Act 1952*, section 11A (Appointment of receiver of trust property)

(5) Each ILP authority is entitled to intervene in the proceedings, unless the court decides that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.

(6) In this section—

**“external administrator”** means a person who is appointed to exercise powers under an Act and who is prescribed under a regulation for this definition.

**“QLS receiver”** means a receiver appointed under the *Queensland Law Society Act 1952*, section 11A.

### *Division 7—Miscellaneous*

#### **116 Cooperation between courts**

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

#### **117 Relationship of Act to Corporations legislation and certain other instruments**

(1) A provision under a relevant law that applies in relation to an incorporated legal practice prevails, to the extent of any inconsistency, over the constitution or other constituent documents of the practice.

(2) A regulation may declare a provision under a relevant law that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of the Corporations Act, section 5G.<sup>58</sup>

(3) A regulation may declare a matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted under a relevant law to be an excluded matter for the purposes of the Corporations Act, section 5F,<sup>59</sup> in relation to—

(a) the whole of the Corporations legislation; or

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58 Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws)

59 Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory laws to be an excluded matter)

- (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.

(4) In this section—

“**matter**” includes act, omission, body, person or thing.

### **118 Undue influence**

A person, whether or not an officer or an employee of an incorporated legal practice, must not cause or induce a lawyer director, or any other Australian legal practitioner who provides legal services for an incorporated legal practice, to contravene this Act or his or her professional obligations as an Australian legal practitioner.

Maximum penalty—300 penalty units.

### **119 Regulation may require training requirement for lawyer director**

(1) A regulation may provide that a lawyer director of an incorporated legal practice must undertake training as required by the regulation.

(2) Without limiting subsection (1), the regulation may provide that a person who has a qualification or experience of a type prescribed under the regulation need not undertake that training.

## **PART 6—FINANCIAL ARRANGEMENTS FOR THOSE WHO MAY ENGAGE IN LEGAL PRACTICE IN THIS JURISDICTION**

### *Division 1—Preliminary*

### **120 Main purposes of ch 2, pt 6**

The main purposes of this part are as follows—

- (a) to provide for the making of a regulation requiring particular solicitors to deposit amounts into prescribed accounts;

- (b) to allow the chief executive to enter into agreements with financial institutions, with whom solicitors have deposited amounts under a regulation, for the payment of interest on the trust accounts;
- (c) to establish the Legal Practitioner Interest on Trust Accounts Fund into which amounts received as interest must be paid;
- (d) to ensure the interest paid into the fund, and other moneys received for the fund, do not become part of the consolidated fund;
- (e) to provide for persons to whom or purposes for which amounts may be paid from the fund.

## 121 Definitions for ch 2, pt 6

In this part—

**“fund”** means the Legal Practitioner Interest on Trust Accounts Fund established under section 126.<sup>60</sup>

**“prescribed account”** means an account prescribed under a regulation as an account into which a solicitor must deposit moneys.

**“solicitor”** means a solicitor to whom the *Trust Accounts Act 1973* applies.

**“trust account”** means a trust account kept by a solicitor under the *Trust Accounts Act 1973*.

## 122 Relationship with other laws

The *Trust Accounts Act 1973* provides for the audit of solicitors' trust accounts.

### *Division 2—Prescribed accounts*

## 123 Regulation for prescribed account

(1) A regulation may make provision for, and for matters relating to, prescribed accounts.

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60 Section 126 (Establishment of fund)

(2) Without limiting subsection (1), the regulation may prescribe as follows—

- (a) a solicitor to whom the regulation applies must deposit an amount into a prescribed account;
- (b) the way to work out an amount mentioned in paragraph (a), including, for example, on the basis of the minimum amount held by a solicitor in the solicitor's trust account for a calendar month or year;
- (c) the way in which the amounts may be paid to a solicitor from a prescribed account;
- (d) the way in which the law society may supervise compliance with the regulation.

(3) If a solicitor contravenes a regulation as mentioned in subsection (2)(a), it is capable of constituting unsatisfactory professional conduct or professional misconduct.

### **124 Deposits to prescribed account**

(1) No action at law or in equity may lie against any solicitor relating to a matter or thing done by the solicitor for complying with a regulation as mentioned in section 123 that applied to the solicitor.

(2) However, this section does not affect in any way the rights and remedies of a claimant against the solicitor in the event of negligence or dishonesty of the solicitor in relation to trust moneys.

#### *Division 3—Interest on trust accounts paid to department*

### **125 Arrangement with financial institution**

The chief executive may enter into an arrangement with a financial institution about the financial institution paying interest to the department on—

- (a) prescribed accounts; and
- (b) trust accounts kept by solicitors.

**Division 4—Legal Practitioner Interest on Trust Accounts Fund****126 Establishment of fund**

(1) The Legal Practitioner Interest on Trust Accounts Fund is established.

(2) Accounts for the fund must be kept as part of the departmental accounts of the department.

(3) Amounts received for the fund must be deposited in a departmental financial-institution account of the department used only for amounts received for the fund.

(4) Amounts received for the fund include—

(a) all interest payable to the department under an arrangement entered into under section 125<sup>61</sup> and

(b) other amounts payable for the fund under an Act.

(5) For the *Financial Administration and Audit Act 1977*, the amounts received for the fund are not received or held for the State.

*Note—*

The amounts are other moneys under the *Financial Administration and Audit Act 1977*.

(6) An amount is payable from the fund only under section 127.<sup>62</sup>

(7) In this section—

**“departmental accounts”**, of a department, means the accounts of the department under the *Financial Administration and Audit Act 1977*, section 12.

**“departmental financial-institution account”**, of a department, means an account of the department kept under the *Financial Administration and Audit Act 1977*, section 18.

**127 Payments from fund**

(1) The chief executive may make payments from the fund to or for any of the following—

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61 Section 125 (Arrangement with financial institution)

62 Section 127 (Payments from fund)

- (a) Legal Aid Queensland;
- (b) the fidelity fund;
- (c) the Supreme Court Library;
- (d) the commissioner;
- (e) a disciplinary body;
- (f) the board;
- (g) part of the cost of the regulatory functions of the law society or bar association;
- (h) grants approved by the Minister for any of the following purposes—
  - (i) the advancement of law reform;
  - (ii) the collection, assessment and dissemination of information concerning legal education, the law, the legal system, law reform, the legal profession and legal services;
  - (iii) facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community;
- (i) the department for the cost of administering this part.

(2) Also, the chief executive may make payments from the fund for a grant or matter mentioned in the following if the law society incurred a liability for the grant or matter before the commencement of this section—

- (a) a grant approved under the *Queensland Law Society Act 1952*, section 36N;
- (b) a matter approved by the Minister under section 36E(b)(iii) of that Act.<sup>63</sup>

(3) The chief executive must not make a payment under subsection (1) or (2) unless the Minister has decided the amount may be paid and has given written authority to the chief executive to pay the amount.

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63 *Queensland Law Society Act 1952*, section 36N (Functions of grants committee) and section 36E (Distributions from contribution fund)



## **128 Minister to decide distribution**

(1) The Minister must decide—

- (a) whether a payment is to be made under section 127;<sup>64</sup> and
- (b) if the Minister decides a payment is to be made, the amount of the payment and any conditions applicable to the payment.

(2) For subsection (1), the chief executive must make recommendations to the Minister.

(3) The amount used for a purpose mentioned in section 127(1)(h) must not be more than the amount prescribed under a regulation for this subsection.

## **129 Submission of budgets**

(1) To help the Minister in making decisions under section 128,<sup>65</sup> the chief executive may ask a potential beneficiary to prepare and submit a budget to the chief executive, for the period the chief executive directs, concerning the income and expenditure of the potential beneficiary, including projected income and expenditure.

(2) The budget is to include the information the chief executive directs.

(3) In particular, the chief executive may require the provision of information about the administration of the beneficiary.

(4) In this section—

**“potential beneficiary”**, of a payment, means the entity to which or in relation to which a payment would be paid for a purpose mentioned in section 127(1).<sup>66</sup>

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64 Section 127 (Payments from fund)

65 Section 128 (Minister to decide distribution)

66 Section 127 (Payments from fund)

## **PART 7—RULES ABOUT THOSE WHO MAY ENGAGE IN LEGAL PRACTICE IN THIS JURISDICTION**

### *Division 1—Preliminary*

#### **130 Main purposes of ch 2, pt 7**

The main purposes of this part are as follows—

- (a) to promote the maintenance of high standards of professional conduct by Australian lawyers and incorporated legal practices by providing for legal profession rules;
- (b) to allow each regulatory authority to provide for administrative matters by providing for administration rules.

#### **131 Power to make rules not limited to specific references to provision in other chapters or parts**

The power to make a legal profession rule or an administration rule is not limited to matters for which this Act, other than this part, specifically authorises the making of a legal profession rule or an administration rule.

#### **132 Definitions for ch 2, pt 7**

In this part—

“**administration rule**” see section 144(3).

“**barristers rule**” see section 133(b).

“**incorporated legal practice rule**” see section 133(c).

“**indemnity rule**” see section 144(4).

“**legal profession rule**” means—

- (a) a solicitors rule; or
- (b) a barristers rule; or
- (c) an incorporated legal practice rule.

“**solicitors rule**” see section 133(a).

## *Division 2—Legal profession rules*

### **133 Rules to be made by Governor in Council**

The Governor in Council may make the following—

- (a) a rule under this Act for any aspect of legal practice, including standards of conduct expected of individuals who engage, or intend to engage, in legal practice as a solicitor in this jurisdiction (a “**solicitors rule**”);
- (b) a rule under this Act for any aspect of legal practice, including standards of conduct expected of individuals who engage, or intend to engage, in legal practice as a barrister in this jurisdiction (a “**barristers rule**”);
- (c) a rule under this Act for any aspect of legal practice, including standards of conduct expected of incorporated legal practices, lawyer directors and qualified employees of the practices (the “**incorporated legal practice rule**”).

### **134 Rule may apply to individuals generally or by using a defined term involving a legal title**

(1) A solicitors rule or barristers rule may apply to an individual generally or by reference to whether the individual is any of the following—

- (a) a local legal practitioner, interstate legal practitioner or Australian legal practitioner;
- (b) a local lawyer, interstate lawyer or Australian lawyer.

(2) An incorporated legal practice rule may apply to an incorporated legal practice or a lawyer director or qualified employee of the practice.

### **135 Particular provision about barristers rule**

A barristers rule may provide for a barrister to be prohibited from any or all of the following—

- (a) engaging in legal practice—
  - (i) otherwise than as a sole practitioner; or
  - (ii) in partnership with any person; or

- (iii) as the employee of any person;
- (b) holding office as a lawyer director of an incorporated legal practice.

### **136 Solicitors rule or barristers rule may apply to government legal officer**

The solicitors rule and barristers rule may provide that a rule applies to a government legal officer.

### **137 Incorporated legal practice rule can not provide for particular matters**

An incorporated legal practice rule can not—

- (a) regulate any services that an incorporated legal practice may provide or regulate conduct other than in connection with—
  - (i) the provision of legal services; or
  - (ii) other services in circumstances where a conflict of interest relating to the provision of legal services may arise; or
- (b) regulate the conduct of officers or employees of an incorporated legal practice other than in connection with—
  - (i) the provision of legal services; or
  - (ii) other services in circumstances where a conflict of interest relating to the provision of legal services may arise.

### **138 Recommendations to the Minister about legal profession rules**

(1) The law society may make a recommendation to the Minister in relation to—

- (a) the solicitors rule; and
- (b) the incorporated legal practice rule.

(2) The bar association may make a recommendation to the Minister in relation to the barristers rule.

(3) Without limiting subsection (1)(b), the law society's recommendation about the incorporated legal practice rule may provide for the following—

- (a) matters that relate to the provision of legal services by or in connection with an incorporated legal practice;
- (b) professional obligations relating to legal services provided by or in connection with an incorporated legal practice;
- (c) the provision of other services by an incorporated legal practice in circumstances in which a conflict of interest relating to the provision of legal services may arise.

### **139 Monitoring role of committee**

(1) The committee may make a recommendation to the Minister in relation to any legal profession rule.

*Note—*

The committee is the Legal Practice Committee established under section 268.

(2) For subsection (1), the committee is—

- (a) to monitor the adequacy of each legal profession rule; and
- (b) to consider any particular matter about which the Minister asks the committee to make a recommendation for a legal profession rule.

### **140 Public notice of proposed legal profession rule**

(1) A regulatory authority that proposes to make a recommendation about a legal profession rule must ensure that a notice is published in a daily newspaper circulating in this jurisdiction—

- (a) explaining the object of the proposed rule; and
- (b) advising where or how a copy of the proposed rule may be accessed, obtained or inspected; and
- (c) inviting comments and submissions within a stated period of not less than 21 days from the date of first publication of the notice.

(2) The regulatory authority must ensure that a copy of the proposed rule is given to the Minister before the notice is published.

(3) The regulatory authority must not make a recommendation about the rule before the end of the period stated in the notice for making comments and submissions and must ensure that any comments and submissions received within that period are appropriately considered.

(4) Subsections (1) to (3) do not apply to a proposed rule that the Minister considers does not warrant publication because of its urgent nature or of its minor or technical nature.

#### **141 Binding nature of each legal profession rule**

(1) Each provision of a legal profession rule is binding on a person to whom the provision applies.

(2) Failure to comply with the provision of the legal profession rule by an individual to whom the provision applies—

- (a) is capable of constituting unsatisfactory professional conduct or professional misconduct; but
- (b) is not a breach of this Act unless a provision of this Act otherwise provides.

#### **142 Relationship of legal profession rule to this Act and regulation**

(1) A regulation may be made in relation to any matter for which a legal profession rule may be made.

(2) A provision of a legal profession rule does not have effect to the extent that it is inconsistent with this Act.

#### **143 Relationship of legal profession rule and administration rule**

(1) A legal profession rule may identify a provision of an administration rule as a provision that a holder of a practising certificate, granted or renewed by the regulatory authority who made the administration rule, must comply with.

(2) If a provision of an administration rule is identified as mentioned in subsection (1), a contravention of the provision is capable of constituting unsatisfactory professional conduct or professional misconduct.

### *Division 3—Administration rules*

#### **144 Rules other than legal profession rule**

(1) To the extent a regulatory authority does not have power under another Act or otherwise to make rules for a matter mentioned in

subsection (2) and another Act does not prevent a rule being made about the matter, the regulatory authority may make a rule about the matter that applies to—

- (a) Australian legal practitioners, including interstate legal practitioners practising in this jurisdiction; and
- (b) if the regulatory authority is the law society—an incorporated legal practice.

(2) The matters about which a regulatory authority may make rules are as follows—

- (a) types of practising certificates that the regulatory authority may grant or renew, including, for example, practising certificates for supervised legal practice or unsupervised legal practice by solicitors;
- (b) the courses of study that an Australian lawyer is required to complete—
  - (i) for the grant of a practising certificate by the law society for unsupervised legal practice; and
  - (ii) for the grant of a practising certificate by the bar association for practice as a barrister;
- (c) matters relating to the courses of study mentioned in paragraph (b) including enrolment procedures, fees payable, minimum course attendance requirements, examination and assessment and procedures for the review of assessments and appeals against assessments;
- (d) exempting an individual who applies for a practising certificate from the requirement to have completed a course of study mentioned in paragraph (b) given the length and nature of the individual's experience in unsupervised practice or practice as a barrister;
- (e) the legal practice by an individual that may constitute supervised legal practice, having regard to—
  - (i) the length and nature of the legal practice engaged in by the individual; and
  - (ii) the length and nature of the legal practice engaged in by the person, if any, who supervised the individual's legal practice;

- (f) approved forms to be used for an application to the regulatory authority and the way an approved form is to be given to the authority, including the time for giving the form to it;
- (g) the timing for payment of fees, levies and contributions payable under this Act;
- (h) matters relating to other matters that may be approved by the regulatory authority under this Act;
- (i) matters relating to indemnity against loss arising from claims in relation to every description of civil liability incurred by a local legal practitioner or former local legal practitioner, including a person who was a solicitor at any time before the commencement of this section, in connection with practitioner's practice or in connection with any trust of which the practitioner was a trustee.

(3) A rule about a matter mentioned in subsection (2) is an **“administration rule”**.

(4) An administration rule about a matter mentioned in subsection (2)(h) is an **“indemnity rule”**.

(5) This division does not affect a regulatory authority's power under another Act or otherwise to make a rule that is not an administration rule or indemnity rule.

## **145 Indemnity rule**

(1) An indemnity rule—

- (a) may authorise or require the regulatory authority to establish and maintain a fund or funds; or
- (b) may authorise or require the regulatory authority to take out and keep insurance with insurers carrying on insurance business and approved by the authority for the purposes of the insurance; or
- (c) may require local legal practitioners holding practising certificates granted or renewed by the authority, or a class of certificate holders, to take out and keep insurance with insurers carrying on insurance business and approved by the authority for the purposes of the insurance.

(2) An indemnity rule—



- (a) may specify the terms and conditions on which indemnity is to be available and any circumstances in which the right to indemnity is to be excluded or modified; and
- (b) may provide for the management, administration and protection of any fund established and maintained under the indemnity rule, and require certificate holders of practising certificates granted or renewed by the authority, or a class of certificate holders, to make payments to a fund; and
- (c) may require certificate holders of practising certificates granted or renewed by the authority, or a class of certificate holders, to make payments by way of premium on any insurance policy taken out and maintained by the authority under the indemnity rule; and
- (d) may require a local legal practitioner to disclose information about professional indemnity insurance to clients or prospective clients; and
- (e) may prescribe terms and conditions with which an insurance policy, required by the indemnity rule made for the purposes of subsection (1)(c), must comply; and
- (f) may authorise the authority to decide the amount of a payment required by the indemnity rule, subject to limits or under the rule; and
- (g) may authorise the authority or insurer to take proceedings against a certificate holder or former certificate holder for amounts paid by way of indemnity in connection with a matter in relation to which he or she has failed to comply with the indemnity rule, and may specify circumstances in which the proceedings may be taken; and
- (h) may empower the law society to take steps as it considers necessary or expedient to find out whether or not the indemnity rule is being complied with.

(3) This section does not limit section 144(2)(h).

### **146 Relationship of administration rule to this Act and regulation**

(1) A regulation may be made in relation to any matter for which an administration rule may be made.

(2) A provision of a regulatory authority's administration rule does not have effect to the extent that it is inconsistent with this Act, a regulation or a legal profession rule relevant to the authority.

(3) Despite another Act, an administration rule can not provide that contravention of the rule—

- (a) is an offence; or
- (b) is capable of constituting unsatisfactory professional conduct or professional misconduct.

*Note—*

Under the *Statutory Instruments Act 1992*, section 23<sup>67</sup> a regulation may apply, adopt or incorporate an administration rule.

### **147 Availability of an administration rule**

A regulatory authority must ensure that an up-to-date version of each administration rule is available for public inspection—

- (a) at the authority's principal place of business; or
- (b) on the authority's internet site or an internet site identified on the authority's internet site.

## **PART 8—INTER-JURISDICTIONAL PROVISIONS REGARDING ADMISSION AND PRACTISING CERTIFICATES**

### *Division 1—Preliminary*

### **148 Main purpose of ch 2, pt 8**

The main purpose of this part is to provide for the notification of and response to action taken by courts and other regulatory authorities in

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<sup>67</sup> *Statutory Instruments Act 1992*, section 23 (Statutory instrument may make provision by applying another document)

relation to the admission of individuals as legal practitioners and their right to practise in Australia.

### **149 Ch 3 not affected**

This part does not affect a function or power under chapter 3.<sup>68</sup>

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

### **150 Notification to other jurisdictions about application for admission**

(1) This section applies to each application for admission.

(2) The board may give the corresponding authority of another jurisdiction written notice of any of the following to the extent that it is relevant to the corresponding authority's functions or powers—

- (a) the making of the application;
- (b) the board's recommendation under section 29<sup>69</sup> in relation to the application;
- (c) the withdrawal of the application after an investigation or inquiry is made or started, or a suitability report is sought or obtained, in relation to the application or the applicant;
- (d) the refusal of the Supreme Court to admit the applicant as a legal practitioner under this Act.

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

### **151 Notification to other jurisdictions about removal from local roll**

(1) This section applies if a local lawyer's name is removed from the local roll, except if the removal happens under section 156.<sup>70</sup>

(2) The Brisbane registrar must give the corresponding authority of each other jurisdiction written notice of the removal.

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68 Chapter 3 (Complaints, investigation matters and discipline)

69 Section 29 (Role of the board relating to application for admission)

70 Section 156 (Pre-emptory removal of local lawyer's name from local roll following removal in another jurisdiction)

**(3)** The notice must state the following—

- (a) the lawyer's name and address as last known to the Brisbane registrar;
- (b) the date the lawyer's name was removed from the roll;
- (c) the reason for removing the lawyer's name;
- (d) other information prescribed under a regulation for this section.

**152 Law society and bar association to notify other jurisdictions about actions by it**

**(1)** Subsection (2) applies if—

- (a) a regulatory authority takes any of the following actions in relation to an Australian lawyer—
  - (i) refuses to grant the lawyer a local practising certificate;
  - (ii) cancels, suspends or refuses to renew the lawyer's local practising certificate;
- (b) the lawyer successfully appeals against the taking of an action mentioned in paragraph (a).

**(2)** The regulatory authority must give the regulatory authorities of other jurisdictions written notice of the action taken or the result of the appeal.

**(3)** The notice must state the following—

- (a) the lawyer's name and address as last known to the regulatory authority for this jurisdiction;
- (b) particulars of—
  - (i) the action taken and the reasons for it; or
  - (ii) the result of the appeal;
- (c) other relevant information that the authority considers should be included in the notice.

**(4)** The regulatory authority may give the regulatory authorities of other jurisdictions 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*****153 Lawyer to give notice of removal in another jurisdiction**

(1) If a local lawyer's name has been removed from an interstate roll, the lawyer must give the Brisbane registrar written notice of the removal.

Maximum penalty—100 penalty units.

(2) If a local legal practitioner's name has been removed from an interstate roll, the practitioner must give the relevant regulatory authority written notice of the removal.

Maximum penalty—100 penalty units.

(3) This section does not apply if the name has been removed from an interstate roll under a corresponding law to section 156.<sup>71</sup>

**154 Lawyer to give notice of removal in foreign country**

(1) If a local lawyer's name has been removed from a foreign roll, the lawyer must give each regulatory authority written notice of the removal.

Maximum penalty—200 penalty units.

(2) If a local legal practitioner's name has been removed from a foreign roll, the practitioner must give the relevant regulatory authority written notice of the removal.

Maximum penalty—200 penalty units.

**155 Provisions relating to requirement to notify**

(1) A notice to be given under this division by a local lawyer or local legal practitioner must—

- (a) state his or her name and address; and
- (b) identify the roll from which his or her name has been removed; and
- (c) state the date of the removal; and

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<sup>71</sup> Section 156 (Pre-emptory removal of local lawyer's name from local roll following removal in another jurisdiction)

(d) be accompanied by a copy of any official notification given to him or her in connection with the removal.

(2) A contravention of section 153 or 154, including failing to comply with subsection (1) in relation to the notice for those sections, is capable of constituting unsatisfactory professional conduct or professional misconduct.

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

**156 Pre-emptory removal of local lawyer's name from local roll following removal in another jurisdiction**

(1) This section applies if the Brisbane registrar is satisfied that—

- (a) a local lawyer's name has been removed from an interstate roll; and
- (b) no order under section 158(1)(a)<sup>72</sup> is, at the time of that removal, in force in relation to the lawyer's name.

(2) The Brisbane registrar must remove, or arrange with another registrar for the removal of, the lawyer's name from the local roll.

(3) The Brisbane registrar may, but need not, give the lawyer written notice of the date on which the registrar proposes to remove the name from the local roll.

(4) The Brisbane registrar must give the former local lawyer written 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 his or her application to the Brisbane registrar or on the 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 section 28.<sup>73</sup>

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72 Section 158 (Order for non-removal of name or non-cancellation of practising certificate)

73 Section 28 (Application for admission)

### **157 Pre-emptory cancellation of local practising certificate following removal of name from interstate roll**

(1) This section applies if—

- (a) an individual's name is removed from an interstate roll; and
- (b) the individual is the holder of a local practising certificate; and
- (c) no order under section 158(1)(b)<sup>74</sup> is, at the time of that removal, in force in relation to the individual's local practising certificate.

(2) The relevant regulatory authority must cancel the local practising certificate.

(3) The relevant regulatory authority may, but need not, give the individual notice of the date on which it proposes to cancel the local practising certificate.

(4) The relevant regulatory authority must give the individual 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 applying for a local practising certificate at a later time.

### **158 Order for non-removal of name or non-cancellation of practising certificate**

(1) If an Australian lawyer reasonably expects that the lawyer's name will be removed from an interstate roll, the lawyer may apply to the Supreme Court for either or both of the following orders (each of which is a "**prevention order**")—

- (a) an order that the lawyer's name not be removed from the local roll under section 156;
- (b) an order that the lawyer's local practising certificate not be cancelled under section 157.<sup>75</sup>

(2) After hearing the application, the Supreme Court may—

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74 Section 158 (Order for non-removal of name or non-cancellation of practising certificate)

75 Section 156 (Pre-emptory removal of local lawyer's name from local roll following removal in another jurisdiction) and 157 (Pre-emptory cancellation of local practising certificate following removal of name from interstate roll)

- (a) refuse to make the prevention order; or
- (b) make the prevention order if it is satisfied that—
  - (i) the lawyer's name is likely to be removed from the interstate roll; and
  - (ii) the reason for the removal of the lawyer's name from the interstate roll will not involve disciplinary action or the possibility of disciplinary action.

(3) A prevention order may be made subject to any conditions the court considers appropriate and remains in force for the period stated in it.

(4) The court may revoke a prevention order, including on its own initiative.

(5) If a prevention order is revoked either or both of sections 156 and 157, as relevant, apply as if the lawyer's name were removed from the interstate roll on the day the revocation takes effect.

(6) Nothing in this section affects action being taken in relation to the lawyer under another provision of this Act.

### **159 Show cause procedure for removal of local lawyer's name from local roll following removal in foreign country**

(1) This section applies if a local lawyer's name has been removed from a foreign roll and the name has not been restored.

(2) The relevant regulatory authority may serve on the local lawyer a notice stating that the authority will apply to the Supreme Court for an order that the lawyer's name be removed from the local roll unless the lawyer shows cause to the authority why his or her name should not be removed.

(3) If the local lawyer does not satisfy the regulatory authority that the lawyer's name should not be removed from the local roll, the authority may apply to the Supreme Court for an order that the lawyer's name be removed from the local roll.

(4) On hearing the application made under this section, the Supreme Court may order the local lawyer's name be removed from the local roll or refuse to make the order.

(5) The local lawyer is entitled to appear before and be heard by the Supreme Court at a hearing about an application under this section.



**160 Local authority may give information to other local authority**

(1) A local authority 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 another local authority.

(2) In this section—

“**local authority**” mean an entity relevant to this jurisdiction that has functions or powers under this Act.

## **CHAPTER 3—COMPLAINTS, INVESTIGATION MATTERS AND DISCIPLINE**

### **PART 1—PRELIMINARY**

#### *Division 1—Purposes*

**161 Main purposes of ch 3**

The main purposes of this chapter are as follows—

- (a) to provide for the discipline of the legal profession;
- (b) to promote and enforce the professional standards, competence and honesty of the legal profession;
- (c) to provide a means of redress for complaints by consumers of the services of the legal profession about Australian lawyers and employees.

#### *Division 2—Interpretation*

**162 Meaning of “unsatisfactory professional conduct”**

“**Unsatisfactory professional conduct**” includes conduct of an Australian lawyer happening in connection with the lawyer engaging in

legal practice 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 lawyer.

*Note—*

See section 392<sup>76</sup> for how this term is defined for complaints made under the *Queensland Law Society Act 1952* that are dealt with under this Act.

### **163 Meaning of “professional misconduct”**

(1) **“Professional misconduct”** includes unsatisfactory professional conduct of an Australian lawyer, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.

(2) Also, **“professional misconduct”** includes conduct of an Australian lawyer, whether happening in connection with the lawyer engaging in legal practice or happening otherwise than in connection with the practice, that would, if established, justify a finding that the lawyer is not suitable to engage in legal practice.

(3) For finding that an Australian lawyer is not suitable to engage in legal practice as mentioned in subsection (2), regard may be given to the suitability matters that would be considered if the lawyer were an applicant for admission.

*Note—*

See section 392 for how this term is defined for complaints made under the *Queensland Law Society Act 1952* that are dealt with under this Act.

### **164 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

Without limiting section 162 or 163, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

- (a) an offence against a relevant law;
- (b) charging of excessive legal fees or costs in connection with engaging in legal practice;

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76 Section 392 (Basis of complaint mentioned in ss 173 or 391(2))

- (c) conduct for which a court has convicted an Australian lawyer for—
  - (i) a serious offence; or
  - (ii) a tax offence; or
  - (iii) an offence involving dishonesty;
- (d) an act of bankruptcy under the *Bankruptcy Act 1966* (Cwlth);
- (e) conduct that is, or is capable of being, unsatisfactory professional conduct or professional misconduct under an Act or a legal profession rule.

### **165 Meaning of “respondent”**

A “**respondent**” is an individual to whom this chapter applies and—

- (a) who is the subject of a complaint; or
- (b) about whom the commissioner, on his or her own initiative, starts an investigation under section 182.<sup>77</sup>

### ***Division 3—Application of this chapter***

### **166 Australian lawyers to whom this chapter applies**

(1) This chapter applies to an Australian lawyer for conduct to which this chapter applies, whether or not 1 or more of the following apply—

- (a) the lawyer is a local lawyer;
- (b) the lawyer holds a practising certificate issued under this Act;
- (c) the lawyer holds a practising certificate issued under a corresponding law;
- (d) the lawyer resides or has an office in this jurisdiction;
- (e) the lawyer is a government legal officer;
- (f) the lawyer’s conduct is or was part of the lawyer’s role as a lawyer director of an incorporated legal practice or the lawyer

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<sup>77</sup> Section 182 (Referral by commissioner to law society or bar association)

providing legal services as a qualified employee of an incorporated legal practice;

- (g) if a complaint is made about the lawyer—the complainant resides, works or has an office in this jurisdiction.

(2) Also, this chapter applies to—

- (a) an individual who was an Australian lawyer for conduct happening while the individual was an Australian lawyer; or
- (b) if the individual was a solicitor or barrister in this jurisdiction before the commencement of this section but is not a local lawyer on the commencement—the individual for conduct happening while the individual was a solicitor or barrister in this jurisdiction.

(3) The chapter applies to an individual mentioned in subsection (2) in the same way as it applies to an Australian lawyer, with any necessary changes.

### **167 Conduct to which this chapter applies—generally**

(1) This chapter applies to conduct in this jurisdiction of an Australian lawyer whether or not the conduct was engaged in before or after the commencement of this section.

(2) Also, this chapter applies to conduct outside this jurisdiction of an Australian lawyer whether or not the conduct was engaged in before or after the commencement of this section—

- (a) if the conduct is part of a course of conduct that happened partly in this jurisdiction and partly in another jurisdiction, and either—
  - (i) the corresponding authority of each other jurisdiction in which the conduct happened consents to it being dealt with under this Act; or
  - (ii) the Australian lawyer and, if a complaint is made by a person about the lawyer, the complainant consent to it being dealt with under this Act; or
- (b) if the conduct happened in Australia but wholly outside this jurisdiction and the Australian lawyer is a local lawyer or a local legal practitioner, and either—

- (i) the corresponding authority of each jurisdiction in which the conduct happened consents to it being dealt with under this Act; or
- (ii) the Australian lawyer and, if a complaint is made by a person about the lawyer, the complainant consent to it being dealt with under this Act; or
- (c) if the conduct happened wholly or partly outside Australia and the Australian lawyer is a local lawyer or a local legal practitioner.

(3) However, this chapter does not apply to conduct in this jurisdiction if—

- (a) the commissioner consents to the conduct being dealt with under a corresponding law; or
- (b) the Australian lawyer and, if a complaint is made by a person about the lawyer, the complainant consent to the conduct being dealt with under a corresponding law.

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

### **168 Conduct to which this chapter applies—bankruptcy, serious offences and tax offences**

(1) This chapter applies to the following conduct of a local legal practitioner whether happening in Australia or elsewhere and whether the conduct was engaged in before or after the commencement of this section—

- (a) conduct for which a court has convicted the practitioner for—
  - (i) a serious offence; or
  - (ii) a tax offence; or
  - (iii) an offence involving dishonesty;
- (b) an act of bankruptcy under the *Bankruptcy Act 1966* (Cwlth).

(2) This section has effect despite anything in section 167.<sup>78</sup>

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78 Section 167 (Conduct to which this chapter applies—generally)

**169 Chapter also applies to law practice employees**

(1) This chapter applies to the conduct of a law practice employee in relation to conduct to which this chapter applies under subsection (2).

(2) This chapter applies to the conduct of the employee in relation to the relevant practice whether or not—

- (a) the conduct is part of a course of conduct that happened partly in this jurisdiction and partly in another jurisdiction; or
- (b) the conduct was engaged in before or after the commencement of this section.

***Division 4—Commissioner’s obligations for complaints*****170 Duty to deal with complaints efficiently and expeditiously**

The commissioner must, under this Act, deal with complaints as efficiently and expeditiously as is practicable.<sup>79</sup>

**171 Duty to inform complainant about action taken for complaint**

(1) The commissioner must keep a complainant informed about the way the complaint is dealt with.

(2) Without limiting subsection (1), the commissioner must give the complainant—

- (a) notice of the receipt of the complaint by the commissioner; and
- (b) a copy of any discipline application made because of the complaint; and
- (c) written notice of a decision of a disciplinary body relating to the complaint.

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<sup>79</sup> See section 178 (Commissioner may delay dealing with complaint).

## **PART 2—MAKING COMPLAINTS**

### **172 Conduct about which complaint may be made**

(1) A complaint may be made under this chapter about—

- (a) an Australian lawyer's conduct to which this chapter applies; or
- (b) the conduct of a law practice employee to which this chapter applies.

(2) A complaint may be made under this chapter about conduct happening outside this jurisdiction, but the complaint must not be dealt with under this chapter unless this chapter is or becomes applicable to the conduct.

### **173 Making a complaint**

(1) An entity may make a complaint in writing to the commissioner about the conduct of an Australian lawyer or law practice employee, including, for example—

- (a) a client of the law practice; or
- (b) the relevant regulatory authority.

(2) However for a government legal officer, only the following entities may make a complaint about the conduct of the officer in relation to the government work engaged in by the officer—

- (a) an Australian lawyer;
- (b) a relevant regulatory authority;
- (c) the chief executive officer, however expressed, of the department or agency in which the officer is a government legal officer or, if the chief executive officer may delegate that power, a delegate.

(3) The complaint must—

- (a) identify the complainant; and
- (b) if possible, identify the individual about whom the complaint is made; and
- (c) describe the alleged conduct the subject of the complaint.

(4) Even if a regulatory authority approves a form for making complaints, a complaint may be made under subsection (1) other than in the approved form.

### **174 Further information and verification**

(1) The commissioner may, by written notice to a complainant, require the complainant to do 1 or more of the following—

- (a) to give further information about the complaint;
- (b) to verify the complaint, or any further information, by statutory declaration;
- (c) to sign an approved form that acknowledges the waiver of legal professional privilege as mentioned in section 229.<sup>80</sup>

(2) The notice must state a date, that is reasonable, by which the complainant must comply with the notice.

(3) The commissioner may extend the time for the complainant to comply with subsection (1) on application by the complainant before the date stated in the notice.

### **175 Complaints made over 3 years after conduct concerned**

(1) This section applies if a complaint is received by the commissioner more than 3 years after the conduct happened that is the subject of the complaint, including conduct that happened before the commencement of this section.

(2) The commissioner may—

- (a) refer the complaint to mediation; or
- (b) dismiss the complaint unless the commissioner decides that—
  - (i) it is just and fair to deal with the complaint having regard to the extent and reasons for the delay; or
  - (ii) the complaint involves conduct of the following type and it is in the public interest to deal with the complaint—
    - (A) conduct of an Australian lawyer that the commissioner considers may be professional misconduct; or

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80 Section 229 (Waiver of legal professional privilege)



(B) conduct of a law practice employee that the commissioner considers may be misconduct in relation to the relevant practice.

(3) The commissioner must give an information notice to—

- (a) if the commissioner dismisses the complaint—the complainant; or
- (b) if the commissioner makes a decision mentioned in subsection (2)(b)(i) or (ii)—the respondent.

(4) For working out whether it is more than 3 years since conduct that is the subject of the complaint happened, the commissioner must calculate from the last day that the conduct happened.

(5) This section does not limit the commissioner's power to dismiss a complaint under section 176.<sup>81</sup>

(6) This section is subject to 392.<sup>82</sup>

## **176 Summary dismissal of complaints**

(1) The commissioner may dismiss the complaint for 1 or more of the following reasons—

- (a) the commissioner has given the complainant a notice under section 174<sup>83</sup> and, within the time stated in the notice or under an extension under that section, the complainant has not complied with the notice;
- (b) the complaint does not disclose conduct that the commissioner considers may be—
  - (i) conduct to which this chapter applies; and
  - (ii) unsatisfactory professional conduct or professional misconduct of an Australian lawyer or misconduct of a law practice employee in relation to the relevant practice;
- (c) the commissioner considers the complaint is vexatious, misconceived or frivolous;

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81 Section 176 (Summary dismissal of complaints)

82 Section 392 (Basis of complaint mentioned in ss 173 or 391(2))

83 Section 174 (Further information and verification)

- (d) the conduct complained about has been the subject of a previous complaint that has been dismissed or dealt with, and the commissioner considers that the complaint discloses no reason to reconsider the matter;
- (e) for a complaint about an Australian lawyer—the lawyer’s name has already been removed from the local roll or an interstate roll.

(2) The commissioner may dismiss a complaint under this section without completing an investigation if, having considered the complaint, the commissioner forms the view that the complaint requires no further investigation.

(3) If a complaint is dismissed for the reason mentioned in subsection (1)(a), the dismissal does not prevent the complainant from making a fresh complaint under section 173.<sup>84</sup>

(4) In this section—

“previous complaint” includes—

- (a) a complaint under the *Queensland Law Society Act 1952* if the complaint was made under that Act before the commencement of this definition; and
- (b) a complaint made to the bar association if the complaint was made before that commencement.

## 177 Withdrawal of complaints

(1) The complainant may withdraw the complaint by notice to the commissioner.

(2) If the notice about the withdrawal is oral, the commissioner must do each of the following unless the complainant gives the commissioner written confirmation of the withdrawal—

- (a) make a written record of the withdrawal;
- (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 commissioner.

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84 Section 173 (Making a complaint)

(3) However, the withdrawal of the complaint does not prevent action being taken on a complaint by another person or by the commissioner on the commissioner's own initiative.

(4) In this section—

“**withdrawal**” of a complaint includes withdrawal of some only or part only of the matters that form the subject of the complaint.

### **178 Commissioner may delay dealing with complaint**

(1) The commissioner may delay dealing with a complaint for 1 or more of the following reasons—

- (a) the complainant has asked for a delay and the commissioner considers the request reasonable;
- (b) for a complaint about an Australian lawyer—the lawyer is under investigation in this jurisdiction or another jurisdiction and, under this Act or a corresponding law of that other jurisdiction, the lawyer's name may be removed from the local roll or interstate roll;
- (c) the matter the subject of the complaint is being or about to be dealt with in another way;
- (d) the commissioner considers that it is in the public interest to delay dealing with the complaint.

(2) Subsection (1) applies despite sections 15 and 170.<sup>85</sup>

## **PART 3—MEDIATION FOR COMPLAINTS INVOLVING CONSUMER DISPUTE**

### **179 Definition for ch 3, pt 3**

In this part—

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<sup>85</sup> Sections 15 (Timing for doing things) and 170 (Duty to deal with complaints efficiently and expeditiously)

**“consumer dispute”** means a dispute between a person and a law practice about conduct of—

- (a) an Australian lawyer to the extent the commissioner considers that the dispute does not involve an issue of unsatisfactory professional conduct or professional misconduct; or
- (b) a law practice employee to the extent the commissioner considers that the dispute does not involve an issue of misconduct in relation to the relevant practice.

### **180 Mediation of complaint involving consumer dispute solely**

(1) This section applies to a complaint that involves a consumer dispute.

(2) The commissioner may—

- (a) suggest to the complainant and the Australian lawyer or law practice that they enter into a process of mediation; and
- (b) refer the matter to the relevant regulatory authority to see if the authority may help in the mediation or otherwise in the resolution of the complaint.

(3) The commissioner is then not required to take further action on the complaint.

### **181 Mediation of hybrid complaint**

(1) This section applies to a complaint that involves both of the following—

- (a) a consumer dispute;
- (b) an issue of unsatisfactory professional conduct or professional misconduct by an Australian lawyer or of misconduct by a law practice employee in relation to the relevant practice.

(2) The commissioner may—

- (a) suggest to the complainant and the Australian lawyer or law practice that they enter into a process of mediation; and
- (b) refer the matter to the relevant regulatory authority to see if the authority may help in the mediation or otherwise in the resolution of the complaint.

(3) The complaint must continue to be dealt with under this chapter after or during the mediation or attempt at mediation.

## **PART 4—STARTING INVESTIGATIONS BASED ON COMPLAINT OR WITHOUT A COMPLAINT**

### **182 Referral by commissioner to law society or bar association**

(1) This section applies if—

- (a) a complaint is received by the commissioner and is not dismissed under section 175(2)(b) or 176<sup>86</sup> or withdrawn under section 177;<sup>87</sup> or
- (b) a complaint is withdrawn under section 177 but the commissioner has continued to investigate the matter on the commissioner’s own initiative; or
- (c) the commissioner believes that an investigation about a matter (an “**investigation matter**”) should be started into the conduct of an Australian lawyer or a law practice employee.

(2) The commissioner may refer the complaint or the investigation matter to the relevant regulatory authority.

(3) The referral may state a date by which the regulatory authority is to report to the commissioner about the complaint or investigation matter and directions to the authority about the way in which the authority is to conduct the investigation.

(4) The commissioner may extend the date for the report but may require the authority to give the commissioner an interim report.

(5) At any time while the regulatory authority is carrying out its investigation, including after the commissioner is given an interim report, the commissioner may give directions or further directions about the way in which the authority is to conduct the investigation.

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86 Section 175 (Complaints made over 3 years after conduct concerned) or 176 (Summary dismissal of complaints)

87 Section 177 (Withdrawal of complaint)

**183 Commissioner investigating a complaint or investigation matter**

(1) The commissioner must investigate a complaint or an investigation matter if the commissioner is satisfied—

- (a) it is inconsistent with the public interest for the relevant regulatory authority to investigate the complaint or investigation matter; or
- (b) it is in the public interest for the commissioner to investigate the complaint or investigation matter.

(2) Also, the commissioner must investigate a complaint or investigation matter that is not mentioned in subsection (1) but is not referred to a regulatory authority under section 182(2).<sup>88</sup>

(3) If the commissioner considers it appropriate to start or continue an investigation into a complaint or investigation matter that was referred to a regulatory authority under section 182(2), the commissioner may do so by giving a written notice of the commissioner's decision to the authority.

(4) A regulatory authority given a notice under subsection (3) must give to the commissioner all documents relating to the investigation into the complaint or investigation matter.

**184 Australian lawyer to be notified of complaint or investigation matter**

(1) The entity carrying out an investigation as mentioned in section 182 or 183<sup>89</sup> must ensure that written notice of the following is given to the Australian lawyer about whom, or the law practice about which, the complaint is made or an investigation matter relates—

- (a) the making of the complaint or investigation matter;
- (b) the nature of the complaint or investigation matter;
- (c) the identity of the complainant;
- (d) action taken by the entity in relation to the complaint or investigation matter before giving the notice.

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<sup>88</sup> Section 182 (Referral by commissioner to law society or bar association)

<sup>89</sup> Section 182 (Referral by commissioner to law society or bar association) or 183 (Commissioner investigating a complaint or investigation matter)

(2) Also, the notice must advise the Australian lawyer or law practice that the lawyer or law practice may make submissions to the entity by a stated date that is reasonable.

(3) Despite section 15,<sup>90</sup> the entity may delay giving the Australian lawyer or law practice notice under subsection (1) until the entity—

- (a) considers notice of the complaint or investigation matter will not prejudice the investigation of the complaint or investigation matter; or
- (b) the complainant complies with a notice given under section 174(1).<sup>91</sup>

### **185 Role of law society or bar association**

(1) If a complaint or investigation matter is referred to a regulatory authority, it must investigate the complaint or investigation matter and report to the commissioner about the complaint or matter by the stated date or a later date stated in an extension.

(2) For subsection (1), the authority may investigate a complaint or investigation matter by an investigator investigating the complaint or matter and presenting evidence to the authority for its consideration and report.

(3) However, the investigator must be an investigator appointed because of a nomination by the authority.

(4) The report must—

- (a) be in an approved form approved by the commissioner; and
- (b) include a recommendation about whether proceedings before a disciplinary body in relation to the complaint or investigation matter should be started.

(5) Without limiting the matters to which the authority may have regard when making a recommendation as mentioned in subsection (4)(b), the authority may have regard to the following—

- (a) the public interest in the complaint or investigation matter being heard and decided by a disciplinary body;

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90 Section 15 (Timing for doing things)

91 Section 174 (Further information and verification)

- (b) the likelihood of a finding of unsatisfactory professional conduct or professional misconduct against the Australian lawyer or of misconduct of the law practice employee in relation to the relevant practice;
- (c) other actions or proceedings that may have started or finished in relation to the conduct the subject of the complaint or investigation matter or to the same lawyer or law practice employee.

(6) If the authority recommends making a discipline application, the report must also include a draft of the application and the evidence to support the application.

### **186 Powers for investigations**

(1) The entity carrying out an investigation as mentioned in section 182 or 183<sup>92</sup> may, for the investigation—

- (a) require an Australian lawyer who is the subject of the investigation—
  - (i) to give the entity, in writing or personally, within a stated reasonable time a full explanation of the matter being investigated; or
  - (ii) to appear before the entity at a stated reasonable time and place; or
  - (iii) to produce to the entity within a stated reasonable time any document in the lawyer's custody, possession or control that the lawyer is entitled at law to produce; or
- (b) engage a costs assessor to report on the reasonableness of a lawyer's bill of costs.

(2) The lawyer must comply with a requirement under subsection (1)(a).

Maximum penalty—50 penalty units.

(3) If the lawyer fails to comply with the requirement, the entity may give the lawyer written notice that if the failure continues for a further 14 days after the notice is given the lawyer may be dealt with for professional misconduct.

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92 Section 182 (Referral by commissioner to law society or bar association) or 183 (Commissioner investigating a complaint or investigation matter)



(4) If notice under subsection (3) is given and the failure continues for the 14 day period—

- (a) the lawyer is taken to have committed professional misconduct, unless the lawyer has a reasonable excuse for not complying with the requirement within the period; and
- (b) the entity may bring a charge of professional misconduct against the lawyer.

(5) In a hearing before the tribunal about a charge of professional misconduct, a copy of the notice mentioned in subsection (3) and any enclosures with the notice are evidence of the matters in the notice and the enclosures.

(6) A lawyer may refuse to give the entity an explanation of a matter being investigated if—

- (a) the lawyer satisfies the entity that to give the explanation would contravene, or invalidate, a policy for professional indemnity insurance held by the lawyer; or
- (b) the explanation would incriminate the lawyer.

### **187 Submissions by Australian lawyer**

(1) The Australian lawyer or law practice in relation to a complaint or investigation matter who is given a notice under section 184<sup>93</sup> may, by the date stated in that notice, make written submissions to the commissioner or the stated relevant regulatory authority about the complaint or investigation matter.

(2) At the request of the lawyer or law practice or the authority, the commissioner may substitute a later date by which submissions may be made.

(3) The commissioner or authority must consider the submissions made before the stated date or any later date before deciding whether to make a discipline application relating to the complaint or investigation matter.

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93 Section 184 (Australian lawyer to be notified of complaint or investigation matter)

**188 Referral of matters for cost assessment**

For the purpose of investigating a complaint, the entity carrying out an investigation as mentioned in section 182 or 183<sup>94</sup> may refer a matter to a costs assessor for assessment of costs charged or claimed by a law practice.

**PART 5—DISCIPLINE***Division 1—Decision of commissioner***189 Decision of commissioner after investigation**

As the commissioner considers appropriate in relation to a complaint or investigation matter that has been or continues to be investigated, the commissioner may start proceedings under this part with a disciplinary body.

**190 Dismissal of complaint**

(1) The commissioner may dismiss the complaint or investigation matter if satisfied that—

- (a) there is no reasonable likelihood of a finding by a disciplinary body of—
  - (i) for an Australian lawyer—either unsatisfactory professional conduct or professional misconduct; or
  - (ii) for a law practice employee—misconduct in relation to the relevant practice; or
- (b) it is in the public interest to do so.

(2) The commissioner must give the lawyer or law practice and any complainant written notice about the commissioner's decision to dismiss the complaint or investigation matter.

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94 Section 182 (Referral by commissioner to law society or bar association) or 183 (Commissioner investigating a complaint or investigation matter)

## 191 Record of decision

The commissioner must cause a record of his or her decision about a complaint or an investigation matter, together with reasons for the decision, to be kept for each complaint or investigation matter dealt with under this division.

### *Division 2—Proceedings in disciplinary body*

## 192 Starting proceeding before a disciplinary body

(1) The commissioner may apply—

- (a) to the tribunal for an order against an Australian lawyer in relation to a complaint against the lawyer or an investigation matter; or
- (b) to the committee for an order—
  - (i) against an Australian lawyer in relation to a complaint against the lawyer or an investigation matter; or
  - (ii) against a law practice employee in relation to a complaint against the employee or an investigation matter involving the employee.

(2) An application under subsection (1) is a “**discipline application**”.

## 193 Hearings

The disciplinary body must hear and decide each allegation stated in the discipline application.

## 194 Variation of discipline application

(1) The disciplinary body may, on the commissioner’s application, vary a discipline application by omitting allegations or including additional allegations, if the body is satisfied that it is reasonable to do so having regard to all the circumstances.

(2) Without limiting subsection (1), when considering whether or not it is reasonable to vary a discipline application, the disciplinary body must have regard to whether varying the application will affect the fairness of the proceedings.

(3) A variation to include an additional allegation is not precluded merely because the alleged conduct happened more than 3 years before the variation is made, including conduct that happened before the commencement of this section.

## 195 Joinder

A disciplinary body may, subject to its rules, order the joinder of more than 1 discipline application involving the same or different Australian lawyers or law practice employees.

### *Division 3—Decisions of disciplinary bodies*

## 196 Decisions of tribunal about an Australian lawyer

(1) This section applies if, after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian lawyer, the tribunal is satisfied that the Australian lawyer is guilty of unsatisfactory professional conduct or professional misconduct.

(2) The tribunal may, under this subsection, make 1 or more of the following in a way it considers appropriate—

- (a) an order recommending that the name of the Australian lawyer be removed from the local roll;
- (b) an order that the Australian lawyer's local practising certificate be cancelled or suspended;
- (c) an order that a local practising certificate not be issued to the Australian lawyer until the end of a stated period;
- (d) an order that—
  - (i) imposes stated conditions on the Australian lawyer's practising certificate issued or to be issued under this Act; and
  - (ii) imposes the conditions for a stated period; and
  - (iii) specifies the time, if any, after which the Australian lawyer may apply to the tribunal for the conditions to be amended or removed;

- (e) an order publicly reprimanding the Australian lawyer or, if there are special circumstances, privately reprimanding the lawyer;
- (f) an order that no law practice in this jurisdiction may, for a period stated in the order of not more than 5 years—
  - (i) employ or continue to employ the Australian lawyer in a law practice in this jurisdiction; or
  - (ii) employ or continue to employ the Australian lawyer in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.

**(3)** The tribunal may, under this subsection, make 1 or more of the following—

- (a) an order recommending that the name of the Australian lawyer be removed under a corresponding law from an interstate roll;
- (b) an order that the Australian lawyer's interstate practising certificate be cancelled or suspended under a corresponding law;
- (c) an order that an interstate practising certificate not be, under a corresponding law, granted to the Australian lawyer until the end of a stated period;
- (d) an order that—
  - (i) stated conditions be imposed under a corresponding law on the Australian lawyer's interstate practising certificate; and
  - (ii) the conditions be imposed for a stated period; and
  - (iii) specifies the time, if any, after which the Australian lawyer may apply under the corresponding law for the conditions to be amended or removed;
- (e) an order that the Australian lawyer's registration under a corresponding law as a foreign lawyer under that law be cancelled.

**(4)** The tribunal may, under this subsection, make 1 or more of the following—

- (a) an order that the Australian lawyer pay a penalty of a stated amount, not exceeding \$100 000;
- (b) a compensation order;
- (c) an order that the Australian lawyer undertake and complete a stated course of further legal education;

- (d) an order that, for a stated period, the Australian lawyer engage in legal practice under supervision as stated in the order;
- (e) an order that the Australian lawyer do or refrain from doing something in connection with the lawyer engaging in legal practice;
- (f) an order that the Australian lawyer stop accepting instructions as a public notary in relation to notarial services;
- (g) an order that engaging in legal practice by the Australian lawyer is to be managed for a stated period in a stated way or subject to stated conditions;
- (h) an order that engaging in legal practice by the Australian lawyer is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;
- (i) an order that the Australian lawyer seek advice from a stated person in relation to the lawyer's management of engaging in legal practice.

(5) To remove any doubt, it is declared that the tribunal may make any number of orders mentioned in any or all of subsections (2), (3) and (4).

(6) Also, the tribunal may make ancillary orders, including an order for payment by the Australian lawyer of expenses associated with orders under subsection (4), as assessed in or under the order or as agreed.

(7) The tribunal may find an individual guilty of unsatisfactory professional conduct even though the discipline application alleged professional misconduct.

### **197 Orders to be filed in Supreme Court and information notices to be given to parties etc.**

(1) This section applies to the Brisbane registrar after the tribunal makes an order under sections 196 or 202 or part 6<sup>95</sup> in relation to a discipline application, including a discipline application that the tribunal dealt with on an appeal from the committee under section 209.<sup>96</sup>

(2) The Brisbane registrar must—

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95 Sections 196 (Decisions of tribunal about an Australian lawyer) and 202 (Costs) or part 6 (Compensation orders)

96 Section 209 (Appeal to tribunal against committee's decision)

- (a) file the order in a Supreme Court registry; and
- (b) give the parties in relation to the discipline application a copy of the order and an information notice about the final decision about the discipline application; and
- (c) give the Minister a copy of the order.

(3) On being filed, the order is an order of the Supreme Court and may be enforced accordingly.

### **198 Decisions of committee about discipline application**

(1) This section applies if, after a committee has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian lawyer or a law practice employee, the committee is satisfied—

- (a) for the lawyer—that the lawyer is guilty of unsatisfactory professional conduct; or
- (b) for the employee—that the employee is guilty of misconduct in relation to the relevant practice.

(2) The committee may make 1 or more of the following in relation to an Australian lawyer—

- (a) an order publicly reprimanding the Australian lawyer or, if there are special circumstances, privately reprimanding the lawyer;
- (b) an order that the Australian lawyer pay a penalty of a stated amount, not exceeding \$10 000;
- (c) a compensation order;
- (d) an order that the Australian lawyer do or refrain from doing something in connection with the lawyer engaging in legal practice;
- (e) an order that engaging in legal practice by the Australian lawyer is to be managed for a stated period in a stated way or subject to stated conditions;
- (f) an order that engaging in legal practice by the Australian lawyer is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;

- (g) an order that the Australian lawyer seek advice from a person nominated by the relevant regulatory authority in relation to the lawyer's management of engaging in legal practice.

(3) Also, the committee may make ancillary orders, including an order for payment by the Australian lawyer of expenses associated with orders under subsection (2), as assessed in or under the order or as agreed.

(4) For a law practice employee, the committee may order that no law practice in this jurisdiction may, for a period stated in the order of not more than 5 years—

- (a) employ or continue to employ the employee in a law practice in relation to the relevant practice in this jurisdiction; or
- (b) employ or continue to employ the employee in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.

(5) In this section—

**“law practice employee”** means an individual who is or was a law practice employee.

### **199 Orders to be filed in Supreme Court and information notices to be given to parties etc.**

(1) This section applies after the committee makes an order under sections 198 or 202 or part 6<sup>97</sup> in relation to a discipline application.

(2) The commissioner must—

- (a) give the other party in relation to the discipline application a copy of the order and an information notice about the final decision about the discipline application; and
- (b) give the Minister a copy of the order.

(3) If there is no appeal from the decision within the 28 days allowed for the appeal, the commissioner must file the order in a Supreme Court registry.

(4) On being filed, the order is an order of the Supreme Court and may be enforced accordingly.

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97 Sections 198 (Decisions of committee about discipline application) and 202 (Costs) or part 6 (Compensation orders)



## **200 Compliance with decisions**

(1) To the extent an entity has a function or power under this Act relevant to an order of a disciplinary body, the entity must—

- (a) give effect to an order made under section 196(2);<sup>98</sup> and
- (b) enforce an order made under section 196(4) or (6) or 198(2) or (3) so far as the order relates to the legal practice of, or other matters affecting, the Australian lawyer concerned in this jurisdiction.

(2) The commissioner must ensure that entities having functions or powers under a corresponding law of another jurisdiction are notified of the making and contents of—

- (a) an order of the tribunal made under section 196(3) in relation to that corresponding law; and
- (b) an order of the body made under section 196(4) or (6) or 198(2) or (3) so far as the order relates to the legal practice of, or other matters affecting, the Australian lawyer concerned in that other jurisdiction.

(3) If the tribunal makes an order recommending that the name of an Australian lawyer be removed from the local roll, the Brisbane registrar must remove, or arrange with another registrar for the removal of, the name from the local roll.

## **201 Interim order**

A disciplinary body may make an interim order as it considers appropriate before making its final decision about a discipline application.

## **202 Costs**

(1) A disciplinary body must make an order requiring an individual whom it has found guilty to pay costs, including costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist.

(2) A disciplinary body may make an order requiring an individual whom it has not found guilty to pay costs, including costs of the

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98 Section 196 (Decisions of tribunal about an Australian lawyer)

commissioner and the complainant, if the disciplinary body is satisfied that—

- (a) the sole or principal reason why the proceedings were started in the disciplinary body was the individual's failure to cooperate with the commissioner or a relevant regulatory authority; or
- (b) there is some other reason warranting the making of an order in the particular circumstances.

(3) A disciplinary body may make an order requiring the commissioner to pay costs, but may do so only if it is satisfied that—

- (a) the Australian lawyer or law practice employee is not guilty; and
- (b) the body considers that special circumstances warrant the making of the order.

(4) An order for costs—

- (a) may be for a stated amount; or
- (b) may be for an unstated amount but must specify the basis on which the amount must be decided.

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

(6) In this section—

“**guilty**” means guilty of unsatisfactory professional conduct or professional misconduct, or of misconduct in relation to a relevant practice, as mentioned in section 196(1) or 198(1).

### **203 Other remedies not affected**

This part does not affect any other remedy available to a complainant.

## PART 6—COMPENSATION ORDERS

### *Division 1—Preliminary*

#### **204 Meaning of “compensation order”**

A “**compensation order**” is 1 or more of the following—

- (a) an order that a law practice can not recover or must repay the whole or a stated part of the amount charged to a complainant by the law practice for stated legal services;
- (b) an order discharging a lien possessed by a law practice in relation to a stated document or class of documents;
- (c) an order that a law practice carry out stated work for a stated person without a fee or for a stated fee;
- (d) an order that a law practice pay to a complainant an amount by way of compensation for pecuniary loss because of conduct that has been found to be—
  - (i) unsatisfactory professional conduct or professional misconduct of an Australian lawyer involved in the relevant practice; or
  - (ii) misconduct of a law practice employee in relation to the relevant practice.

### *Division 2—Compensation orders*

#### **205 Compensation order relating to pecuniary loss**

A disciplinary body may not make a compensation order as mentioned in section 204(d) for a loss for which the relevant complainant has received or is entitled to receive—

- (a) compensation under an order that has been made by a court; or
- (b) compensation from a fidelity fund of any jurisdiction, if a claim for payment from the fund has been made or decided.

**206 Effect of compensation order**

(1) A compensation order preventing recovery of an amount of the type mentioned in section 204(a) is effective even if proceedings to recover the amount, or any part of it, have been started by or for the law practice.

(2) A compensation order requiring repayment of an amount of the type mentioned in section 204(a) 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 for the law practice.

(3) A compensation order requiring payment of an amount exceeding \$7 500 by way of monetary compensation of the type mentioned in section 204(d) is not to be made unless the complainant and the law practice both consent to the order.

**207 Other remedies not affected**

The recovery of an amount awarded by a compensation order does not affect any other remedy available to a complainant, but an amount so awarded must be taken into account in any other proceedings by or for the complainant in relation to the same loss.

**PART 7—APPEALS FROM DECISIONS OF  
DISCIPLINARY BODIES****208 Appeal may be made to Court of Appeal from tribunal's decision**

(1) The following may appeal a decision of the tribunal to the Court of Appeal—

- (a) a party dissatisfied with the tribunal's decision;
- (b) the Minister.

(2) The appeal is by way of a rehearing on the evidence given in the matter before the tribunal.

(3) However, subsection (2) does not prevent the Court of Appeal from giving leave to introduce further evidence, whether fresh, additional or substituted, if the court considers the further evidence may be material to the appeal.

(4) The appeal must be made—

- (a) if the appeal is being made by the Minister—within 28 days after a copy of the tribunal’s order is given to the Minister; or
- (b) otherwise—within 28 days after the tribunal’s order is made.

### **209 Appeal to tribunal against committee’s decision**

(1) A party dissatisfied with a final decision of the committee about a discipline application may appeal to the tribunal against the decision within 28 days after the date the information notice mentioned in section 199(2)<sup>99</sup> is given to the party.

(2) If a party appeals to the tribunal against the decision of the committee, the appeal is to be by way of rehearing, and fresh evidence or evidence in addition to or in substitution for the evidence before the committee may be given on the appeal.

(3) On an appeal under this section, the tribunal may make an order as it considers appropriate to decide the discipline application.

### **210 Appeal to Court of Appeal in relation to a decision of committee**

(1) This section applies to a decision of the committee that, under section 199(4), has become an order of the Supreme Court.

(2) A person may appeal against the order by appealing to the Court of Appeal.

(3) The appeal is by way of a rehearing on the evidence given in the matter before the tribunal.

(4) However, subsection (3) does not prevent the Court of Appeal from giving leave to introduce further evidence, whether fresh, additional or substituted, if the court considers the further evidence may be material to the appeal.

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<sup>99</sup> Section 199 (Orders to be filed in Supreme Court and information notices to be given to parties etc.)

## **PART 8—PUBLICATION OF DISCIPLINARY ACTIONS**

### **211 Definition for ch 3, pt 8**

In this part—

**“disciplinary action”** means—

- (a) the making of an order by a court or the tribunal that finds an Australian lawyer guilty of professional misconduct under this Act or under a corresponding law; or
- (b) any of the following actions under this Act or under a corresponding law, following a finding by a court or the tribunal of professional misconduct by an Australian lawyer—
  - (i) the removal of the name of the Australian lawyer from a local roll or interstate roll;
  - (ii) the cancellation or suspension of the practising certificate of the Australian lawyer;
  - (iii) the refusal to issue a practising certificate to the Australian lawyer; or
- (c) the making of an order by the committee under section 198(4).

### **212 Discipline register**

(1) The commissioner must keep a register (the **“discipline register”**) about the following—

- (a) disciplinary action taken under this Act against an Australian lawyer or in relation to a law practice employee;
- (b) disciplinary action taken under a corresponding law against an Australian lawyer who is or was admitted or practising in this jurisdiction when the conduct that is the subject of the disciplinary action happened.

(2) The discipline register must include—

- (a) the full name of the individual against whom the disciplinary action was taken and the law practice who employs or employed the individual; and
- (b) the individual’s business address or former business address; and

- (c) the individual's home jurisdiction if the individual has or had a practising certificate; and
- (d) particulars of the disciplinary action taken; and
- (e) other particulars prescribed under a regulation.

**(3)** The discipline register may—

- (a) be kept in a form decided by the commissioner, including forming part of other registers; and
- (b) include other information, including, for example, the date and jurisdiction of the individual's first admission as an Australian lawyer.

**(4)** The discipline register must be available for public inspection on—

- (a) the internet site of the commissioner; or
- (b) an internet site identified on the internet site of the commissioner.

**(5)** Information recorded in the discipline register may be given to members of the public in another way approved by the commissioner.

**(6)** The commissioner may cause any error in or omission from the discipline register to be corrected.

**(7)** The requirement to keep the discipline 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.

### **213 Other means of publicising disciplinary action**

**(1)** The commissioner may publicise disciplinary action taken against an individual in any way the commissioner considers appropriate.

**(2)** Nothing in this section affects the provisions of this part relating to the discipline register.

### **214 Disciplinary action taken because of infirmity, injury or illness**

**(1)** Disciplinary action taken against an individual because of infirmity, injury or mental or physical illness is not to be recorded in the discipline register or otherwise publicised under this part.

**(2)** Subsection (1) does not apply if the disciplinary action involves—

- (a) the cancellation or suspension of the individual's practising certificate; or
- (b) a refusal to issue a practising certificate to the individual or to renew the individual's practising certificate; or
- (c) a regulation of the individual'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 part without the individual's consent.

### **215 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 discipline register.

(2) If disciplinary action is quashed on appeal or review after the action was publicised by the commissioner under section 213,<sup>100</sup> the result of the appeal or review must be publicised in the same way by the commissioner.

### **216 Liability for publicising disciplinary action**

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

- (a) publicising disciplinary action taken against an individual or relating to a law practice; or
- (b) performing the functions or exercising the powers of the commissioner under this part; or
- (c) keeping, publishing or enabling access to the discipline register.

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

- (a) information about disciplinary action—
  - (i) recorded in the discipline register; or
  - (ii) otherwise publicised by the commissioner under this part;
- or

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100 Section 213 (Other means of publicising disciplinary action)



- (b) matter containing that information; or
- (c) a fair report or summary of that information.

(3) In this section—

**“protected person”** means—

- (a) the State; or
- (b) the commissioner; or
- (c) a regulatory authority; or
- (d) a person responsible for keeping a record about disciplinary action, or information about disciplinary action, under a corresponding law; or
- (e) an internet service provider or internet content host; or
- (f) a person acting at the direction of the State or any person or body mentioned in paragraphs (b) to (d).

## **217 General provisions about disclosure of information**

(1) The provisions of this part are subject to any order made by any of the following if the order regulates the disclosure of information—

- (a) a disciplinary body in relation to disciplinary action taken under this part;
- (b) a corresponding tribunal in relation to disciplinary action taken under a corresponding law;
- (c) a court of this or another jurisdiction.

(2) However, despite the order mentioned in subsection (1), the name and other identifying particulars of the individual against whom the disciplinary action was taken and the law practice who employs or employed the individual, and the kind of disciplinary action taken—

- (a) must be recorded in the discipline register; and
- (b) may be otherwise publicised under this part.

(3) Section 376<sup>101</sup> is subject to this part.

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101 Section 376 (Offence of improper disclosure of information)

## **PART 9—INTER-JURISDICTIONAL PROVISIONS**

### **218 Protocols**

(1) The commissioner may enter into arrangements (“**protocols**”) with corresponding authorities about investigating and dealing with conduct that appears to have happened in more than 1 jurisdiction.

(2) In particular, the protocols may provide for—

- (a) providing principles to help in deciding where conduct happens, either generally or in stated classes of cases; and
- (b) giving and receiving consent for conduct happening 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 an aspect of complaints or investigation matters under this part.

### **219 Request to another jurisdiction to investigate complaint or investigation matter**

(1) The commissioner may request a corresponding authority to arrange for the investigation of an aspect of a complaint or an investigation matter that is being dealt with by the commissioner and to give the commissioner 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 considered by the commissioner and a disciplinary body in the course of dealing with the discipline application under this chapter.

### **220 Request from another jurisdiction to investigate complaint**

(1) This section applies in relation to a request received by the commissioner from a corresponding authority to arrange for the investigation of an aspect of a complaint or an investigation matter being

dealt with under a corresponding law, including a complaint under that law that is made by the corresponding authority.

(2) The commissioner may conduct the investigation or authorise another entity to conduct it.

(3) The provisions of this chapter relating to the investigation of a complaint or investigation matter apply, with any necessary changes, in relation to the investigation that is the subject of the request.

(4) The commissioner or other authority must give a report on the result of the investigation to the corresponding authority.

### **221 Sharing of information with corresponding authorities**

(1) The commissioner may give information to a corresponding authority about—

- (a) a complaint or investigation matter made under this chapter; and
- (b) any action taken in relation to a complaint or investigation matter made under this chapter, including a decision of a disciplinary body in relation to a discipline application.

(2) However, the commissioner must enter into an arrangement with the corresponding authority before providing information to the corresponding authority.

(3) The arrangement must include the following—

- (a) the purposes for which the corresponding authority is given the information;
- (b) how the corresponding authority will protect the privacy of information.

### **222 Cooperation with corresponding authorities**

(1) When dealing with a complaint or investigation matter relating to an Australian lawyer or law practice, the commissioner 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 Australian lawyer or law practice.

(2) For subsection (1), the commissioner and the other person or body may exchange information concerning the complaint or investigation matter.

**223 Compliance with orders made under corresponding laws**

(1) Entities having relevant functions or powers under this Act must—

- (a) give effect to any order of a corresponding tribunal or other corresponding authority made under a corresponding law in relation to powers exercisable under this Act; and
- (b) enforce any order of a corresponding tribunal or other corresponding authority made under a corresponding law so far as the order relates to the legal practice of the Australian lawyer or law practice concerned in this jurisdiction.

(2) If a corresponding tribunal makes an order recommending that the name of an Australian lawyer be removed from the roll of this jurisdiction or of rolls of other jurisdictions, the Brisbane registrar must remove, or arrange with another registrar for the removal of, the lawyer's name from the local roll.

(3) If a corresponding tribunal makes an order that a local Australian lawyer pay a penalty, or pay an amount under a compensation order under corresponding law, a copy of the order may be filed in the Supreme Court and the order may be enforced as if it were an order of the court.

**224 Other powers or functions not affected**

Nothing in this part affects any functions or powers that a person or body has apart from this part.

**PART 10—MISCELLANEOUS****225 Information about complaints procedure**

The commissioner must—

- (a) produce information about the making of complaints and the procedure for dealing with complaints; and
- (b) ensure that information is available to members of the public on request; and
- (c) give help to members of the public in making complaints.

**226 Performance criteria**

(1) The commissioner must develop performance criteria relating to the handling of complaints under this chapter.

(2) The commissioner must include the relevant criteria in the commissioner's annual report under this Act, together with an assessment of the commissioner's performance against the criteria in the period to which the report relates.

**227 Annual and other reports to the Minister**

(1) By 31 October after the end of each financial year, the commissioner must give to the Minister a report for the immediately preceding financial year.

(2) The report must deal with the system established under this Act for dealing with complaints.

(3) Also the Minister may, by written notice, ask the commissioner to provide a report at any time for a period stated in the Minister's request about the system or about an aspect of the system stated in the notice.

(4) If the Minister makes a request under subsection (3), the commissioner must comply with the request and give the relevant report to the Minister by the date stated in the notice.

(5) The commissioner may include other matters the commissioner considers appropriate in a report under this section, including, for example, recommendations about the system.

(6) The Minister must table in the Legislative Assembly a report given to the Minister under subsection (1), within 14 days after receiving the report.

**228 Confidentiality of client communications**

(1) An Australian lawyer must comply with a requirement under this chapter, or chapter 5, part 2, to answer a question or to produce information or a document, despite any duty of confidentiality about a communication between the lawyer and a client, but only if the client is the complainant or consents to its disclosure.

(2) A provision of an agreement with a client in settlement of a matter that involves conduct that may be the subject of a complaint under this chapter is not enforceable to prevent the client disclosing, or consenting to

the disclosure of, information for an investigation of the complaint whether or not it has been withdrawn or of an investigation matter.

(3) It is a reasonable excuse for the Australian lawyer not to comply with the requirement if complying with the requirement might tend to incriminate the lawyer.

## **229 Waiver of legal professional privilege**

(1) If a person signs a document waiving the person's legal professional privilege about a matter the subject of a complaint or an investigation matter, an Australian lawyer can not refuse to disclose to the commissioner or relevant regulatory authority any information about the matter on the grounds of legal professional privilege.

(2) However, the Australian lawyer may refuse to disclose the information on the grounds that it might tend to incriminate the lawyer.

# **CHAPTER 4—ESTABLISHMENT OF ENTITIES FOR THIS ACT, AND RELATED MATTERS**

## **PART 1—LEGAL SERVICES COMMISSIONER**

### *Division 1—Preliminary*

#### **230 Main purposes of ch 4, pt 1**

The main purposes of this part are to establish the Legal Services Commissioner and to provide for matters relevant to the commissioner.

### *Division 2—Appointment*

#### **231 Legal Services Commissioner**

There is to be a Legal Services Commissioner.

### 232 Appointment

(1) The Governor in Council may appoint an individual as the commissioner by gazette notice.

(2) Before recommending an individual for appointment as the commissioner, the Minister must be satisfied that the appointee—

- (a) is familiar with the nature of the legal system and legal practice; and
- (b) possesses appropriate qualities of independence, fairness and integrity.

(3) The Minister may recommend an individual who is not an Australian lawyer.

(4) The commissioner is appointed under this Act and not under the *Public Service Act 1996*.

### 233 Term of appointment

(1) The commissioner holds office for the term, not longer than 5 years, stated in the gazette notice and may be reappointed.

(2) However, an individual must not be reappointed if the total of the individual's term of appointment would be more than 10 years.

### 234 Remuneration and conditions

(1) The commissioner is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) The commissioner holds office—

- (a) on the conditions stated in this Act; and
- (b) on other conditions decided by the Minister.

(3) In this section—

“**commissioner**” includes an individual appointed to act as commissioner under section 235.<sup>102</sup>

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102 Section 235 (Acting commissioner)

**235 Acting commissioner**

(1) The Governor in Council may appoint an individual to act as commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or during any periods, when the commissioner is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

(2) The individual appointed to act as commissioner must be eligible for appointment as commissioner.

**236 Termination of appointment**

(1) The Governor in Council may end the appointment of the commissioner if the commissioner—

- (a) becomes incapable of performing the commissioner's functions because of physical or mental incapacity; or
- (b) is an insolvent under administration; or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the commissioner were an officer of the public service.

(2) The Governor in Council must end the appointment of the commissioner if the commissioner is convicted of a serious offence or an offence against this Act.

**237 Resignation of commissioner**

(1) The commissioner may resign by giving a signed notice of resignation to the Minister.

(2) A notice of resignation under subsection (1) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.



### *Division 3—Functions*

#### **238 Functions**

(1) The commissioner has the functions conferred or imposed on the commissioner under this or another Act.

(2) The commissioner may appear, by Australian legal practitioner or government legal officer, and be heard by, the Supreme Court in relation to the court’s jurisdiction, or an exercise of the court’s power, under a relevant law.

### *Division 4—Legal Services Commission*

#### **239 Establishment of commission**

(1) The Legal Services Commission (the “**commission**”) is established.

(2) The commission consists of the commissioner and the staff of the commission.

(3) The commissioner controls the commission.

#### **240 Staff and other resources**

(1) The chief executive must provide the commission with the resources the chief executive considers appropriate for the commissioner to discharge the commissioner’s functions effectively and efficiently.

(2) The commission may, with the chief executive’s approval, consult with, employ and remunerate the Australian lawyers, accountants, auditors or other professionals the commissioner considers necessary to properly perform the commissioner’s functions.

(3) For subsection (1) or (2), a public service officer may be seconded to the commission.

(4) In this section—

“**resources**” includes office accommodation and equipment, staff and administrative support.

“**staff**”, in relation to the commission, means the staff that the chief executive provides under subsection (1) and an individual employed under subsection (2).

**241 Preservation of rights if public service officer appointed or engaged**

(1) A public service officer who is appointed to an office under this part is entitled to retain all existing and accruing rights as if service in that office were a continuation of service as a public service officer.

(2) If the individual stops holding that office for a reason other than misconduct, the individual—

- (a) is entitled to be employed as a public service officer; and
- (b) is to be employed on the classification level and remuneration that the public service commissioner or another entity prescribed under a regulation considers the individual would have attained in the ordinary course of progression if the individual had continued in employment as a public service officer.

**242 Preservation of rights if individual becomes public service officer**

(1) On the appointment of an individual holding office under this part as a public service officer, the individual's service under this part must be regarded as service as a public service officer.

(2) Subsection (1) does not apply to the commissioner if the individual is guilty of misconduct in office as commissioner.

**243 Preservation of rights if public service officer seconded**

(1) A public service officer seconded as mentioned in section 240(3)<sup>103</sup>—

- (a) is entitled to the individual's existing and accruing rights as if employment as a member of the staff of the commission were a continuation of employment as a public service officer; and
- (b) may apply for positions, and be employed in, the public service as if the individual were a public service officer.

(2) When the secondment ends, the individual's employment on secondment as a member of the staff of the commission is employment of the same nature in the public service for working out the individual's rights as a public service officer.

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103 Section 240 (Staff and other resources)

(3) If the secondment ended for a reason other than misconduct, the individual is entitled to be employed—

- (a) as a public service officer; and
- (b) on the same, or a higher, classification level and remuneration that the public service commissioner or another entity prescribed under a regulation considers the individual would have attained in the ordinary course of progression if the individual had not been seconded.

## **244 Delegation**

(1) The commissioner may delegate the commissioner’s powers under this Act, other than this power of delegation, to an appropriately qualified member of the staff of the commission.

(2) In this section—

“**appropriately qualified**”, includes having the qualifications, experience or standing appropriate to the exercise of the power.

## **PART 2—DISCIPLINARY TRIBUNAL**

### *Division 1—Preliminary*

## **245 Main purpose of ch 4, pt 2**

The main purpose of this part is to establish the Legal Practice Tribunal to deal with matters it is empowered to deal with under this Act.

### *Division 2—Establishment of Legal Practice Tribunal and related matters*

## **246 Establishment, members and chairperson of tribunal**

- (1) The Legal Practice Tribunal is established.
- (2) The members of the tribunal are the Supreme Court judges.

(3) The Chief Justice is the chairperson of the tribunal.

(4) The tribunal is constituted by any 1 of its members.

### **247 Way tribunal is to operate**

(1) The chairperson is to allocate the work of the tribunal.

(2) The tribunal, as constituted by any 1 of its members, may sit in more than 1 place at the same time.

### **248 Jurisdiction**

The tribunal's jurisdiction is to hear and decide a discipline application made to the tribunal.

### **249 Powers**

(1) The tribunal may do all things necessary or convenient to be done for exercising its jurisdiction.

(2) Without limiting subsection (1), the tribunal has the powers conferred on it under this or another Act.

### **250 Rule-making power**

(1) The Governor in Council may, on the recommendation of the chairperson, make rules for the practice and procedure for the tribunal (“tribunal rules”).

(2) The tribunal rules are subordinate legislation.

### **251 Practice directions**

(1) To the extent a matter about the tribunal's procedure is not provided for by this Act or the tribunal rules, the matter may be dealt with by directions under this section.

(2) The chairperson may issue directions of general application about the tribunal's procedures.

(3) The chairperson may delegate the chairperson's power under subsection (2) to another member of the tribunal.

(4) The member constituting the tribunal may issue particular directions for a hearing.

## **252 Registrar**

The registrar of the tribunal, as constituted by any 1 of its members, is the registrar for the Supreme Court district in which the tribunal is hearing the discipline application.

## **253 Tribunal's seal**

(1) The tribunal must have a seal for each Supreme Court district.

(2) Each seal must be judicially noticed.

(3) The registrar for each Supreme Court district is to have custody of the seal for the district.

### *Division 3—Panels, members of panels and related matters*

## **254 Establishment of panels for helping the tribunal**

(1) The following are established—

- (a) the lay panel;
- (b) the practitioner panel.

(2) The practitioner panel is to consist of both barristers and solicitors.

(3) One member of the lay panel and 1 member of the practitioner panel are to sit with the tribunal and help the tribunal in hearing and deciding a discipline application.

(4) However, if a panel member disqualifies himself or herself as mentioned in section 260(2),<sup>104</sup> the tribunal may continue with the relevant hearing if the tribunal member considers it appropriate to do so.

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104 Section 260 (Disclosure of interest)

**255 Appointment of panel member**

(1) The members of the panels are to be appointed under this Act by the Governor in Council.

(2) An individual is eligible for appointment as a member of the lay panel only if the individual—

- (a) has high level experience and knowledge of consumer protection, business, public administration or another relevant area; and
- (b) is not, and has not been, an Australian lawyer, foreign lawyer or otherwise legally qualified; and
- (c) has not been convicted of a serious offence or a offence against a relevant law, including before the commencement of this section.

(3) An individual is eligible for appointment as a member of the practitioner panel only if the individual—

- (a) is an Australian legal practitioner who has held a practising certificate for at least 5 years; and
- (b) has not been convicted of a serious offence or an offence against a relevant law, including before that commencement.

(4) A member holds office for a term of not longer than 5 years stated in the instrument of appointment.

(5) For subsection (3)(a), in relation to any part of the 5 year period before the commencement of this section, a barrister is not required to have held a practising certificate for that part of the period if the barrister was practising as a barrister during that period.

**256 Remuneration and appointment conditions of panel members**

(1) A member of the lay panel is entitled to be paid the remuneration and allowances decided by the Governor in Council for sitting with the tribunal in relation to hearing and deciding a discipline application.

(2) It is a condition of a lay member's appointment that if the member's appointment is terminated under section 257,<sup>105</sup> the member is not entitled to any remuneration or allowances applicable to any sitting after the date of the termination.

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105 Section 257 (Termination of appointment)

(3) To the extent that the conditions are not provided for by this Act, a member of the lay panel or practitioner panel holds office on the conditions decided by the Governor in Council.

### **257 Termination of appointment**

(1) The Governor in Council may end the appointment of a panel member if the panel member—

- (a) becomes incapable of performing the member's functions because of physical or mental incapacity; or
- (b) is an insolvent under administration; or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service.

(2) The Governor in Council must terminate the appointment of a panel member if the member—

- (a) is convicted of a serious offence or an offence against a relevant law; or
- (b) for a member of the lay panel—becomes an Australian lawyer or otherwise legally qualified; or
- (c) for a member of the practitioner panel—stops holding a practising certificate.

### **258 Resignation of members**

(1) A panel member may resign by giving a signed notice of resignation to the Minister.

(2) A notice of resignation under subsection (1) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.

## *Division 4—Role of tribunal members and panel members*

### **259 Role of members**

(1) The chairperson may do all things necessary or convenient to be done for the performance of the chairperson's role.

(2) The role of a tribunal member and panel member includes professionally and efficiently performing the functions of the tribunal assigned or given to the member under this or another Act.

(3) Each tribunal member and panel member must comply with the procedures and policies implemented by the chairperson for the tribunal's adjudicative operations.

## **260 Disclosure of interests**

(1) If a tribunal member, or a panel member helping the tribunal, becomes aware that the member has a conflict of interest about a proceeding before the tribunal, the member must disclose the issue giving rise to the conflict—

(a) if the member is the chairperson—to the parties to the proceeding; or

(b) otherwise—to the chairperson and the parties to the proceeding.

(2) After making the disclosure, the member must disqualify himself or herself.

(3) A member has a conflict of interest about a proceeding if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the proceeding.

(4) If the individual who is disqualified is a panel member, the tribunal member may decide it is appropriate to proceed with the hearing with only 1 panel member.

### *Division 5—Constitution of tribunal for hearings*

## **261 Constitution of tribunal for hearing**

(1) For hearing and deciding a discipline application made to the tribunal, the tribunal is constituted by a tribunal member.

(2) However, although panel members do not constitute the tribunal, the tribunal member is to be helped by 2 panel members chosen by the Brisbane registrar and approved by the tribunal member.

(3) The panel members mentioned in subsection (2) must consist of—

(a) a lay panel member; and



(b) 1 of the following members—

- (i) if the complaint is about the conduct of a person who, at the time of performing the acts or omitting to do the acts constituting the conduct complained of, was a barrister or, in the opinion of the tribunal member, was engaged in legal practice in the manner of a barrister—a member of the practitioner panel who is a barrister;
- (ii) otherwise—a member of the practitioner panel who is a solicitor.

(4) The registrar must keep a record of the name of the tribunal member for each hearing, the names of the panel members helping the tribunal and the discipline application for which the hearing is held.

### *Division 6—Other provisions*

#### **262 Institution of proceedings by the commissioner**

The commissioner may bring a proceeding for the imposition or enforcement of a penalty under this part.

#### **263 Contempt of tribunal**

(1) The tribunal has, for itself, the tribunal members and the panel members, all the protection, powers, jurisdiction and authority the Supreme Court has for that court in relation to contempt of court.

(2) The tribunal must comply with the Uniform Civil Procedure Rules relating to contempt of court, with necessary changes.

(3) The registrar may apply to the tribunal for an order that a person be committed to prison for contempt of the tribunal.

(4) The tribunal's jurisdiction to punish a contempt of the tribunal may be exercised on the tribunal's own initiative.

#### **264 Conduct that is contempt and an offence**

If conduct of a person is both contempt of the tribunal and an offence, the person may be proceeded against for the contempt or for the offence, but the person is not liable to be punished twice for the same conduct.

**265 Protection of members etc.**

(1) A tribunal member or panel member has, in the performance of the member's duties as a member, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.

(2) A person representing a person before the tribunal has the same protection and immunity as an Australian legal practitioner appearing for a party in a proceeding in the Supreme Court.

(3) A person appearing before the tribunal as a witness has the same protection as a witness in a proceeding in the Supreme Court.

(4) A document produced at, or used for, a tribunal hearing has the same protection it would have if produced before the Supreme Court.

**PART 3—LEGAL PRACTICE COMMITTEE***Division 1—Preliminary***266 Main purpose of ch 4, pt 3**

The main purpose of this part is to establish the Legal Practice Committee to deal with matters it is empowered to deal with under this Act.

**267 Definitions for ch 4, pt 3**

In this part—

“**barrister**” means a local legal practitioner who holds a current practising certificate to practise as a barrister.

“**solicitor**” means a local legal practitioner who holds a current local practising certificate to practise as a solicitor.

***Division 2—Establishment, membership of committee, functions and powers***

**268 Establishment of committee**

The Legal Practice Committee is established.

**269 Committee members**

(1) The committee is to consist of the following members appointed by the Governor in Council—

- (a) a chairperson;
- (b) 2 solicitors;
- (c) 2 barristers;
- (d) 2 lay members.

(2) Before recommending an individual for appointment as the chairperson, the Minister must be satisfied that the individual has high level experience and knowledge of the legal system and legal practice.

(3) For choosing someone to recommend for appointment under subsection (1)(b), the Minister may invite nominations from the law society.

(4) For choosing someone to recommend for appointment under subsection (1)(c), the Minister may invite nominations from the bar association.

(5) Before recommending an individual for appointment under subsection (1)(d), the Minister must be satisfied that the individual has high level experience and knowledge of consumer protection, business, public administration or another relevant area but is not an Australian lawyer or is otherwise legally qualified.

**270 Term of appointment**

The appointment of a member of the committee is for the term stated in the member's appointment.

**271 Functions and powers of committee**

(1) The committee has the functions provided for under this Act.

(2) The committee has all the powers necessary or convenient for performing its functions.

**272 Administrative support**

The commissioner must provide administrative support for the committee, including secretariat support.

*Division 3—Provisions about committee members***273 Eligibility for membership**

An individual can not become a member of the committee if the individual—

- (a) is an insolvent under administration; or
- (b) has been convicted of a serious offence or an offence against a relevant law.

**274 Termination of office**

(1) The Governor in Council may end the appointment of a committee member if the member—

- (a) becomes incapable of performing the member's functions because of physical or mental incapacity; or
- (b) is an insolvent under administration; or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service.

(2) The Governor in Council must end the appointment of a committee member if the member—

- (a) is convicted of a serious offence or an offence against a relevant law; or
- (b) if the individual was appointed because the individual was a solicitor—the individual stops being a solicitor; or

- (c) if the individual was appointed because the individual was a barrister—the individual stops being a barrister; or
- (d) if the individual was appointed as a lay member—the individual becomes an Australian lawyer or otherwise legally qualified.

### **275 Resignation of committee member**

(1) A committee member may resign by giving a signed notice of resignation to the Minister.

(2) A notice of resignation under subsection (1) takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.

### **276 Deputy chairperson**

(1) The committee members must appoint a member, other than the chairperson, as the deputy chairperson of the committee.

(2) The appointment of the deputy chairperson may be for a time decided by the committee but not for longer than the deputy chairperson's term of appointment as a member.

### **277 Remuneration and allowances of lay members**

A lay member of the committee is entitled to be paid the remuneration and allowances decided by the Governor in Council.

### ***Division 4—Provisions about committee performing advisory functions***

### **278 Application of ch 4, pt 3, div 4**

This division applies to the committee in performing its advisory functions under this Act.<sup>106</sup>

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<sup>106</sup> See section 139 (Monitoring role of committee) which provides that the committee has certain functions in relation to advising the Minister about the legal profession rules.

**279 Conduct of business**

Subject to this division, the committee may conduct its business, including its meetings, in the way it considers appropriate.

**280 Time and place of meeting**

(1) Committee meetings are to be held at the times and places the chairperson decides.

(2) However, the chairperson must call a meeting if asked, in writing, to do so by at least the number of members forming a quorum for the committee.

**281 Quorum**

A quorum for the committee is 4 members.

**282 Presiding at meetings**

(1) The chairperson is to preside at all meetings of the committee at which the chairperson is present.

(2) If the chairperson is absent from a committee meeting, but the deputy chairperson is present, the deputy chairperson is to preside.

(3) If the chairperson and deputy chairperson are both absent from a committee meeting, including because of a vacancy in the office, a member chosen by the members present is to preside at the committee meeting.

**283 Conduct of meetings**

(1) A question at a committee meeting is decided by a majority of the votes of the members present.

(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(3) A member present at the meeting who abstains from voting is taken to be have voted for the negative.

(4) The committee may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

Teleconferencing.

(5) A member who takes part in a committee meeting under subsection (4) is taken to be present at the meeting.

(6) A resolution is validly made by the committee, even if it is not passed at a committee meeting, if—

- (a) a majority of the committee members give written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the committee.

## **284 Minutes**

(1) The committee must keep—

- (a) minutes of its meetings; and
- (b) a record of any resolutions made under section 283(6).<sup>107</sup>

(2) Subsection (3) applies if a resolution is passed at a committee meeting by a majority of the members present.

(3) If asked by a member who voted against the passing of the resolution, the committee must record in the minutes of the meeting that the member voted against the resolution.

## **285 Disclosure of interests**

(1) This section applies to a committee member (the “**interested person**”) if—

- (a) the interested person has a direct or indirect interest in an issue being considered, or about to be considered, by the committee; and
- (b) the interest could conflict with the proper performance of the interested person’s duties about the consideration of the issue.

(2) After the relevant facts come to the interested person’s knowledge, the person must disclose the nature of the interest to a committee meeting.

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<sup>107</sup> Section 283 (Conduct of meetings)

(3) Unless the committee otherwise directs, the interested person must not—

- (a) be present when the committee considers the issue; or
- (b) take part in a decision of the committee about the issue.

(4) The interested person must not be present when the committee is considering whether to give a direction under subsection (3).

(5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—

- (a) be present when the committee is considering whether to give a direction under subsection (3) about the interested person; or
- (b) take part in making the decision about giving the direction.

(6) If—

- (a) because of this section, a committee member is not present at a committee meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
- (b) there would be a quorum if the member were present;

the remaining persons present are a quorum of the committee for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

(7) A disclosure under subsection (2) must be recorded in the committee's minutes.

### *Division 5—Provisions applying to committee for hearings*

#### **286 Constitution of committee for hearing**

(1) The chairperson must make arrangements about constituting the committee for hearing and deciding discipline applications.

(2) For hearing and deciding a discipline application made to the committee, the committee is constituted by—

- (a) the chairperson; and
- (b) a member of the committee who is a local legal practitioner chosen by the chairperson; and



(c) a lay member of the committee chosen by the chairperson.

(3) In choosing a local legal practitioner as mentioned in subsection (2), the chairperson must choose an individual who is—

- (a) if the discipline application relates to a barrister—a barrister; or
- (b) otherwise—a solicitor.

(4) The chairperson is to preside at the hearing of a matter referred to the committee.

(5) In this section—

“**chairperson**” includes the deputy chairperson.

## **287 Conduct of meetings**

(1) A question at a committee meeting is decided by a majority of the votes of the members present.

(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(3) A member present at the meeting who abstains from voting is taken to be have voted for the negative.

(4) The committee may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

Teleconferencing.

(5) A member who takes part in a committee meeting under subsection (4) is taken to be present at the meeting.

(6) A resolution is validly made by the committee, even if it is not passed at a committee meeting, if—

- (a) a majority of the committee members give written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the committee.

**288 Disclosure of interests**

(1) If a member of the committee becomes aware that the member has a conflict of interest about a discipline application made to the committee, the member must disclose the issue giving rise to the conflict—

- (a) if the member is the chairperson—to the parties to the proceeding in relation to the discipline application; or
- (b) otherwise—to the chairperson and the parties to the proceeding.

(2) After making the disclosure, the member must disqualify himself or herself.

(3) A member has a conflict of interest about a proceeding if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the proceeding.

(4) If the parties agree, the remaining members of the committee may continue with hearing and deciding the discipline application.

(5) However, if the parties do not agree as mentioned in subsection (4), the hearing of the discipline application must stop and the committee must be reconstituted to hear and decide the discipline application.

(6) If the committee can not be reconstituted under subsection (5), the discipline application is to be transferred to the tribunal under the tribunal rules.

**289 Protection of members etc.**

(1) A committee member has, in the performance of the member's duties as a member of the committee hearing and deciding a discipline application, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.

(2) A person representing a person before the committee has the same protection and immunity as an Australian legal practitioner appearing for a party in a proceeding in the Supreme Court.

(3) A person appearing before the committee as a witness has the same protection as a witness in a proceeding in the Supreme Court.

(4) A document produced at, or used for, a hearing of the committee has the same protection it would have if produced before the Supreme Court.

## **PART 4—PROVISIONS APPLYING TO EACH DISCIPLINARY BODY**

### *Division 1—Parties to proceedings*

#### **290 Parties**

(1) The parties to a proceeding in a disciplinary body for a discipline application are—

- (a) the Australian lawyer, or the law practice employee, about whom the complaint has been made or an investigation matter relates; and
- (b) the commissioner.

(2) The parties are entitled to appear at the hearing of the application.

(3) The complainant is entitled to appear at the hearing in relation to—

- (a) those aspects of the hearing that relate to a request by the complainant for a compensation order; and
- (b) other aspects of the hearing, but only if the disciplinary body grants leave to the complainant to appear in relation to them.

(4) The disciplinary body may grant leave to any other person to appear at the hearing if the disciplinary body is satisfied that it is appropriate for that person to appear at the hearing.

(5) A person who is entitled to appear at the hearing or who is granted leave to appear at the hearing may appear personally or be represented by an Australian legal practitioner or a government legal officer.

### *Division 2—Conduct of proceedings*

#### **291 Public hearings**

(1) A hearing before a disciplinary body must be open to the public, unless the disciplinary body directs that the hearing or a part of the hearing be closed to the public.

(2) A disciplinary body may not direct that a hearing or a part of a hearing be closed to the public unless satisfied that it is desirable to do so in the public interest for reasons connected with—

- (a) the subject matter of the hearing; or
- (b) the nature of the evidence to be given.

### **292 Procedure for hearing by a disciplinary body**

(1) When conducting a hearing, a disciplinary body—

- (a) must comply with natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it; and
- (c) is not bound by the rules of evidence; and
- (d) may inform itself of anything in the way it considers appropriate.

(2) Subsection (1) is subject to another provision of this Act that states a particular way the disciplinary body must conduct the hearing.

### **293 Disciplinary body may proceed in absence of party or may adjourn hearing**

(1) At a hearing, a disciplinary body may proceed in the absence of a party if it reasonably believes the party has been given sufficient notice of the hearing.

(2) A disciplinary body may adjourn the hearing from time to time.

### **294 Matter may be decided on affidavit evidence**

If a disciplinary body receives in evidence an affidavit of 1 party, the disciplinary body may decide all or part of a discipline application or any relevant fact on the evidence given in the affidavit—

- (a) with the written consent of the other party; or
- (b) if the other party does not appear and—
  - (i) the party filing the affidavit has given the other party a copy of the affidavit and the name of the person making the

affidavit is included in a list of documents given to the other party under the tribunal rules; or

- (ii) appropriate enquiries have been made as to the other party's whereabouts and, in all the circumstances, it is reasonable for the matter to be decided in that party's absence.

### **295 Standard of proof**

(1) If an allegation of fact is not admitted or is challenged when a disciplinary body is hearing a discipline application, the body may act on the allegation if the body is satisfied on the balance of probabilities that the allegation is true.

(2) For subsection (1), the degree of satisfaction required varies according to the consequences for the relevant Australian lawyer or law practice employee of finding the allegation to be true.

### *Division 3—Powers of disciplinary body*

### **296 Power to disregard procedural lapses**

(1) A disciplinary body may order that a failure by the commissioner to observe a procedural requirement in relation to a complaint, an investigation matter or a discipline application must be disregarded, if the disciplinary body is satisfied that the parties to the hearing have not been prejudiced by the failure.

(2) This section applies whether the failure happened—

- (a) before the making of the discipline application resulting from the complaint or investigation matter; or
- (b) after the making of the discipline application.

(3) Subsection (1) does not limit the disciplinary body's power to disregard a failure by another person to observe a procedural requirement.

### **297 Directions for hearings**

(1) A disciplinary body may issue directions in relation to a hearing before the disciplinary body.

(2) The disciplinary body may issue the directions—

- (a) on the body's own initiative; or
- (b) at the request of a party, or a person granted leave to appear at the hearing; or
- (c) at the request of another person who has a sufficient interest in—
  - (i) the hearing; or
  - (ii) another matter arising out of or relating to the hearing.

(3) Subsection (1) is subject to the tribunal rules and directions under section 251.<sup>108</sup>

### 298 Attendance notice

(1) A disciplinary body may, on the application of a party to a hearing or on its own initiative, by written notice given to a person (an “**attendance notice**”), require the person to attend the hearing at a stated time and place to give evidence or to produce stated documents or things.

(2) A person given an attendance notice must not fail, without reasonable excuse—

- (a) to attend as required by the notice; or
- (b) to continue to attend as required by the disciplinary body until excused from further attendance.

Maximum penalty—100 penalty units.

(3) Also at a hearing, a person appearing as a witness must not—

- (a) fail to take an oath or make an affirmation when required by the disciplinary body; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the disciplinary body; or
- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by an attendance notice.

Maximum penalty—100 penalty units.

(4) It is a reasonable excuse for an individual to fail to answer a question or produce a document or other thing, if answering the question or

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<sup>108</sup> Section 251 (Practice directions)

producing the document or other thing might tend to incriminate the individual.

### **299 Authentication of documents**

(1) A document relating to proceedings for a discipline application requiring authentication by a disciplinary body is sufficiently authenticated if it is signed by the tribunal member or the registrar for the proceedings, or the chairperson or deputy chairperson of the committee.

(2) However, the tribunal rules may require that a document issued by the tribunal is stamped with the tribunal's seal.

(3) Judicial notice must be taken of the signature of—

- (a) a tribunal member or the registrar that appears on a document issued by the tribunal; or
- (b) the chairperson or deputy chairperson of the committee that appears on a document issued by the tribunal.

## *Division 4—Offences*

### **300 False or misleading information**

A person must not state anything to a disciplinary body that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

### **301 False or misleading documents**

(1) A person must not give to a disciplinary body a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the disciplinary body, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the disciplinary body if the person has, or can reasonably obtain, the correct information.

## **PART 5—LEGAL PRACTITIONERS ADMISSIONS BOARD**

### *Division 1—Preliminary*

#### **302 Main purpose of ch 4, pt 5**

The main purpose of this part is to establish the Legal Practitioners Admissions Board to deal with matters it is empowered to deal with under this Act.

#### **303 Definitions for ch 4, pt 5**

In this part—

“**barrister**” means a local legal practitioner who holds a current local practising certificate to practise as a barrister.

“**solicitor**” means a local legal practitioner who holds a current local practising certificate to practise as a solicitor.

### *Division 2—Establishment and membership of board*

#### **304 Establishment of board**

The Legal Practitioners Admissions Board is established.

#### **305 Members of board**

(1) The board is to consist of the following members—

- (a) 2 solicitors and 2 barristers;
- (b) 1 solicitor nominated by the law society;
- (c) 1 barrister nominated by the bar association;
- (d) the Brisbane registrar;
- (e) an individual nominated by the Minister.

(2) The Chief Justice must appoint the members of the board, other than the Brisbane registrar or the Minister’s nominee.



(3) An individual mentioned in subsection (1)(a), (b) or (c) must not be appointed unless the Chief Justice is satisfied the individual is an Australian lawyer of at least 5 years standing, including before the commencement of this section.

(4) If the law society or bar association fails to nominate a member within 14 days after being requested to do so by the Chief Justice, the chief justice may appoint any individual whom the Chief Justice considers suitable to represent the interests of the law society or bar association as a member of the board and the nomination is taken to have been made by the law society or bar association.

(5) An appointment under this section must be for no longer than 1 year but an individual may be reappointed.

### *Division 3—Board's functions and powers*

#### **306 Functions and powers of board**

(1) The board has the functions provided for under this Act and the admission rules.

(2) The board has all the powers necessary or convenient for performing its functions.

#### **307 Administrative support of the board**

The law society must provide administrative support for the board, including secretariat support.

### *Division 4—Provisions about board members*

#### **308 Term of appointment**

A member of the board, other than the Brisbane registrar, holds office for the term stated in the member's appointment.

#### **309 Chairperson and deputy chairperson**

(1) The member of the board appointed by the Chief Justice as chairperson is the chairperson of the board.

(2) The board members must appoint a member, other than the chairperson, as the deputy chairperson of the board.

(3) The appointment of the deputy chairperson may be for a time decided by the board but not for longer than the deputy chairperson's term of appointment as a member.

### **310 Eligibility for membership**

An individual can not become a board member if the individual—

- (a) is an insolvent under administration; or
- (b) has been convicted of a serious offence; or
- (c) has been convicted of an offence against this Act.

### **311 Termination of appointment**

(1) The Chief Justice may end the appointment of a board member if the member is absent without the board's permission from 3 consecutive meetings of the board of which proper notice has been given.

(2) The Chief Justice must end the appointment of a board member if the member—

- (a) is an insolvent under administration; or
- (b) is convicted of a serious offence; or
- (c) is convicted of an offence against this Act; or
- (d) if the individual was appointed because the individual was a solicitor—stops being a solicitor; or
- (e) if the individual was appointed because the individual was a barrister—stops being a barrister.

(3) In this section—

**“meeting”** means the following—

- (a) if the member does not attend—a meeting with a quorum present;
- (b) if the member attends—a meeting with or without a quorum present.

**312 Resignation of board member**

(1) A board member, other than the Brisbane registrar, may resign by giving a signed notice of resignation to the Chief Justice.

(2) A notice of resignation under subsection (1) takes effect when the notice is given to the Chief Justice or, if a later time is stated in the notice, the later time.

***Division 5—Board business*****313 Conduct of business**

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

**314 Times and places of meetings**

(1) Board meetings are to be held at the times and places the chairperson decides.

(2) However, the chairperson must call a meeting if asked, in writing, to do so by the Chief Justice or at least the number of members forming a quorum for the board.

**315 Quorum**

A quorum for the board is 4 members.

**316 Presiding at meetings**

(1) The chairperson is to preside at all meetings of the board at which the chairperson is present.

(2) If the chairperson is absent from a board meeting, but the deputy chairperson is present, the deputy chairperson is to preside.

(3) If the chairperson and deputy chairperson are both absent from a board meeting, including because of a vacancy in the office, a member chosen by the members present is to preside at the board meeting.

### 317 Conduct of meetings

(1) A question at a board meeting is decided by a majority of the votes of the members present.

(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(3) A member present at the meeting who abstains from voting is taken to be have voted for the negative.

(4) The board may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

Teleconferencing.

(5) A member who takes part in a board meeting under subsection (4) is taken to be present at the meeting.

(6) A resolution is validly made by the board, even if it is not passed at a board meeting, if—

- (a) a majority of the board members gives written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the board.

### 318 Minutes

(1) The board must keep—

- (a) minutes of its meetings; and
- (b) a record of any resolutions made under section 317(6).<sup>109</sup>

(2) Subsection (3) applies if a resolution is passed at a board meeting by a majority of the members present.

(3) If asked by a member who voted against the passing of the resolution, the board must record in the minutes of the meeting that the member voted against the resolution.

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<sup>109</sup> Section 317 (Conduct of meetings)

**319 Disclosure of interests**

(1) This section applies to a board member (the “**interested person**”) if—

- (a) the interested person has a direct or indirect interest in an issue being considered, or about to be considered, by the board; and
- (b) the interest could conflict with the proper performance of the person’s duties about the consideration of the issue.

(2) After the relevant facts come to the interested person’s knowledge, the person must disclose the nature of the interest to a board meeting.

(3) Unless the board otherwise directs, the interested person must not—

- (a) be present when the board considers the issue; or
- (b) take part in a decision of the board about the issue.

(4) The interested person must not be present when the board is considering whether to give a direction under subsection (3).

(5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—

- (a) be present when the board is considering whether to give a direction under subsection (3) about the interested person; or
- (b) take part in making the decision about giving the direction.

(6) If—

- (a) because of this section, a board member is not present at a board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
- (b) there would be a quorum if the member were present;

the remaining persons present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

(7) A disclosure under subsection (2) must be recorded in the board’s minutes.

*Division 6—Miscellaneous***320 Application of particular Acts to board**

To remove any doubt, it is declared that the board is a public authority for the purposes of—

- (a) the *Freedom of Information Act 1992*; and
- (b) the *Ombudsman Act 2001*.

**CHAPTER 5—SUITABILITY REPORTS AND INVESTIGATIONS****PART 1—SUITABILITY REPORTS***Division 1—Preliminary***321 Main purpose of ch 5, pt 1**

The main purpose of this part is to ensure police reports and health assessment reports may be obtained when this Act has provided for the reports or assessments.

**322 Definitions for ch 5, pt 1**

In this part—

**“commissioner of police”** means the commissioner of the police service.

**“relevant authority”** means—

- (a) for an applicant for admission—the board; or
- (b) for an applicant for the grant or renewal of a local practising certificate or for the holder of a local practising certificate—the relevant regulatory authority.

**“subject person”** means—

- (a) an applicant for admission; or
- (b) an applicant for the grant or renewal of a local practising certificate; or
- (c) the holder of a local practising certificate.

**“suitability report”** means a police report or health assessment report prepared under this part or under provisions of a corresponding law, and includes a copy of a report or a part of a report or copy.

### *Division 2—Police reports*

#### **323 Relevant authority may ask for police report**

(1) A relevant authority may ask the commissioner of police for a written report about whether a subject person has any convictions for offences.

(2) However, a regulatory authority must not ask for a report about a local legal practitioner unless the authority considers it appropriate.

(3) Subsection (2) applies to the regulatory authority whether or not the local legal practitioner is applying for the renewal of the local practising certificate or applying for another practising certificate.

(4) The commissioner of police must give the report to the authority.

(5) The report must contain only information in the possession of the commissioner of police or to which the commissioner has access.

### *Division 3—Health assessments*

#### **324 Health assessment**

(1) This section applies if a relevant authority believes a subject person may have a material physical or mental infirmity that may make the person unsuitable to engage in legal practice in this jurisdiction.

(2) The relevant authority may require the subject person to undergo a health assessment by a person appointed by the relevant authority.

(3) If the relevant authority decides to require the health assessment, the authority must give the subject person an information notice about the decision to require the assessment that includes—

- (a) the name and qualifications of the person appointed by the authority to conduct the assessment; and
- (b) a stated date, and a stated time and place, for the assessment that must be reasonable having regard to the circumstances of the subject person as known to the relevant authority.

(4) The stated date must be no sooner than 28 days after the information notice is given to the subject person.

(5) The subject person may appeal to the Supreme Court against the decision within 28 days after the date the information notice is given to the subject person.

### 325 Appointment of health assessor

(1) The relevant authority may appoint 1 or more appropriately qualified persons (“**health assessors**”) to conduct all or part of a health assessment under this division of a subject person.

(2) At least 1 health assessor must be a registered medical practitioner.

(3) If the relevant authority considers the subject person’s criminal history is relevant to the assessment, the authority may disclose the history to the health assessor.

(4) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure.

(5) Before appointing a person as a health assessor, the relevant authority must be satisfied the person does not have a personal or professional connection with the subject person that may prejudice the way in which the person conducts the assessment.

(6) In this section—

“**appropriately qualified**”, in relation to a registered medical practitioner or other person conducting a health assessment, includes having the qualifications, experience, skills or knowledge appropriate to conduct the assessment.



### **326 Health assessment report**

(1) A health assessor conducting all or part of a health assessment of a subject person must prepare a report about the assessment (“**health assessment report**”).

(2) The health assessment report must include—

- (a) the health assessor’s findings as to any material physical or mental infirmity of the subject person and the extent, if any, to which the infirmity may make the person unsuitable to engage in legal practice; and
- (b) if the health assessor finds the person has a material physical or mental infirmity that may make the person unsuitable to engage in legal practice—the health assessor’s recommendations, if any, as to a condition—
  - (i) the Supreme Court could impose on the person’s admission as a legal practitioner that would make, or would be likely to make, the person suitable to engage in legal practice, despite the infirmity; or
  - (ii) the relevant authority could impose on the person’s practising certificate that would make, or would be likely to make, the person suitable to engage in legal practice, despite the infirmity.

(3) The health assessor must give the health assessment report to the relevant authority and a copy to the subject person.

### **327 Payment for health assessment and report**

The relevant authority that appoints a health assessor to conduct all or part of a health assessment is liable for the cost of the assessment conducted by, and the report prepared by, the health assessor.

### **328 Use of health assessment report**

(1) A report about a subject person is not admissible in any proceedings, and a person can not be compelled to produce the report or to give evidence about the report or its contents in any proceedings.

(2) Subsection (1) does not apply in relation to—

- (a) proceedings relating to an application by the subject person for admission as a legal practitioner in this or any other jurisdiction; or
- (b) proceedings on an appeal by the subject person against a decision of a relevant authority of this or any other jurisdiction—
  - (i) refusing to grant or renew a practising certificate; or
  - (ii) imposing conditions on a practising certificate; or
  - (iii) amending or cancelling a practising certificate.

(3) Subsection (1) does not apply if the report is admitted or produced, or evidence about the report or its contents is given, in proceedings with the consent of—

- (a) the health assessor who prepared the report; and
- (b) the subject person to whom the report relates.

(4) In this section—

**“report”** means a health assessment report prepared under this division or under provisions of a corresponding law, and includes a copy of a report or a part of a report or copy.

### *Division 4—General*

#### **329 Confidentiality of suitability report**

(1) A member, officer, employee or agent of a relevant authority must not, directly or indirectly, disclose to anyone else a suitability report, or information in a suitability report, given to the relevant authority.

Maximum penalty—200 penalty units.

(2) A member, officer, employee or agent of the board does not contravene subsection (1) if—

- (a) disclosure of the suitability report or information in it to someone else is authorised by the board to the extent necessary to perform a function or exercise a power under this Act relating to an application for admission; or
- (b) disclosure of the report or information in it is made to the corresponding authority for the board of another jurisdiction in

which the individual has applied for admission as a legal practitioner; or

- (c) the disclosure is made with the consent of the person to whom it relates and, in the case of a health assessment, the health assessor; or
- (d) the disclosure is otherwise required or permitted by law.

**(3)** A member, officer, employee or agent of a regulatory authority does not contravene subsection (1) if—

- (a) disclosure of the suitability report or information in it to someone else is authorised by the regulatory authority to the extent necessary to perform a function or exercise a power under this Act in relation to—
  - (i) an application for the grant or renewal of a local practising certificate; or
  - (ii) the imposition or proposed imposition of conditions on a local practising certificate; or
  - (iii) the amendment, cancellation or suspension, or the proposed amendment, cancellation or suspension, of a local practising certificate; or
- (b) disclosure of the suitability report or information in it is made to the regulatory authority of another jurisdiction when the individual to whom it relates is an applicant for the grant or renewal of a practising certificate or the holder of a practising certificate under a corresponding law of the other jurisdiction; or
- (c) the disclosure is made with the consent of the person to whom it relates and, in the case of a health assessment, the health assessor; or
- (d) the disclosure is otherwise required or permitted by law.

**(4)** The relevant authority must ensure a suitability report is destroyed after—

- (a) the application concerned is finally decided or is withdrawn; or
- (b) other action relating to the imposition of conditions on a practising certificate or the amendment, cancellation or suspension of a practising certificate is taken or a decision is taken not to proceed with other action.

(5) Subsection (1) does not apply to information in a suitability report if that information was given or obtained by the relevant authority other than as part of the suitability report.

*Example for subsection (5)—*

A suitability report may contain information that an applicant may have already disclosed, including name, address, or some information about previous convictions or a previous disqualification from being a lawyer.

### **330 Operation of this part**

(1) Nothing in this part authorises the board to seek a suitability report about—

- (a) an applicant for the grant or renewal of a local practising certificate; or
- (b) the holder of a local practising certificate.

(2) Nothing in this part authorises a relevant authority to seek a suitability report about an applicant for admission.

## **PART 2—INVESTIGATORS AND THEIR POWERS**

### *Division 1—Preliminary*

#### **331 Main purposes of ch 5, pt 2**

The main purpose of this part is to provide for powers for investigations of complaints or investigation matters.

#### **332 Definitions for ch 5, pt 2**

In this part—

“**investigation**” means an investigation of a complaint or investigation matter.

“investigator” means an individual appointed under section 333<sup>110</sup> as an investigator.

### *Division 2—Investigators*

#### **333 Appointment, qualifications etc. of investigators**

(1) The commissioner may appoint any of the following individuals as an investigator—

- (a) a member of the staff of the commission or a consultant to the commissioner as mentioned in section 240(2);<sup>111</sup>
- (b) an individual nominated for appointment as an investigator by a regulatory authority.

(2) However, the commissioner may appoint an individual as an investigator only if the commissioner is satisfied the individual is qualified for appointment because the individual has the necessary expertise or experience.

(3) An investigator nominated by a regulatory authority may only exercise the power of an investigator in relation to an investigation by the regulatory authority or when directed by the commissioner to investigate a matter.

(4) If, under this Act, a regulatory authority may investigate a complaint or investigation matter, an investigator nominated by the regulatory authority may investigate the complaint or investigation matter.

(5) This section does not limit the power of a regulatory authority to delegate powers to an individual who is an investigator nominated by the regulatory authority.

(6) An investigator nominated by a regulatory authority is not employed, and is not entitled to payments, under this Act or the *Public Service Act 1996*.

#### **334 Appointment conditions and limit on powers**

(1) An investigator holds office on any conditions stated in—

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110 Section 333 (Appointment, qualifications etc. of investigators)

111 Section 240 (Staff and other resources)

- (a) the investigator's instrument of appointment; or
- (b) a signed notice given to the investigator; or
- (c) a regulation.

(2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers under this Act.

(3) In this section—

“**signed notice**” means a notice signed by the commissioner.

### **335 Issue of identity card**

(1) The commissioner must issue an identity card to each investigator.

(2) The identity card must—

- (a) contain a recent photo of the investigator; and
- (b) contain a copy of the investigator's signature; and
- (c) identify the individual as an investigator under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to an individual for this Act and other purposes.

### **336 Production or display of identity card**

(1) In exercising a power under this Act in relation to a person, an investigator must—

- (a) produce the investigator's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an investigator does not exercise a power in relation to a person only because the investigator has entered a place as mentioned in section 340(1)(b) or (2).<sup>112</sup>

### **337 When investigator ceases to hold office**

(1) An investigator ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the investigator ceases to hold office;
- (c) the investigator's resignation under section 338 takes effect.

(2) Subsection (1) does not limit the ways an investigator may stop holding office.

(3) In this section—

“**condition of office**” means a condition on which the investigator holds office.

### **338 Resignation**

An investigator may resign by signed notice given to the commissioner.

### **339 Return of identity card**

An individual who ceases to be an investigator must return the individual's identity card to the commissioner within 21 days after ceasing to be an investigator unless the individual has a reasonable excuse.

Maximum penalty—10 penalty units.

## *Division 3—Entry to places*

### **340 Power to enter places**

(1) An investigator may enter a place if—

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112 Section 340 (Power to enter places)

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is a place of business where an Australian lawyer is generally engaged in legal practice, other than a residence, and the place is open for carrying on business or otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an investigator may, without the occupier's consent or a warrant—

- (a) enter in to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) In this section—

**“place of business”** includes a place where a government legal officer is generally engaged in government work.

**“residence”** includes a part of a place of business where an individual resides.

### **341 Entry with consent**

(1) This section applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator entering the place under section 340(1)(a).

(2) Before asking for the consent, the investigator must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the investigator may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and



- (b) the purpose of the entry; and
- (c) the occupier gives the investigator consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the investigator must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **342 Application for warrant**

(1) An investigator may apply to a magistrate for a warrant for a place.

(2) The investigator must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

### **343 Issue of warrant**

(1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence about a matter that is the subject of a complaint or investigation matter that the investigator is investigating under this Act; and

- (b) the evidence is at the place or, within the next 7 days, will be at the place.

**(2)** The warrant must state—

- (a) the place to which the warrant applies; and
- (b) that a stated investigator may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for entry to the place; and
  - (ii) exercise the investigator's powers under this part; and
- (c) particulars of the matter that is the subject of the complaint or investigation matter that the magistrate considers appropriate in the circumstances; and
- (d) the name of the person about whom the complaint is made or who is the subject of the investigation matter, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the date and time of the warrant's issue; and
- (i) the date, within 14 days after the warrant's issue, the warrant ends.

### **344 Application by electronic communication and duplicate warrant**

**(1)** An application under section 342<sup>113</sup> may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the investigator considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the investigator's remote location.

**(2)** The application—

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113 Section 342 (Application for warrant)

- (a) may not be made before the investigator prepares the written application under section 342(2); but
- (b) may be made before the written application is sworn.

(3) The magistrate may issue the warrant (the **“original warrant”**) only if the magistrate is satisfied—

- (a) it was necessary to make the application under subsection (1); and
- (b) the way the application was made under subsection (1) was appropriate.

(4) After the magistrate issues the original warrant—

- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the investigator, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the investigator; or
- (b) otherwise—
  - (i) the magistrate must tell the investigator the date and time the warrant is issued and the other terms of the warrant; and
  - (ii) the investigator must complete a form of warrant, including by writing on it—
    - (A) the magistrate’s name; and
    - (B) the date and time the magistrate issued the warrant; and
    - (C) the other terms of the warrant.

(5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the **“duplicate warrant”**) is a duplicate of, and as effectual as, the original warrant.

(6) The investigator must, at the first reasonable opportunity, send to the magistrate—

- (a) the written application complying with section 342(2) and (3); and
- (b) if the investigator completed a form of warrant under subsection (4)(b)—the completed form of warrant.

(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—

- (a) attach the documents to the original warrant; and
- (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.

**(8)** Despite subsection (5), if—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
- (b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

**(9)** This section does limit section 342.

**(10)** In this section—

**“relevant magistrates court”**, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

### **345 Defect in relation to a warrant**

**(1)** A warrant is not invalidated by a defect in the warrant or in compliance with section 342, 343 or 344<sup>114</sup> unless the defect affects the substance of the warrant in a material particular.

**(2)** In this section—

**“warrant”** includes a duplicate warrant mentioned in section 344(5).

### **346 Warrants—procedure before entry**

**(1)** This section applies if an investigator named in a warrant issued under this part for a place is intending to enter the place under the warrant.

**(2)** Before entering the place, the investigator must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the investigator’s

<sup>114</sup> Sections 342 (Application for warrant), 343 (Issue of warrant) or 344 (Application by electronic communication and duplicate warrant)

identity card, or having the identity card displayed, as mentioned in section 336(1);<sup>115</sup>

- (b) give the person a copy of the warrant;
- (c) tell the person the investigator is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.

(3) However, the investigator need not comply with subsection (2) if the investigator believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

(4) In this section—

“**warrant**” includes a duplicate warrant mentioned in section 344(5).<sup>116</sup>

#### *Division 4—Powers of investigators after entry*

### **347 General powers of investigator after entering places**

(1) This division applies to an investigator who enters a place.

(2) However if an investigator, under section 340(2),<sup>117</sup> enters a place to ask the occupier’s consent to enter premises, this division applies to the investigator only if the consent is given or the entry is otherwise authorised.

(3) For performing an investigator’s function under this Act, an investigator may do any of the following—

- (a) search any part of the place;
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
- (c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;
- (d) copy, or take an extract from, a document at the place;

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115 Section 336 (Production or display of identity card)

116 Section 344 (Application by electronic communication and duplicate warrant)

117 Section 340 (Power to enter places)

- (e) take into or onto the place any person, equipment and materials the investigator reasonably requires for exercising a power under this division.

### **348 Power to require reasonable help or information**

(1) An investigator may require the occupier of the place, or a person at the place, to give the investigator—

- (a) reasonable help to exercise a power under this part; or
- (b) information to help the investigator in conducting the investigation.

(2) When making a requirement under subsection (1), the investigator must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(3) A person required to give reasonable help under subsection (1)(a), or give information under subsection (1)(b), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) If the person is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

### *Division 5—Power of investigators to seize evidence*

### **349 Seizing evidence at place entered under s 340**

(1) An investigator, who enters a place with the consent of the occupier as mentioned in section 340(1)(a), may seize a thing at the place if—

- (a) the investigator believes the thing is evidence that is relevant to the investigation being conducted by the investigator; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(2) An investigator, who enters a public place as mentioned in section 340(1)(b), may seize a thing at the place if the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator.

(3) An investigator, who enters a place under a warrant as mentioned in section 340(1)(c), may seize the evidence for which the warrant was issued.

(4) An investigator, who enters a place of business as mentioned in section 340(1)(d), may seize a thing at the place if the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator.

(5) The investigator may also seize anything else at the place if the investigator believes—

- (a) the thing is evidence of unsatisfactory professional conduct or professional misconduct of an Australian lawyer, misconduct of a law practice employee or an offence against a relevant law; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

### **350 Securing seized things**

Having seized a thing, an investigator may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

### **351 Tampering with seized things**

If an investigator restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without the investigator’s approval.

Maximum penalty—100 penalty units.

### **352 Powers to support seizure**

(1) To enable a thing to be seized, an investigator may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

**(2) The requirement—**

- (a) must be made by written notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

**(3)** A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

**(4)** A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—100 penalty units.

### **353 Receipt for seized things**

**(1)** After an investigator seizes a thing, the investigator must give a receipt for it to the person from whom it was seized.

**(2)** However, if for any reason it is not practicable to comply with subsection (1), the investigator must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

**(3)** The receipt must describe generally the thing seized and its condition.

**(4)** This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt given the thing's nature, condition and value.

### **354 Forfeiture of seized things**

**(1)** A seized thing is forfeited to the State if the investigator who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts.



**(2)** In applying subsection (1)—

- (a) subsection (1)(a) does not require the investigator to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the investigator to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for subsection (2)(b)—*

The owner of the thing has migrated to another country.

**(3)** Regard must be had to a thing's nature, condition and value in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

**355 Dealing with forfeited things etc.**

**(1)** On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the commissioner as the commissioner considers appropriate.

**(2)** Without limiting subsection (1), the commissioner may destroy or dispose of the thing.

**356 Return of seized things**

**(1)** If a seized thing has not been forfeited, the investigator must return it to its owner—

- (a) at the end of 6 months; or
- (b) if proceedings involving the thing are started within 6 months—at the end of the proceedings and any appeal from the proceedings.

**(2)** Despite subsection (1), unless the thing has been forfeited, the investigator must immediately return a thing seized as evidence to its owner if the investigator stops being satisfied its continued retention as evidence is necessary.

**357 Access to seized things**

(1) Until a seized thing is forfeited or returned, an investigator must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

***Division 6—General enforcement matters*****358 Notice of damage**

(1) This section applies if—

- (a) an investigator damages property when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction of an investigator damages property.

(2) The investigator must promptly give written notice of particulars of the damage to the person who appears to the investigator to be the owner of the property.

(3) If the investigator believes the damage was caused by a latent defect in the property or circumstances beyond the investigator’s or other person’s control, the investigator may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the investigator must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the investigator reasonably believes is trivial.

(6) In subsection (2)—

“**owner**”, of property, includes the person in possession or control of it.

**359 Compensation**

(1) A person may claim compensation from the commissioner if the person incurs loss or expense because of the exercise or purported exercise of a power under division 3, 4 or 5.<sup>118</sup>

(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.

(3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.

(4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

**360 False or misleading information**

A person must not state anything to an investigator that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

**361 False or misleading documents**

(1) A person must not give to an investigator a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the investigator, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the investigator if the person has, or can reasonably obtain, the correct information.

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118 Division 3 (Entry to places), 4 (Powers of investigators after entry) or 5 (Power of investigators to seize evidence)

**362 Obstructing investigators**

(1) A person must not obstruct an investigator in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed an investigator and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that—

- (a) it is an offence to obstruct the investigator, unless the person has a reasonable excuse; and
- (b) the investigator considers the person's conduct is an obstruction.

(3) In this section—

“obstruct” includes hinder and attempt to obstruct.

**363 Impersonation of investigators**

A person must not pretend to be an investigator.

Maximum penalty—100 penalty units.

**CHAPTER 6—MISCELLANEOUS MATTERS****PART 1—JURISDICTION OF THE SUPREME COURT****364 Inherent jurisdiction of Supreme Court**

(1) The inherent jurisdiction and power of the Supreme Court in relation to the control and discipline of local lawyers and local legal practitioners is not affected by anything in this Act.

(2) The inherent jurisdiction and power—

- (a) extends to an interstate legal practitioner under section 71;<sup>119</sup> and

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119 Section 71 (Interstate legal practitioner is officer of Supreme Court)

- (b) may be exercised by making any order that a disciplinary body may make under this Act.

### **365 Jurisdiction of Supreme Court**

(1) The Supreme Court must hear and decide each application and appeal made to it under this Act and may make the order it considers appropriate for the application or appeal.

(2) Subsection (1) is subject to a provision that states the orders that may be made by the court on an application or appeal.

(3) This section does not limit section 364.

(4) An Australian lawyer is entitled to appear before and be heard by the Supreme Court at a hearing about an application or appeal as mentioned in subsection (1) that is made in relation to the lawyer under this Act.

### **366 Injunctions**

(1) This section applies if a person (the “**subject person**”) has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

- (a) an offence against a relevant law; or
- (b) attempting to contravene a relevant law; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
- (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, an offence against a relevant law by a person; or
- (f) conspiring with others to contravene this Act.

(2) On application by the commissioner or the relevant regulatory authority for the subject person, the Supreme Court may grant an injunction, on terms the court considers appropriate—

- (a) restraining the subject person from engaging in the conduct; and
- (b) if the court considers it desirable to do so—requiring the subject person to do any act or thing.

(3) If an application under subsection (2) has been made, the Supreme Court may, if the court decides it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the court is satisfied that subsection applies.

(4) If the Supreme Court considers it desirable to do so, the court may grant an interim injunction pending its decision of an application under subsection (2).

(5) The Supreme Court may discharge or vary an injunction granted under subsection (2) or (4).

(6) The Supreme Court's power to grant an injunction restraining the subject person from engaging in conduct may be exercised whether or not—

- (a) it appears to the court that the subject person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) the subject person has previously refused or failed to do that act or thing; and
- (c) there is an imminent danger of substantial damage to anyone if the subject person refuses or fails to do that act or thing.

(7) The Supreme Court must not require the commissioner or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

## **PART 2—SUSPECTED OFFENCES, PARTICULAR ASSOCIATES AND OTHER MATTERS**

### **367 Duty of relevant entities to report suspected offences**

(1) This section applies if a relevant entity suspects a person has committed an offence, other than an offence against the *Trust Accounts Act 1973*, that the relevant entity considers is of a minor nature.

(2) The relevant entity must—

- (a) report the suspected offence to an appropriate authority; and
- (b) make available to the appropriate authority the documents and information relevant to the suspected offence in the relevant

entity's possession or under its control or other documents that, after it has made the report, come into the entity's possession or under its control.

(3) However, if the relevant entity suspects only because of an allegation by an individual and the suspected offence is not in relation to a relevant law, the relevant entity may advise the individual as follows—

- (a) that the relevant entity is not going to report the suspected offence to an appropriate authority;
- (b) that if the individual wishes to pursue the matter of the suspected offence, the individual should raise it with an appropriate authority.

(4) For this section but subject to subsections (5) and (6), it is immaterial how the relevant entity gained the information that caused it to suspect that the person has committed an offence, including whether or not the relevant entity obtained information or a document—

- (a) after a complaint or an investigation; or
- (b) before the commencement of this section.

(5) The obligation under subsection (2)(a) does not apply to a suspicion formed on the basis of documents or information that may be subject to privilege, or information derived from documents or information subject to privilege, unless the person to whom the privilege attaches gives written consent to the relevant entity to report the suspected offence under that provision.

(6) The obligation under subsection (2)(b) does not apply to documents or information that may be subject to privilege, or information derived from documents or information subject to privilege, unless the person to whom the privilege attaches gives written consent to the relevant entity to make available to the appropriate authority the documents or information under that provision.

(7) A relevant entity may apply to the Supreme Court for a declaration as to whether documents or information are subject to privilege.

(8) The commissioner must develop guidelines relating to obligations under this section for the commission and for relevant entities.

(9) To remove any doubt, it is declared that the relevant entity is not under an obligation to make inquiries for subsection (1) in relation to information before it in order to have reasonable grounds about a concern

so that the concern is a suspicion about something, or to decide whether the suspicion is correct.

(10) In this section—

**“appropriate authority”** includes the following—

- (a) the commissioner of police;
- (b) the Crime and Misconduct Commission;
- (c) the director of public prosecutions;
- (d) the chief executive of a department in which a government legal officer is employed;
- (e) a person in another jurisdiction corresponding to a person mentioned in paragraph (a), (b), (c) or (d).

**“offence”** means an offence against either of the following—

- (a) an Act;
- (b) a law of the Commonwealth or another jurisdiction.

**“privilege”** means legal professional privilege or another privilege.

**“relevant entity”** means—

- (a) the commissioner; or
- (b) a regulatory authority.

### **368 Associate who is proscribed person or has been convicted of serious offence etc.**

(1) A local legal practitioner must not have a person as an associate if the practitioner knows the person is either of the following unless the associate is approved by the relevant regulatory authority—

- (a) a proscribed person;
- (b) a person who has been convicted of a serious offence and does not hold a current local practising certificate or interstate practising certificate.

(2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.

(3) The relevant regulatory authority may, on application, approve an associate for the purposes of this section.



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

(5) If the regulatory authority refuses an application mentioned in subsection (3) or imposes a condition on the approval—

- (a) the authority must give the applicant an information notice about the decision to refuse the application or to impose the condition; and
- (b) the applicant may appeal to the Supreme Court against the refusal or imposition of the condition within 28 days after the date the information notice is given to the applicant.

(6) A proscribed person, or a person convicted of a serious offence, must not seek to become an associate of a local legal practitioner unless the person first informs the practitioner that the person is a proscribed person or about the conviction.

Maximum penalty—200 penalty units.

(7) In this section—

**“associate”** of a local legal practitioner means—

- (a) a person, other than an Australian legal practitioner, who is a partner of the local legal practitioner in a business that includes the local legal practitioner’s practice; or
- (b) a person, other than an Australian legal practitioner, who shares the receipts of the local legal practitioner’s practice; or
- (c) a person who is an employee of the local legal practitioner’s practice.

**“proscribed person”** means either of the following—

- (a) a person whose name has been removed from an Australian roll, whether before or after the commencement of this definition, other than a roll switcher;
- (b) a person who is currently suspended from legal practice in Australia.

**“roll switcher”** means—

- (a) an individual whose name was, before the commencement of this definition, removed from the roll of barristers at the individual’s request in order for the individual’s name to be added to the roll of solicitors; or

- (b) an individual whose name was, before the commencement of this definition, removed from the roll of solicitors at the individual's request in order for the individual's name to be added to the roll of barristers.

### **369 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual or, if the penalty is expressed to be for this section, the expressed penalty.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove that—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) For subsection (4)(a), it is sufficient for the executive officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.

(6) This section applies to an individual who is an executive officer of a corporation that is an incorporated legal practice and a lawyer director of the practice in addition to any other provision that applies to the individual in the individual's capacity as a lawyer director of that practice.

(7) A defence available to an individual under this section is available to an individual mentioned in subsection (6) in the individual's capacity as an executive officer but not in the individual's capacity as a lawyer director.

(8) In this section—

“**executive officer**”, for a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

### **370 Offences are summary offences**

An offence against this Act is a summary offence.

### **371 Limitation on time for starting summary proceeding**

A proceeding for a summary offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant’s knowledge, but within 2 years after the commission of the offence.

### **372 Appointments and authority**

The following must be presumed unless a party to the proceeding under a relevant law, by reasonable notice, requires proof of it—

- (a) the appointment of the Minister, the chief executive, the commissioner, a panel member, a committee member, a member of the board, a registrar, the Brisbane registrar or an investigator;
- (b) the authority of a person mentioned in paragraph (a) or the law society or bar association to do anything under this Act.

### **373 Signatures**

A signature purporting to be that of any of the following persons is evidence of the signature that it purports to be—

- (a) the Minister;
- (b) the chief executive;
- (c) the commissioner;
- (d) a tribunal member;

- (e) the chairperson or deputy chairperson of the committee;
- (f) the chairperson of the board;
- (g) the Brisbane registrar or another registrar;
- (h) an investigator;
- (i) the President of the law society or the bar association.

### **374 Evidentiary aids—documents**

A document purporting to be a copy of an individual's admission or practising certificate or another document made or given under this Act is evidence of the admission, practising certificate or other document and of the matters contained in it.

## **PART 3—OTHER MATTERS**

### **375 Information sharing among entities with functions under Act**

(1) This section applies to each of the following (each of which is an “entity”)—

- (a) the board;
- (b) the law society;
- (c) the bar association;
- (d) the commissioner.

(2) An entity that holds a document or information (the “**information holder**”) about a person may allow another entity (the “**information seeker**”) access to the document or give the information to the information seeker if—

- (a) the information holder considers allowing the access or giving the information is consistent with the information holder's or information seeker's functions under a relevant law; and
- (b) allowing the access or giving the information is done under a written arrangement between the information holder and information seeker as mentioned in subsection (3).

(3) An entity must have a written arrangement with another entity providing for the way in which the entity, as an information holder, and its officers may, under subsection (2), allow access to a document or give information to the other entity, as an information seeker, and its officers.

(4) Despite subsection (2), the information holder may not allow access to a suitability report about a person, or give information about a person in a suitability report, in contravention of section 329(1).

*Note—*

Section 329 (Confidentiality of suitability report) states when the board or a regulatory authority may disclose a suitability report or information in a suitability report.

### **376 Offence of improper disclosure of information**

(1) A person who discloses information obtained in the administration of this Act commits an offence, unless the disclosure is—

- (a) authorised or required by this Act or another Act; or
- (b) made in connection with the administration of this Act; or
- (c) made with the consent of the person to whom the information relates; or
- (d) made in connection with legal proceedings under a relevant law or of any report of those proceedings, including proceedings before the tribunal or the committee relating to a discipline application; or
- (e) made with other lawful excuse.

Maximum penalty—200 penalty units.

(2) For the purposes of and without limiting subsection (1), a person who receives information directly or indirectly from a corresponding authority is taken to have obtained the information in the administration of this Act.

(3) This section does not apply to the following disclosures of information—

- (a) a disclosure that does not identify or help in identifying—
  - (i) a complainant; or
  - (ii) an Australian lawyer or law practice employee, who is the subject of a complaint or an investigation matter, or a law practice that employs the lawyer or employee; or

- (iii) a person associated with the complainant, Australian lawyer, law practice employee or law practice;
  - (b) a disclosure by an investigator to the commissioner and, if the investigator was nominated by a regulatory authority, to the regulatory authority.
- (4) This section is not limited by another provision of this Act—
- (a) allowing an entity to disclose information; or
  - (b) requiring an entity to protect information.

### **377 Protection from liability**

(1) An Act official is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an Act official, the liability attaches instead to the State.

(3) This section does not apply to an act done, or omission made, for which liability is excluded under section 216, 265 or 289.<sup>120</sup>

(4) In this section—

**“Act official”** means—

- (a) the commissioner or the staff of the commission; or
- (b) an investigator involved in the conduct of an investigation under chapter 3;<sup>121</sup> or
- (c) a disciplinary body, any member of the disciplinary body or a panel member; or
- (d) the Brisbane registrar and other registrars; or
- (e) a mediator to whom a matter is referred under chapter 3; or
- (f) a regulatory authority; or
- (g) a member of the staff of an entity mentioned in paragraphs (b) to (f).

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120 Section 216 (Liability for publicising disciplinary action), 265 (Protection of members etc.) or 289 (Protection of members etc.)

121 Chapter 3 (Complaints, investigation matters and discipline)

“**civil liability**” includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.

### **378 Approved forms**

(1) A form may be approved under this Act.

(2) The form may be approved by—

- (a) if the form is to be used for an application to or another purpose relating to the Supreme Court—the rules committee within the meaning of the *Supreme Court of Queensland Act 1991*, section 118C;<sup>122</sup> or
- (b) if the form is to be used for an application to or another purpose relating to a disciplinary body—the body; or
- (c) if the form is to be used for an application to or another purpose relating to a regulatory authority, however described—the regulatory authority; or
- (d) if the form is to be used for a purpose relating to the commissioner—the commissioner; or
- (e) if the form is to be used for an application to or another purpose relating to the board—the board; or
- (f) if the form is to be used in relation to a matter dealt with under chapter 2, part 6<sup>123</sup>—the chief executive.

(3) If a provision provides that an approved form may provide for a matter, however expressed, the provision does not limit other matters that may be included in the form.

### **379 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may be made—

- (a) authorising the Brisbane registrar to give to a regulatory authority of this jurisdiction or another jurisdiction the date of

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122 *Supreme Court of Queensland Act 1991*, section 118C (Rules Committee)

123 Chapter 2 (Engaging in legal practice), part 6 (Financial arrangements for those who may engage in legal practice in this jurisdiction)

admission and other relevant information about a person's admission; and

- (b) imposing a penalty, not exceeding 20 penalty units, for a contravention of a regulation; and
- (c) providing for fees; and
- (d) allowing a law practice that is a sole practitioner to continue to engage in legal practice after the death of the sole practitioner and applying the provisions of this Act to the law practice and the employees of that practice.

(3) A regulation mentioned in subsection (2)(c) may be made—

- (a) prescribing that fees and costs payable as mentioned in the regulation, including, for example, fees and costs payable for matters dealt with by the Supreme Court or an entity established under this Act and for filing articles of clerkship and assignment of articles; and
- (b) providing for the refund or remission of fees and costs.

(4) A regulation may provide that a contravention of the regulation is capable of constituting unsatisfactory professional conduct or misconduct of the person who has contravened.

(5) Also, a regulation may be made about a matter for which a regulatory authority may make a rule and, if a regulation provides for a matter the regulation, to the extent of any inconsistency, prevails.

## **PART 4—AMENDMENT OF ACTS**

### **380 Acts amended in sch 1**

Schedule 1 amends the Acts mentioned in it.



## PART 5—TRANSITIONAL, SAVINGS AND REPEAL PROVISIONS

### *Division 1—Definitions for part*

#### **381 Definition for ch 6, pt 5**

In this part—

“**Legal Practitioners Act**” means the *Legal Practitioners Act 1995*.

“**QLS Act**” means the *Queensland Law Society Act 1952*.

### *Division 2—Transitional provisions relating to ch 2, pt 2 (Reservation of legal work and related matters)*

#### **382 Act or omission that happened before the commencement may be relevant to an offence under ch 2, pt 2**

(1) Without limiting the *Acts Interpretation Act 1954*, section 20C,<sup>124</sup> an act or omission that happened before the commencement of this section may be relevant to a proceeding relating to a contravention of section 20 or 21.<sup>125</sup>

(2) Also, an act or omission that happened before that commencement may be relevant to whether conduct after that commencement is unsatisfactory professional conduct or professional misconduct.

(3) In this section—

“**contravention**” includes an alleged contravention.

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124 *Acts Interpretation Act 1954*, section 20C (Creation of offences and changes in penalties)

125 Section 20 (Prohibition on engaging in legal practice when not entitled) or 21 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

### **383 Offences committed before the commencement**

(1) The law society may continue or complete a proceeding that the council of the society started under the QLS Act, section 5D<sup>126</sup> before the commencement of this section but the society must not start a proceeding after the commencement.

(2) However, if the society had investigated a matter before the commencement of this section but had not started a proceeding and the society considers the matter should be dealt by the commissioner under subsection (3), the society must give to the commissioner all reports of its investigations for the matter and relevant evidence.

(3) The commissioner may start a proceeding under the Legal Practitioners Act, section 19 in relation to a contravention of that section that happened before the repeal of that section.

(4) This section does not limit the *Acts Interpretation Act 1954*, section 42.<sup>127</sup>

### ***Division 3—Transitional provisions relating to ch 2, pt 3 (Admission of legal practitioners)***

### **384 Application for admission made before commencement but not heard by Supreme Court before the commencement**

(1) This section applies to each of the following (each of which is an “existing application”)—

- (a) an application for admission as a barrister or as a solicitor made by an individual before the commencement of this section that has not been heard by the Supreme Court before the commencement;
- (b) a motion by an individual under the Legal Practitioners Act, section 41 or 42 that has not been dealt with by the court before the commencement of this section.

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126 *Queensland Law Society Act 1952*, section 5D (Institution of proceedings by council)

127 *Acts Interpretation Act 1954*, section 42 (Any person may prosecute etc.)

(2) The existing application is to be dealt with by the court and the board as an application for admission under section 28,<sup>128</sup> including, for example, accepting any advertising done in relation to an existing application as advertising under this Act.

(3) However if the fees for an application for admission under section 28 are more than the fees for the existing application and the applicant has paid the fees for the existing application, no more fees are payable for the existing application.

(4) The suitability matters in relation to an individual may be considered in relation to an existing application.

### **385 References in other Acts to applicant for admission as a barrister or as a solicitor**

In an Act, a reference to an applicant or application for admission as a barrister or for admission as a solicitor whether by reference to the admission rules, is a reference to an applicant or application for admission as a legal practitioner.

### *Division 4—Transitional provisions relating to ch 2, pt 4 (Legal Practice by Australian legal practitioners)*

### **386 Application for grant or renewal of practising certificate by person who is solicitor or barrister at first commencement**

(1) This section applies to an application under section 43<sup>129</sup> by a person who was a solicitor or barrister immediately before the commencement of this section.

(2) If the person applies to the law society or bar association for the grant of a practising certificate, the person is an Australian legal practitioner at the time the person makes the application as mentioned in section 43(2)(b).

### **387 Actions before commencement that continue to have effect**

(1) This section applies to an action taken, however described, by—

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128 Section 28 (Application for admission)

129 Section 43 (Application for grant or renewal of local practising certificate)

- (a) the law society, or its council or secretary, in relation to a person or the person's practising certificate before the commencement of this section, other than an action dealt with in another section of this division; or
- (b) the solicitor's complaints tribunal or the clerk of the tribunal in relation to a person whether the tribunal's or clerk's action is taken before or after that commencement.

*Examples of actions—*

1. A person's practising certificate is suspended.
2. The tribunal orders a lawyer to pay an amount of money.

**(2)** The action continues to have effect under this Act subject to—

- (a) any conditions stated in a document by which the action was taken against the person, or 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)** For subsections (2) and (3), a regulation made under section 406<sup>130</sup> may provide for the way the action is to continue under this Act.

**(5)** In this section—

**“action”** includes an appointment of costs assessor, cancellation or suspension of a practising certificate, decision and order.

*Division 5—Transitional provisions relating to ch 2, pt 7 (Rules about those who may engage in legal practice in this jurisdiction)*

### **388 Continuation of rules of law society**

**(1)** This section applies to the rules of the law society as in force immediately before the commencement of this section.

**(2)** The rules continue to have effect as subordinate legislation made under this Act.

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130 Section 406 (Transitional regulation-making power)

(3) A regulation made under section 406<sup>131</sup> may provide for the way a particular provision of the rules operates under this Act.

### **389 Bar association rules**

(1) This section applies to the bar association in relation to it making a recommendation as mentioned in section 138(2).

(2) The bar association need not comply with section 140<sup>132</sup> in relation to a recommendation to make a rule that is a remaking of the bar association's rules as in force immediately before the commencement of this section, with only necessary changes, if the President of the bar association advises the Minister in writing to that effect.

(3) This section expires 3 months after the commencement of this section.

### *Division 6—Transitional provisions relating to ch 3 (Complaints, investigation matters and discipline)*

### **390 Complaints made to the council before commencement but not finally dealt with before that time**

(1) This section applies to a complaint made by a person to the council within the meaning of the QLS Act, as mentioned in section 5E of that Act.

(2) If the complaint has not been withdrawn or finally dealt with in a way mentioned in section 5J of that Act before the commencement of this section, on that commencement the complaint is a complaint under this Act and the commissioner may deal with it in a way that the commissioner considers appropriate.

(3) For subsection (2), the council must give to the commissioner—

- (a) a copy of each complaint that has not been withdrawn or finally dealt with in a way mentioned in section 5J of that Act before the commencement of this section; and

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131 Section 406 (Transitional regulation-making power)

132 Section 140 (Public notice of proposed legal profession rule)

- (b) if the commissioner, by written notice to the council, asks for a copy of any other documents that the council possesses relating to a particular complaint—a copy of those documents.

(4) The commissioner may refer a complaint to which this section applies to the law society under section 182<sup>133</sup> unless the complaint relates to a government legal officer engaged in government work.

### **391 Complaints made to the legal ombudsman before commencement but not finally dealt with before that time**

(1) This section applies to a complaint made by a person to the legal ombudsman within the meaning of the QLS Act, as mentioned in section 6AF(1)(b) of that Act.

(2) If the complaint has not been finally dealt with before the commencement of this section, on that commencement the complaint is a complaint under this Act and the commissioner may deal with it in a way that the commissioner considers appropriate.

### **392 Basis of complaint mentioned in ss 173 or 391(2)**

(1) This section applies to the following—

- (a) a complaint made after the commencement of this section in relation to conduct before that commencement of an Australian lawyer or a law practice employee;
- (b) a complaint mentioned in section 391(2).

(2) The complaint is to be dealt with under this Act.

(3) For subsection (2), in relation to the conduct of an Australian lawyer who was a solicitor at the time the conduct happened, references in this Act to unsatisfactory professional conduct and professional misconduct are to be read as if they were defined as follows—

**“professional misconduct”** means professional misconduct or malpractice within the meaning of the QLS Act.

**“unsatisfactory professional conduct”** means unprofessional conduct or practice within the meaning of the QLS Act.

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133 Section 182 (Referral by commissioner to law society or bar association)

(4) For subsection (2), in relation to the conduct of an Australian lawyer who was a barrister at the time the conduct happened, references in this Act to unsatisfactory professional conduct and professional misconduct are to be read as if they were defined as follows—

**“professional misconduct”** means professional misconduct according to the law applied by the Supreme Court when exercising its inherent jurisdiction to deal with the conduct of a barrister before the commencement of this section.

**“unsatisfactory professional conduct”** means unsatisfactory professional conduct according to the law applied by the Supreme Court when exercising its inherent jurisdiction to deal with the conduct of a barrister before the commencement of this section.

*Division 7—Transitional provisions relating to ch 4 (Establishment of entities for this Act, and related matters)*

**393 Proceedings mentioned in s 5D(5) of Queensland Law Society Act 1952**

(1) If, before the commencement of this section, the council of the society had instituted an action, complaint, information or proceeding under the QLS Act, section 5D(1), or proceedings under section 5D(2) of that Act, and the action, complaint, information or proceeding has not been finally dealt with before the commencement of this section, on that commencement the council must continue to deal with it unless this Act otherwise provides.

(2) Subsection (3) applies if, immediately before the commencement of this section, the council of the society may have instituted an action, complaint, information or proceeding under the QLS Act, section 5D(1), or proceedings under section 5D(2) of that Act but, after that commencement, can not do so.

(3) The commissioner may institute the action, complaint, information or proceeding under this Act in the way the commissioner considers appropriate.

***Division 8—Transitional provisions relating to the Legal Practitioners Act 1995***

**394 Main purposes of ch 6, pt 5, div 8**

The main purposes of this division is to provide for—

- (a) the expiry or repeal of provisions of the Legal Practitioners Act at different times in a way that integrates with the commencement of provisions of this Act; and
- (b) provides for transitional provisions relating to provisions of the Legal Practitioners Act that are repealed.

**395 Expiry of particular provisions of the Legal Practitioners Act**

(1) On the commencement of this section, the Legal Practitioners Act, sections 19, 20, 43, 45 and 46 expire.

(2) On the commencement of this section, the Legal Practitioners Act, sections 18, 41, 42, 56, 57 and 59 expire.

(3) On the commencement of section 39,<sup>134</sup> the Legal Practitioners Act, section 44 expires.

**396 Amendment and relocation of s 58 of the Legal Practitioners Act**

(1) Schedule 2 amends the Legal Practitioners Act, section 58 and relocates that provision to schedule 3 of this Act.

(2) Section 58 as amended and relocated to schedule 3 of this Act has effect as a provision of this Act.

**397 Accounts kept by society under s 51**

(1) This section applies to the accounts kept by the society as required under the Legal Practitioners Act, section 51(11) (“**section 51 accounts**”).

(2) On 1 July 2004, the section 51 accounts and any investment of moneys from those accounts vest in the chief executive for the purposes of chapter 2, part 6.

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<sup>134</sup> Section 39 (Main purposes of ch 2, pt 4)



(3) For the *Financial Administration and Audit Act 1977*, section 51 accounts vested in the chief executive are not held for the State.

(4) A regulation under section 406<sup>135</sup> may provide for arrangements between the society and the chief executive for subsection (2), including matters to be done by the society to ensure that a financial institution at which a section 51 account is kept does all that is necessary to give effect to subsection (2).

(5) When a section 51 account vests in the chief executive, for this Act, it is a prescribed account for the person to whom the account relates.

(6) On the commencement of this section, the Legal Practitioners Act, part 7 expires.

### **398 Repeal of remaining provisions of Legal Practitioners Act**

The Legal Practitioners Act is repealed.

### **399 References to Legal Practitioners Act and related matters**

(1) In an Act or document, a reference to the *Legal Practitioners Act 1995* may, if the context permits, be taken to be a reference to this Act.

(2) A reference in an Act, other than an Act amended by this 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, an individual is entitled to engage in legal practice in this jurisdiction, the reference is to be read subject to sections 20 and 21 of this Act and the individual must be an Australian legal practitioner who may engage in legal practice in this jurisdiction or a government legal officer engaged in government work.

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135 Section 406 (Transitional regulation-making power)

(4) Subsection (3) does not affect the appointment of a individual before the commencement of this subsection if the appointment was valid when made.

#### **400 References to other Acts etc.**

(1) This section applies to an Act or document that refers to an Act mentioned in the Legal Practitioners Act, section 62(1) or (2) as in force immediately before the commencement of this section (a “**previous Act**”).

(2) To the extent that section 62(1) or (2) had effect in relation to an Act or document and a previous Act was taken to refer to a corresponding provision of the Legal Practitioners Act, the Act or document is taken to refer to a corresponding provision of this Act.

#### **401 Appeals under Legal Practitioners Act**

(1) This section applies if a person may appeal in relation to a matter under the Legal Practitioners Act.

(2) An appeal started, but not decided, before the commencement of this section, may be dealt with or continue to be dealt with under the Legal Practitioners Act.

(3) A decision that could have been appealed except for the repeal of the Legal Practitioners Act may be the subject of an appeal under this Act to the Supreme Court.

(4) For an appeal under this section, the Supreme Court may give directions about the way in which the appeal is to proceed.

#### ***Division 9—Transitional provisions relating to the Queensland Law Society Act 1952***

#### **402 Main purposes of ch 6, pt 5, div 9**

The main purposes of this division are to provide for—

- (a) the expiry or repeal of provisions of the QLS Act at different times in a way that integrates with the commencement of provisions of this Act; and
- (b) transitional provisions relating to provisions of the QLS Act that are repealed.

**403 Repeals relating to solicitors complaints tribunal under QLS Act**

(1) The QLS Act, part 2A, divisions 1, 2, 3, 4, 5 and 6, sections 6AC, 6AD and 6ADA are repealed.

(2) The members of the solicitors complaints tribunal under the QLS Act stop holding office as members of the tribunal despite section 6AC<sup>136</sup> of that Act.

(3) The members of the solicitors complaints tribunal are not entitled to any payments, remuneration or allowances for a period after the members stop holding office.

(4) The person who is the clerk of the solicitors complaints tribunal immediately before the repeal must, immediately before that repeal, give all documents held at that time by the clerk or tribunal to the commissioner.

(5) A regulation may provide for how the commissioner must deal with the documents given to the commissioner under subsection (4) to protect confidentiality, including creating an offence for unauthorised disclosures.

**404 Repeals relating to legal ombudsman under the QLS Act**

(1) The QLS Act, part 2B is repealed.

(2) On the repeal, the legal ombudsman goes out of office despite section 6AJ<sup>137</sup> of the QLS Act.

(3) The legal ombudsman is not entitled to any payments, remuneration or allowances for a period after the ombudsman goes out of office.

(4) The legal ombudsman must, immediately before that repeal, give all documents held at that time by the ombudsman to the commissioner.

(5) A regulation may provide for how the commissioner must deal with the documents given to the commissioner under subsection (4) to protect confidentiality, including creating an offence for unauthorised disclosures.

**405 Further amendment of QLS Act**

Schedule 4 further amends the *Queensland Law Society Act 1952*.

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136 *Queensland Law Society Act 1952*, section 6AC (Duration of appointment)

137 *Queensland Law Society Act 1952*, section 6AJ (Duration of appointment)

**Division 10—Regulation-making power for transitional purposes****406 Transitional regulation-making power**

(1) A regulation (a “**transitional regulation**”) may make provision of a saving or transitional nature—

- (a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve—
  - (i) the transition from the operation of the Legal Practitioners Act, and the QLS Act, before the commencement of this section to the operation of this Act and those Acts after that commencement; or
  - (ii) the application to an incorporated legal practice, a lawyer director of the legal practice, or a qualified employee or law practice employee of the legal practice who is engaged in providing legal services for the legal practice, of provisions of this Act, the *Queensland Law Society Act 1952* and the *Trust Accounts Act 1973*; and
- (b) for which this Act does not make provision or sufficient provision.

(2) Without limiting subsection (1)(a)(ii), a regulation may be made about the application, with or without changes, of the provisions of this Act relating to the following—

- (a) professional indemnity insurance;
- (b) legal fees and costs;
- (c) trust accounts and prescribed accounts;
- (d) the fidelity fund, including the application of the provisions to interstate legal practitioners who engage in legal practice in the jurisdiction.

(3) A transitional regulation may have retrospective operation to a day not earlier than the commencement of this section.

(4) A transitional regulation must declare it is a transitional regulation.

(5) This section and any transitional regulation expire 1 year after the commencement of this section.

## SCHEDULE 1

### ACTS AMENDED

section 380

### ACTS INTERPRETATION ACT 1954

**1 Section 36, definition “lawyer”, ‘State.’—**

*omit, insert—*

‘State.<sup>138</sup>’.

### CORONERS ACT 2003

**1 Section 71(6), ‘sections 10(8) and 13 do’ and footnote—**

*omit, insert—*

‘section 41<sup>139</sup> does’.

**2 Sections 73(2), 80(2) and 82(4), ‘section 15(4)’ and footnotes—**

*omit, insert—*

‘section 43(4)<sup>140</sup>’.

**3 Section 97—**

*omit.*

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138 See the *Legal Profession Act 2003*, section 399 (References to Legal Practitioners Act and related matters).

139 Section 41 (Functions of magistrates generally)

140 Section 43 (Suspension of magistrate by Governor in Council)

## SCHEDULE 1 (continued)

- 4** Schedule 2, definitions “de facto partner” and “spouse”—  
*omit.*

**CREMATIONS ACT 2003**

- 1** Section 17—  
*omit.*

- 2** Schedule, definitions “de facto partner” and “spouse”—  
*omit.’.*

**CRIMINAL LAW (REHABILITATION OF OFFENDERS)  
ACT 1986**

- 1** Section 9A, table, column 1, item 20, from ‘barrister’—  
*omit, insert—*

‘legal practitioner under the admission rules made under the *Supreme Court of Queensland Act 1991*, section 118.’.

- 2** Section 9A, table, item 22—  
*omit.*

## SCHEDULE 1 (continued)

**3 Section 9A, table—***insert—*

- |   |   |
|---|---|
| <p><b>‘24.</b> An applicant for the grant of a practising certificate under the <i>Legal Profession Act 2003</i>.</p>   | <p><b>24.</b> Contraventions of any law whether committed in Queensland or elsewhere.</p>   |
| <p><b>25.</b> An applicant for the renewal of a practising certificate under the <i>Legal Profession Act 2003</i>, that is the first application for the renewal of the certificate under that Act.</p> | <p><b>25.</b> Contraventions of any law whether committed in Queensland or elsewhere.’.</p> |

**DIRECTOR OF PUBLIC PROSECUTIONS ACT 1984****1 Section 4—***insert—*

‘**“Australian lawyer”** see the *Legal Profession Act 2003*, schedule 5.

**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**2 Section 5(1A), ‘a lawyer’—***omit, insert—*

‘an Australian lawyer’.

**3 Section 8—***omit.*

## SCHEDULE 1 (continued)

**4 Section 10(3), ‘by counsel or solicitor’—**

*omit, insert—*

‘by a lawyer’.

**5 Section 17, ‘a lawyer’—**

*omit, insert—*

‘an Australian lawyer’.

**6 Section 23(1)(a), from ‘barristers’ to ‘Court’—**

*omit, insert—*

‘Australian lawyers’.

**DISTRICT COURT OF QUEENSLAND ACT 1967****1 Section 3—**

*insert—*

‘**“Australian lawyer”** see the *Legal Profession Act 2003*, schedule 5.

**“incorporated legal practice”** see the *Legal Profession Act 2003*, schedule 5.

**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**2 Section 13—**

*omit, insert—*

**‘13 Judge not to practice as lawyer, etc**

‘A judge must not—

(a) practise as a lawyer or notary; or



## SCHEDULE 1 (continued)

- (b) directly or indirectly be concerned or interested in the practice of a person mentioned in paragraph (a) or an incorporated legal practice.’.

**3 Section 35A(2), ‘a lawyer’—**

*omit, insert—*

‘an Australian lawyer<sup>141</sup>’.

**4 Section 48(1), ‘solicitor’—**

*omit, insert—*

‘a lawyer’.

**5 Part 2, division 7, heading—**

*omit, insert—*

*‘Division 7—Lawyers and agents’.*

**6 Section 52, heading, ‘barrister, or solicitor’—**

*omit, insert—*

‘lawyer’.

**7 Section 52(1), ‘or by a barrister or solicitor’—**

*omit, insert—*

‘, by a lawyer,’.

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141 *Legal Profession Act 2003*, chapter 2 (Engaging in legal practice), part 3 (Admission of local legal practitioners)

## SCHEDULE 1 (continued)

**8 Section 52(2), ‘barrister or solicitor of the Supreme Court, shall not be’—***omit, insert—*

‘lawyer, is not’.

**9 Sections 72(1) and 120, ‘solicitors’—***omit, insert—*

‘lawyers’.

**JUSTICES ACT 1886****1 Section 4—***insert—*

‘ **“incorporated legal practice”** see the *Legal Profession Act 2003*, schedule 5.

**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**2 Section 23D(2) and (5), ‘counsel, solicitor’—***omit, insert—*

‘lawyer’.

**3 Section 23D(4), ‘counsel, solicitors,’—***omit, insert—*

‘lawyers’.

**4 Section 23E(1)(a) and (1A), ‘counsel, solicitors’—***omit, insert—*

‘lawyers’.

## SCHEDULE 1 (continued)

**5 Section 42(1), ‘counsel or solicitor’—**

*omit, insert—*

‘lawyer’.

**6 Section 53(2)(b)—**

*omit, insert—*

‘(b) the justice who issued the summons was at the date of its issue, the complainant’s lawyer, that lawyer’s partner, or an employee of either of them, or a lawyer, director or employee of an incorporated legal practice that represented the complainant.’.

**7 Section 70(3), from ‘counsel’—**

*omit, insert—*

‘defendant’s lawyer.’.

**8 Part 4, division 8, heading, ‘*counsel or solicitor*’—**

*omit, insert—*

‘*lawyer*’.

**9 Section 72, heading—**

*omit, insert—*

‘72 Lawyer’.

**10 Section 72, ‘counsel or solicitor’—**

*omit, insert—*

‘lawyer’.

## SCHEDULE 1 (continued)

- 11 Section 84(2), ‘counsel or a solicitor’—**  
*omit, insert—*  
‘a lawyer’.
- 12 Section 88(1)(a), ‘counsel, solicitors’—**  
*omit, insert—*  
‘lawyers’.
- 13 Sections 103A(1)(b) and (2A)(a), 104A(1), ‘counsel or solicitor’—**  
*omit, insert—*  
‘lawyer’.
- 14 Section 104(1)(b), ‘counsel and solicitor’—**  
*omit, insert—*  
‘lawyer’.
- 15 Section 110A(4), ‘counsel or a solicitor’—**  
*omit, insert—*  
‘a lawyer’.
- 16 Section 110A(6)(b), ‘counsel or the solicitor’—**  
*omit, insert—*  
‘the lawyer’.
- 17 Section 110A(9) and (10), ‘counsel or the solicitor for the defendant’—**  
*omit, insert—*  
‘the defendant’s lawyer’.

## SCHEDULE 1 (continued)

**18 Section 111(3)(b), ‘counsel or solicitor’—***omit, insert—*

‘lawyer’.

**19 Section 140(2), ‘solicitor’—***omit, insert—*

‘lawyer’.

**20 Section 141, ‘counsel, or solicitor’—***omit, insert—*

‘lawyer’.

**21 Sections 142(6) and 142A(12), ‘on the defendant’s behalf by counsel or solicitor’—***omit, insert—*

‘the defendant’s lawyer’.

**22 Section 144, ‘counsel or solicitor’—***omit, insert—*

‘their lawyers’.

**23 Section 146A(2), ‘solicitor’—***omit, insert—*

‘lawyer’.

**24 Section 147, ‘counsel or solicitor’—***omit, insert—*

‘a lawyer’.

## SCHEDULE 1 (continued)

**JUSTICES OF THE PEACE AND COMMISSIONERS  
FOR DECLARATIONS ACT 1991**

**1 Section 3, definition “legal practitioner”—***omit.***2 Section 3—***insert—*‘**“Australian lawyer”** see the *Legal Profession Act 2003*, schedule 5.’.**3 Section 16(2), ‘a lawyer’—***omit, insert—*

‘an Australian lawyer’.

**4 Section 19(2)(c) and (d), ‘a legal practitioner’—***omit, insert—*

‘an Australian lawyer’.

**JUVENILE JUSTICE ACT 1992**

**1 Sections 34(1)(c)(i) and (f)(i), 73(a) and (b), 79, 82(b), 85(b), 98(1), 98(5)(a) and (b), 104(2), 105(a) and (b), 153(1)(b) and (2), 185(4)(a), 275, 276, 295(2)(e) and 308(3), ‘lawyer’—***omit, insert—*

‘lawyer’.

**2 Schedule 4, definition “legal practitioner”—***omit, insert—*‘**“lawyer”** means—

## SCHEDULE 1 (continued)

- (a) an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State; or
- (b) a person mentioned in section 308(2) acting for a party.<sup>142</sup>.

**3 Schedule 4, definition “legal representation”, ‘legal practitioner’—**

*omit, insert—*

‘lawyer’.

## LAND SALES ACT 1984

**1 Section 11(1)(a) and (aa)—**

*omit, insert—*

‘(a) a law practice; or’.

**2 Section 11(4), ‘solicitor or firm of solicitors’—**

*omit, insert—*

‘law practice’.

**3 Section 11—**

*insert—*

‘(5) In this section—

“**law practice**” means a law practice within the meaning of the *Legal Profession Act 2003*, schedule 5 if the law practice is constituted by, or has a partner or a lawyer director who is, a solicitor.

“**solicitor**” see the *Trust Accounts Act 1973*, section 4.’.

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<sup>142</sup> Section 308 (Proceeding for offence)

## SCHEDULE 1 (continued)

**4 Section 23(1)(a) and (aa)—***omit, insert—*

‘(a) a law practice; or’.

**5 Section 23(5), ‘a solicitor or firm of solicitors’—***omit, insert—*

‘a law practice’.

**6 Section 23—***insert—*

‘(6) In this section—

“**law practice**” means a law practice within the meaning of the *Legal Profession Act 2003*, schedule 5 if the law practice is constituted by, or has a partner or a lawyer director who is, a solicitor.

“**solicitor**” see the *Trust Accounts Act 1973*, section 4.’.

**LAND TITLE ACT 1994****1 Sections 11(1)(b), 161(3A), 189(1)(b) and 189(1A), first mention, ‘solicitor’—***omit, insert—*

‘lawyer’.

**2 Section 22(1)(e), ‘legal practitioner enrolled in Queensland or elsewhere’—***omit, insert—*

‘lawyer’.



## SCHEDULE 1 (continued)

**3 Section 189(1A), ‘solicitor for the person’—***omit, insert—*

‘the person’s lawyer’.

**4 Section 189(2), definition “indemnified solicitor”—***omit, insert—*

‘**“indemnified lawyer”** means a lawyer covered by indemnity insurance (however described) under the *Queensland Law Society Act 1952* or a law of another State that corresponds to the provisions of the *Queensland Law Society Act 1952* about indemnity insurance.’.

**5 Schedule 2—***insert—*

‘**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**LEGAL AID QUEENSLAND ACT 1997****1 Section 45(4), ‘Legal Practitioners Act 1955, section 51’—***omit, insert—*‘*Legal Profession Act 2003*, chapter 2, part 6, division 2<sup>143</sup>’.**2 Section 45(4), ‘in section 51’—***omit, insert—*

‘in that division’.

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143 *Legal Profession Act 2003*, chapter 2 (Engaging in legal practice), part 6 (Financial arrangements for those who may engage in legal practice in this jurisdiction), division 2 (Prescribed accounts)

## SCHEDULE 1 (continued)

**3 Section 45(6), from ‘with’—***omit, insert—*‘under the *Legal Profession Act 2003*, chapter 2, part 6, division 3.’.**4 Section 73, heading, ‘solicitors firm’—***omit, insert—*

‘law firm’.

**5 Section 73(a), ‘firm of solicitors’—***omit, insert—*

‘law firm’.

**6 Section 76(3), from ‘only if’—***omit, insert—*

‘only if he or she is a lawyer.’.

**7 Section 76—***insert—*

‘(6) A Legal Aid lawyer performing functions of a lawyer under this Act is a government legal officer engaged in government work under the *Legal Profession Act 2003*.<sup>144</sup>

‘(7) However, the *Legal Profession Act 2003*, section 173(2)<sup>145</sup> does not apply to a Legal Aid lawyer.’.

144 See the *Legal Profession Act 2003*, section 9 (Meaning of “government legal officer” and related matters).

145 Under the *Legal Profession Act 2003*, section 173(2) (Making a complaint) a complaint about a government legal officer may, generally speaking, only be made by the law society, the bar association or the chief executive of the department or agency in which the legal officer is employed.

## SCHEDULE 1 (continued)

**8 Section 77—**

*omit, insert—*

**‘77 Application of *Queensland Law Society Act 1952* and *Legal Profession Act 2003* to Legal Aid lawyers**

‘(1) The provisions of the *Queensland Law Society Act 1952* regulating the way in which complaints against solicitors for malpractice, professional misconduct or unprofessional conduct or practice may be investigated and dealt with, apply to a Legal Aid lawyer if the complaint is, after the commencement of the *Legal Profession Act 2003*, chapter 3, to be dealt with by the Solicitors Complaints Tribunal under the *Queensland Law Society Act 1952*.<sup>146</sup>

‘(2) The provisions of the *Legal Profession Act 2003* regulating the way in which complaints against Australian lawyers for unsatisfactory professional conduct or professional misconduct may be investigated and dealt with, apply to a Legal Aid lawyer in the same way as that Act applies to Australian lawyers within the meaning of the Act.’.

**9 Section 78, ‘section 73(b)’—**

*insert—*

‘section 73(b) and 76(1)(b)’.

**10 Section 79, heading, ‘Solicitor’—**

*omit, insert—*

‘Lawyer’.

**11 Section 79(1) and (2), ‘solicitor’—**

*omit, insert—*

‘lawyer’.

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<sup>146</sup> See the *Queensland Law Society Act 1952*, section 5EA (Complaints after commencement).

## SCHEDULE 1 (continued)

**12 Section 82(5)(a), (b), (c) and (d)—***omit, insert—*

‘(a) an entity that has functions under the *Legal Profession Act 2003* for the purposes of that entity performing a function or exercising a power under that Act, including, for example, the following—

- Queensland Law Society Incorporated;
- Bar Association of Queensland;
- Legal Services Commissioner;
- Legal Practitioners Admissions Board;
- Legal Practice Tribunal;
- Legal Practice Committee;’.

**13 Section 82(5)(e) to (h)—***renumber* as section 82(5)(b) to (e).**14 Schedule, definitions “Legal aid lawyer” and “private lawyer”, ‘a lawyer’—***omit, insert—*

‘an Australian legal practitioner’.

**15 Schedule—***insert—*

‘ **“Australian legal practitioner”** see the *Legal Profession Act 2003*, schedule 5.

**“barrister”** see the *Legal Profession Act 2003*, section 7.<sup>147</sup>

**“law firm”** see the *Legal Profession Act 2003*, schedule 5.

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<sup>147</sup> *Legal Profession Act 2003*, section 7 (Meaning of “barrister”)

## SCHEDULE 1 (continued)

**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.

**“solicitor”** see the *Legal Profession Act 2003*, section 8.<sup>148</sup>.

## MAGISTRATES COURTS ACT 1921

### 1 Section 2—

*insert—*

‘**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

### 2 Sections 4A(2)(b) and 45(2)(b), ‘solicitors’—

*omit, insert—*

‘lawyers’.

### 3 Section 18, heading, ‘barrister, or solicitor’—

*omit, insert—*

‘lawyer’.

### 4 Section 18(1), ‘barrister or solicitor’—

*omit, insert—*

‘lawyer’.

### 5 Section 18(2), ‘barrister or solicitor of the Supreme Court shall not be’—

*omit, insert—*

‘lawyer is not’.

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<sup>148</sup> *Legal Profession Act 2003*, section 8 (Meaning of “solicitor”)

## SCHEDULE 1 (continued)

**6 Section 45(3), ‘solicitor’—***omit, insert—*

‘lawyer’.

**PROPERTY AGENTS AND MOTOR DEALERS  
ACT 2000****1 Section 372(1)(b)—***omit, insert—*‘(b) a solicitor within the meaning of the *Trusts Act 1973*, section 4; or’.**2 Section 578(2), from ‘*Legal Practitioners Act 1995*’—***omit, insert—*‘*Legal Profession Act 2003*, sections 20 or 21.<sup>149</sup>’.**3 Schedule 2—***insert—*‘**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.**RETAIL SHOP LEASES ACT 1994****1 Section 5—***insert—*‘**“Australian lawyer”** see the *Legal Profession Act 2003*, schedule 5.

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<sup>149</sup> *Legal Profession Act 2003*, sections 20 (Prohibition on engaging in legal practice when not entitled) or 21 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

## SCHEDULE 1 (continued)

**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**2 Section 22D(4)(b), ‘barrister or solicitor who is admitted to practise in Queensland’—**

*omit, insert—*

‘lawyer’.

**3 Section 22D(4)(c), ‘barrister or solicitor’—**

*omit, insert—*

‘lawyer’.

**4 Section 102(a)(ii), ‘lawyers’—**

*omit, insert—*

‘Australian lawyers’.

## SUPREME COURT ACT 1995

**1 Sections 134 and 139(2), ‘solicitor’—**

*omit, insert—*

‘lawyer’.

**2 Section 134—**

*insert—*

‘(2) In this section—

**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

## SCHEDULE 1 (continued)

**3 Section 139—***insert—*

‘(3) In this section—

“**lawyer**” means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**4 Section 208, ‘barrister or barristers’—***omit, insert—*

‘lawyers’.

**5 Section 208—***insert—*

‘(2) In this section—

“**lawyer**” means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**6 Section 209, heading, ‘barrister or solicitor’—***omit, insert—*

‘lawyer’.

**7 Section 209(1), ‘barrister or solicitor’—***omit, insert—*

‘lawyer,’.

**8 Section 209(2), ‘barrister or solicitor of the Supreme Court shall not be’—***omit, insert—*

‘lawyer is not’.



## SCHEDULE 1 (continued)

**9 Section 209(3)—**

*insert—*

‘**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**10 Section 211(11), ‘barrister, solicitor’, first mention—**

*omit, insert—*

‘lawyer’.

**11 Section 211(11), ‘barrister, solicitor or notary’—**

*omit, insert—*

‘lawyer or notary or the legal practice of an incorporated legal practice’.

**12 Section 211—**

*insert—*

‘**(18)** In this section—

**“incorporated legal practice”** see the *Legal Profession Act 2003*, schedule 5.

**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**13 Section 219, ‘such attorneys solicitors and practitioners’—**

*omit, insert—*

‘lawyers’.

**14 Section 219—**

*insert—*

‘**(2)** In this section—

## SCHEDULE 1 (continued)

“**lawyer**” means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**15 Section 261(1), ‘counsel or solicitor’—**

*omit, insert—*

‘lawyer’.

**16 Section 261—**

*insert—*

‘(4) In this section—

“**lawyer**” means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**17 Section 291(2), ‘solicitors’—**

*omit, insert—*

‘lawyers’.

**18 Section 291—**

*insert—*

‘(4) In this section—

“**lawyer**” means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

**SUPREME COURT LIBRARY ACT 1968****1 Section 2, definitions “Barristers’ Board” and “Solicitors’ Board”—**

*omit.*

## SCHEDULE 1 (continued)

**2 Section 4(4)(c)—***omit, insert—*

‘(c) does not hold a local practising certificate, or has a practising certificate that is suspended, under the *Legal Profession Act 2003*.’.

**3 Section 11, heading, from ‘from’—***omit, insert—*

‘relating to admission and examinations’.

**4 Section 11(1), from ‘received’ to ‘shall’—***omit, insert—*

‘must’.

**5 Section 11(2)—***omit.***SUPREME COURT OF QUEENSLAND ACT 1991****1 Section 118(1)(b), ‘barristers or solicitors;’—***omit, insert—*

‘legal practitioners;<sup>150</sup>’.

**2 Section 118—***insert—*

‘(2A) The rules of court for the admission of legal practitioners may make provision of a saving or transitional nature for which it is necessary

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<sup>150</sup> See the *Legal Profession Act 2003*, section 23 (Main purpose of ch 2, pt 3).

## SCHEDULE 1 (continued)

to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of—

- (a) the rules applying immediately before the commencement of the *Legal Profession Act 2003*, section 23<sup>151</sup> to the operation of that Act after the commencement; and
- (b) other matters about admission dealt with under the *Legal Practitioners Act 1995* before the commencement of the *Legal Profession Act 2003*, section 23<sup>152</sup> to the operation of *Legal Profession Act 2003* after the commencement.’.

**3 Schedule 1, section 23(d), ‘solicitors’—**

*omit, insert—*

‘lawyers’.

**4 Schedule 1, section 24(c), ‘practitioners’—**

*omit, insert—*

‘lawyers’.

**5 Schedule 2—**

*insert—*

‘**“lawyer”** means an Australian lawyer who, under the *Legal Profession Act 2003*, may engage in legal practice in this State.’.

## TRUST ACCOUNTS ACT 1973

**1 Section 4—**

*insert—*

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151 *Legal Profession Act 2003*, section 23 (Main purpose of ch 2, pt 3)

152 *Legal Profession Act 2003*, section 23 (Main purpose of ch 2, pt 3)

## SCHEDULE 1 (continued)

‘**“Australian legal practitioner”**’ has the meaning given by the *Legal Profession Act 2003*, section 6.<sup>153</sup>.

**2 Section 4, definition “solicitor” —**

*omit, insert—*

‘**“solicitor”**’ means an Australian legal practitioner to whom section 4F applies.<sup>154</sup>.

**3 After section 4E—**

*insert—*

**‘4F Application of Act to legal practitioners and trust moneys**

‘**(1)** This Act applies to the following trustees in relation to trust moneys received by them in this State—

- (a) an Australian legal practitioner who has an office in this State, whether or not the lawyer has an office in another State;
- (b) an Australian legal practitioner who does not have an office in any State at all.

‘**(2)** This Act applies to the following trustees in relation to trust moneys received by them in another State—

- (a) an Australian legal practitioner who has an office in this State and in no other State;
- (b) an Australian legal practitioner who has an office in this State and in 1 or more other States but not in the State in which the trust moneys were received, unless the moneys are dealt with under the corresponding law of another State.

‘**(3)** However, subsections (1) and (2) do not apply to—

- (a) persons or classes of persons prescribed under a regulation; or
- (b) persons or classes of persons in circumstances prescribed under a regulation; or

153 *Legal Profession Act 2003*, section 6 (Meaning of terms involving “lawyer”)

154 Section 4F (Application of Act to solicitors and trust moneys)

## SCHEDULE 1 (continued)

- (c) kinds of trust moneys prescribed under a regulation; or
- (d) kinds of trust moneys in circumstances prescribed under a regulation.

‘(4) A reference in this section to having an office in a State is a reference to—

- (a) having, or practising law from, an office or business address in the State; or
- (b) being a partner or employee of a firm that has an office or business address in the State.

‘(5) For this Act, an Australian legal practitioner receives money when the practitioner—

- (a) obtains possession or control of it directly; or
- (b) obtains possession or control of it indirectly as a result of its delivery to an associate of the practitioner; or
- (c) is given a power enabling the practitioner to deal with it whether alone or with an associate.

‘(6) In this section—

“**associate**” of an Australian legal practitioner means—

- (a) a partner of the practitioner; or
- (b) an employee or agent of the practitioner.

“**corresponding law**” means a law of another State that corresponds to the relevant provisions of this Act or, if a regulation is made declaring a law of the other State that corresponds to this Act, the corresponding law as declared for that other State.’

#### 4 Section 8(1)(b), from ‘*Practitioners Act*’—

*omit, insert—*

‘*Profession Act 2003*, chapter 2, part 6, division 2;<sup>155</sup>’.

155 *Legal Profession Act 2003*, chapter 2 (Engaging in legal practice), part 6 (Financial arrangements for those who may engage in legal practice in this jurisdiction), division 2 (Prescribed accounts)

## SCHEDULE 1 (continued)

**5 Section 8(1)(c)(iii), ‘Legal Practitioners Act 1995, part 2’ and footnote—**

*omit, insert—*

‘*Queensland Law Society Act 1952, part 4B*<sup>156</sup>’.

**6 Section 16(4)(c), from ‘Practitioners Act’—**

*omit, insert—*

‘*Profession Act 2003, section 124*.<sup>157</sup>’.

**7 Section 24(2), ‘a an employee’—**

*omit, insert—*

‘an employee’.

**8 Section 28B(2), ‘Queensland Law Society Act 1952, section 50A’ and footnote—**

*omit, insert—*

‘*Legal Profession Act 2003, section 367*<sup>158</sup>’.

**9 Section 31(8)(a)—**

*omit, insert—*

‘(a) a solicitor; or’.

**10 Section 34(1), from ‘trustee who is’ to ‘Society Act 1952’—**

*omit, insert—*

‘solicitor’.

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156 *Queensland Law Society Act 1952, part 4B* (Payment for work)

157 *Legal Profession Act 2003, section 124* (Deposits to prescribed account)

158 *Legal Profession Act 2003, section 367* (Duty of relevant entities to report suspected offences)

## SCHEDULE 1 (continued)

- 11 Section 35(1), from ‘trustee who is’ to ‘*Society Act 1952*’—**  
*omit, insert—*  
‘solicitor’.



**SCHEDULE 2****AMENDMENTS OF LEGAL PRACTITIONERS ACT  
1995, SECTION 58**

section 396(1)

**1 Section 58(1)(c)(ii), after ‘examinations’—***insert—*

‘before the commencement of the *Legal Profession Act 2003*, section 402<sup>159</sup>’.

**2 Section 58(1)(e)(i), ‘this part’—***omit, insert—*

‘this section’.

**3 Section 58(1), ‘as a solicitor’—***omit, insert—*

‘as a legal practitioner’.

**4 Section 58(2)(a)(iv) and (v)—***omit, insert—*

‘(iv) the department;’.

**5 Section 58(3), ‘as a solicitor pursuant to’—***omit, insert—*

‘as a legal practitioner under’.

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159 Section 402 (Main purposes of ch 6, pt 5, div 9)

## SCHEDULE 2 (continued)

**6 Section 58(4)—**

*omit, insert—*

‘(4) The admission rules are subject to this section.’.

**7 Section 58(5), ‘Legal Aid Act 1978’ and footnote—**

*omit, insert—*

‘Legal Aid Queensland Act 1997’.

**8 Section 58(5), from ‘is evidence’—**

*omit, insert—*

‘is evidence.’.

**9 Section 58, as amended—**

*relocate* to schedule 3 of this Act.

**SCHEDULE 3**

**LEGAL PRACTITIONERS ACT 1995, SECTION 58 AS  
AMENDED AND RELOCATED**

section 396(1)

**SCHEDULE 4****AMENDMENT OF QUEENSLAND LAW SOCIETY  
ACT 1952**

section 405

**1 Section 3, definition “legal ombudsman”—***omit.***2 Section 3—***insert—*“**Australian lawyer**” see the Legal Profession Act, schedule 5.“**Australian legal practitioner**” see the Legal Profession Act, schedule 5.“**Brisbane registrar**” see the Legal Profession Act, schedule 5.“**clerk of the tribunal**”, for part 2A, division 6A, see section 6ZAA.“**commissioner**” see the Legal Profession Act, schedule 5.“**costs assessor**” see section 6ZAA.“**disciplinary body**” see the Legal Profession Act, schedule 5.“**discipline application**” see the Legal Profession Act, schedule 5.“**government legal officer**” see the Legal Profession Act, schedule 5.“**incorporated legal practice**” see the Legal Profession Act, schedule 5.“**lawyer director**” see the Legal Profession Act, schedule 5.“**Legal Profession Act**” means the *Legal Profession Act 2003*.“**Legal Profession Fund**” means the Legal Practitioner Interest on Trust  
Accounts Fund established under the Legal Profession Act, chapter 2,  
part 6.“**legal profession rule**” see the Legal Profession Act, schedule 5.“**local lawyer**” see the Legal Profession Act, schedule 5.

## SCHEDULE 4 (continued)

**“local legal practitioner”** means a local legal practitioner under the Legal Profession Act who holds a current local practising certificate granted or renewed by the law society under that Act, but does not include a government legal officer engaged in government work.

**“local roll”** see the Legal Profession Act, schedule 5.’.

### 3 Part 1, after section 3B—

*insert—*

#### **‘3C Application of Act to local legal practitioners**

‘(1) A reference in this Act to any of the following may include a local legal practitioner—

- (a) a practising practitioner;
- (b) a practitioner;
- (c) a solicitor.

‘(2) Subsection (1) is subject to a provision that, after the commencement of this section, states that a term mentioned in that subsection is defined in a particular way for the provision or another provision.’.

### 4 Section 4—

*insert—*

‘(8) In this section—

**“tribunal”** includes the Legal Practice Tribunal established under the Legal Profession Act, section 246.<sup>160</sup>’.

### 5 Section 5(6), after ‘this Act,’—

*insert—*

‘and the Legal Profession Act’.

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160 Section 246 (Establishment, members and chairperson of tribunal)

## SCHEDULE 4 (continued)

**6 Section 5A(1)(g), after ‘breach of any rule’—***insert—*

‘(other than a legal profession rule)’.

**7 Section 5A(1)(hb)(ii), from ‘practitioner—’—***omit, insert—*

‘practitioner to the issue of a certificate that relates to any speciality within practice as a solicitor or conveyancer is subject;’

**8 Section 5A(1)(hc)—***omit.***9 Section 5A(1)(hd), before ‘in whole or in part’—***insert—*

‘(other than a legal profession rule)’.

**10 Section 5A—***insert—*

‘(7A) Despite subsection (7), after the commencement of this subsection, the council may not refer a question to an entity mentioned in that subsection but may, under the Legal Profession Act, make a complaint to the commissioner about the failure.’

**11 Section 5A(12)(d)—***omit.***12 After section 5A—***insert—*

## SCHEDULE 4 (continued)

**‘5AA No rules under section 5A(1) (hb), (hc) and (he) after commencement**

‘(1) On and after the commencement of this section, the council must not make rules for the purposes mentioned in section 5A(1)(hb), (hc) or (he).

‘(2) Subsection (1) does not affect the validity of rules made for 1 or more of those purposes before that commencement and in force immediately before that commencement.’.

**13 Section 5C—**

*insert—*

‘(2) In this section—

“**the tribunal**” includes a disciplinary body.’.

**14 Section 5D—**

*insert—*

‘(5) However, the council may not institute any action, complaint, information or proceeding under subsection (1), or proceedings under subsection (2), if the matter the subject of the action, complaint, information or proceeding under subsection (1), or proceedings under subsection (2), may be started under the Legal Profession Act.’.

**15 After section 5E—**

*insert—*

**‘5EA Complaints after commencement**

‘(1) Despite section 5E, after the commencement of this section, complaints about Australian lawyers, or employees of Australian lawyers, must be made under the Legal Profession Act.

‘(2) However, subsection (1) does not prevent a complaint made under section 5E(1) that has started to be heard by the tribunal under its rules before the commencement of this section from being dealt with under this Act.’.

## SCHEDULE 4 (continued)

**16 Section 5K—**

*omit.*

**17 Section 5N(1), after ‘this part’—**

*insert—*

‘, or the Legal Profession Act.’.

**18 Part 2A, before division 1—**

*insert—*

***‘Division 1A—Application of part after commencement***

**‘5O Purpose of this division**

‘The purpose of this division is to provide for matters relating to the tribunal on and after the commencement of this section.

**‘5P Application of part**

‘(1) If a hearing has, under the tribunal’s rules, started in the tribunal on or before the commencement of this section, it must continue to be dealt with under this part.

‘(2) However, for the application of this part to a hearing, a reference to the legal ombudsman is to be taken as a reference to the commissioner.

‘(3) If a hearing has not, under the tribunal’s rules, started on or before the commencement of this section, the commissioner may make a discipline application under the Legal Profession Act to a disciplinary body in relation to the matter the subject of the complaint under this Act.’.

**19 Section 6R(1)(a) and (2), after ‘roll of solicitors’—**

*insert—*

‘or, if that roll is included in the local roll, the local roll’.



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SCHEDULE 4 (continued)

**20 Section 6T—***insert—*

‘(4) This section is repealed on the commencement of the Legal Profession Act, section 156.<sup>161</sup>’.

**21 Part 2A, division 6A, before section 6ZA—***insert—***‘6ZAA Definitions for div 6A**

‘In this division—

**“clerk of the tribunal”** means the Brisbane registrar.

**“cost assessor”** means a person whose name, immediately before the commencement of this definition, appeared on the tribunal’s register of costs assessors.

**‘6ZAB Clerk of tribunal to hand over register of assessors and related document**

‘The person who is the clerk of the tribunal immediately before the commencement of this section must give to the clerk of the tribunal after the commencement the tribunal’s register of costs assessors and all related documents.’.

**22 Section 6AA(3), ‘to the council or the legal ombudsman’—***omit.***23 Part 3A, before section 36A—***insert—*


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161 Section 156 (Pre-emptory removal of local legal practitioner’s name from local roll following removal in another jurisdiction)

## SCHEDULE 4 (continued)

*‘Division 1—Preliminary***‘36AA Relationship between divs 2 and 3**

‘(1) Division 2 is subject to division 3.

‘(2) The purpose of division 3 is to close the funds established under division 2 on the commencement of this section and to provide for matters relating to the closures.’.

**24 After section 36A—**

*insert—*

*‘Division 2—Contribution fund and grants fund’.*

**25 Part 3A, after section 36R—**

*insert—*

*‘Division 3—Closure of contribution fund and grants fund*

**‘36S Closure of contribution fund and grants fund**

‘(1) On the commencement of this section—

- (a) the contribution fund and grants fund close; and
- (b) all moneys that were part of the contribution fund and grants fund become moneys of the Legal Profession Fund.

‘(2) Despite the closures, entries may be made in the accounts for the contribution fund and grant fund for transactions completed before the commencement.

**‘36T Obligation of society to pay moneys to Legal Practitioner Interest on Trust Accounts Fund**

‘(1) Under an arrangement with the chief executive, a total amount is payable as an amount for the fund consisting of the amount of each of the closing balances immediately before the commencement of this section for the following—

SCHEDULE 4 (continued)

- (a) the contribution fund;
- (b) the grants fund;
- (c) the society's account called the Contributions Distribution Account kept by the society for amounts distributed to it under section 36E(b)(iii).<sup>162</sup>

‘(2) For subsection (1), by the date stated in the arrangement or a later date that the chief executive allows, the society must arrange for transfer of the total amount to the account kept for the fund as mentioned in the Legal Profession Act, section 126(3).<sup>163</sup>

*‘Division 4—Expiry of part*

**‘36U Expiry**

‘This part expires 1 month after the commencement of this section.’.

**26 Section 37—**

*insert—*

‘(2) After the commencement of this subsection, practising certificates are to be issued under the Legal Profession Act.’.

**27 Sections 38 and 39—**

*omit.*

**28 Section 39A(1), (7), (8) and (9), after ‘sole practitioner’—**

*insert—*

‘before the commencement of the Legal Profession Act, section 406<sup>164</sup>’.

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162 Section 36E (Distributions from contribution fund)

163 *Legal Profession Act 2003*, section 126 (Establishment of fund)

164 *Legal Profession Act*, section 406 (Transitional regulation-making power)

## SCHEDULE 4 (continued)

**29 Section 39A(7), before ‘section 41(1)(f)—**

*insert—*

‘the repealed’.

**30 Sections 40, 40A, 41, 41A and 41B—**

*omit.*

**31 Section 42(8), ‘section 41B(2) and’—**

*omit.*

**32 Section 44—**

*insert—*

‘(2) Subsection (1) does not apply to conduct happening after the commencement of this subsection.’.

**33 Section 50(2), definition “official”—**

*insert—*

(f) the commissioner or the staff of the commission; and

(g) an accountant, auditor or other professional consulted by the commissioner.’.

**34 Section 50—**

*insert—*

‘(5) If a provision of this Act that commences on or after the commencement of this subsection provides that a person is to give documents to the commissioner or the Brisbane registrar, the person must comply with the provision despite anything to the contrary in this section.

‘(6) In this section—

“**excluded mortgages**” see section 24A(3).

“**practitioner**” includes the following—

## SCHEDULE 4 (continued)

- (a) an Australian legal practitioner or an employee of the practitioner;
- (b) an incorporated legal practice or a lawyer director or employee of the practice.’.

**35 Section 50A—**

*omit.*

**36 Schedule—**

*omit.*

## SCHEDULE 5

### DICTIONARY

section 4

“**administration rule**” see section 144(3).

“**admission rules**” see section 24.

“**applicant for admission**” see section 24.

“**application for admission**” see section 28.

“**approved form**” see section 378.<sup>165</sup>

“**Australian lawyer**” see section 5.<sup>166</sup>

“**Australian legal practitioner**” see section 6.<sup>167</sup>

“**Australian roll**” means the local roll or an interstate roll.

“**bar association**” means the Bar Association of Queensland (ACN 009 717 739).

“**barrister**”—

- (a) for chapter 4, part 3—see section 267; and
- (b) for chapter 4, part 5—see section 303; and
- (c) otherwise—see section 7.

“**barristers rule**”, for chapter 2, part 7, see section 133.

“**board**” means the Legal Practitioners Admissions Board established under section 304.

“**Brisbane registrar**” means the registrar under the *Supreme Court of Queensland Act 1991* for the Brisbane Supreme Court district.

“**certificate holder**” means—

- (a) for a local practising certificate or an interstate practising certificate—the individual who is named in the certificate as the

<sup>165</sup> Section 378 (Approved forms)

<sup>166</sup> Section 5 (Meaning of terms involving “lawyer”)

<sup>167</sup> Section 6 (Meaning of terms involving “legal practitioner”)

## SCHEDULE 5 (continued)

individual to whom the certificate has been granted or in relation to whom the certificate has been renewed; or

- (b) for a practising certificate that is cancelled—the individual who was the holder of the certificate when it was in force.

**“change”** includes change by way of an addition, alteration, omission or substitution.

**“commission”** see section 239.

**“commissioner”** means an individual holding the appointment of the Legal Services Commissioner.

**“commissioner of police”**, for chapter 5, part 1, see section 322.

**“committee”** means the Legal Practice Committee established under section 268.

**“committee member”** means an individual holding an appointment to the committee under section 269.

**“compensation order”**, for chapter 3, part 6, see section 204.

**“complaint”** means a complaint made under section 173.

**“conditions”** means conditions, limitations or restrictions.

**“conduct”** means conduct whether consisting of an act or omission.

**“consumer dispute”** for chapter 3, part 3, see section 179.

**“conviction”** see section 12.

**“corporation”** see section 81.

**“corresponding authority”** means—

- (a) an entity with functions or powers under a corresponding law; or  
 (b) when used in the context of an entity with functions or powers under this Act—an entity with corresponding functions or powers under a corresponding law.

**“corresponding law”** means the following—

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

## SCHEDULE 5 (continued)

- (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 jurisdiction, a previous law applying to legal practice in the other jurisdiction.

**“corresponding tribunal”** means a court or tribunal in another jurisdiction having functions and powers that include disciplining legal practitioners in that jurisdiction that correspond to a disciplinary body’s functions and powers under this Act.

**“costs assessor”** see the *Queensland Law Society Act 1952*, section 3.<sup>168</sup>

**“director”** see section 81.

**“disciplinary action”**, for chapter 3, part 8, see section 211.

**“disciplinary body”**, in relation to a discipline application, means either of the following entities to which the commissioner makes the application—

- (a) the tribunal;
- (b) the committee, other than the committee exercising advisory functions as mentioned in chapter 4, part 3, division 4.

**“discipline application”** see section 192(2).

**“discipline register”** see section 212.

**“disqualified person”**, for chapter 2, part 5, see section 81.

**“employee”**, of an entity, means an individual who is employed by or in the entity whether or not—

- (a) the individual is employed on a full time, part time, temporary or casual basis; or
- (b) the individual is employed as a law clerk or articled clerk.

**“engaged in government work”**, in relation to a government legal officer, see section 9(2).

**“engage in legal practice”** includes practise law.

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168 *Queensland Law Society Act 1952*, section 3 (Definitions)



## SCHEDULE 5 (continued)

**“fidelity fund”** means the Legal Practitioners’ Fidelity Guarantee Fund established under the *Queensland Law Society Act 1952*, part 3.<sup>169</sup>

**“foreign country”** means—

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

**“foreign law”** means a law of a foreign country that corresponds to the relevant provisions of this Act, and includes a law of a foreign country that is declared under a regulation to correspond to this Act.

**“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 under a regulation for this definition.

**“fund”**, for chapter 2, part 6, see section 121.

**“government legal officer”** see section 9.

**“health assessor”** see section 325.

**“home jurisdiction”**, of an Australian legal practitioner, means the jurisdiction in which the practitioner’s only or most current Australian practising certificate was granted.

**“in-house legal services”** mean legal services provided to a corporation by an individual employed by the corporation concerning a proceeding or transaction to which the corporation, or a related body corporate, is a party.

**“ILP authority”** see section 81.

**“incorporated legal practice”** see section 80.<sup>170</sup>

**“incorporated legal practice rule”** see section 133.

**“indemnity rule”** see section 144(4).

**“information notice”** see section 13.<sup>171</sup>

**“insolvent under administration”** means—

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169 *Queensland Law Society Act 1952*, part 3 (Legal Practitioners’ Fidelity Guarantee Fund)

170 Section 80 (Meaning of “incorporated legal practice”)

171 Section 13 (Meaning of information notice)

## SCHEDULE 5 (continued)

- (a) a person who is an undischarged bankrupt under the *Bankruptcy Act 1966* (Cwlth) or the provisions of a foreign law that correspond to that Act; or
- (b) a person who has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X or the provisions of a foreign law that correspond to that Act, if the terms of the deed have not been fully complied with; or
- (c) a person whose creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X or the provisions of a foreign law that correspond to that Act, if a final payment has not been made under that composition; or
- (d) a person for whom a debt agreement has been made under the *Bankruptcy Act 1966* (Cwlth), part IX or the provisions of a foreign law that correspond to that Act, if the debt agreement has not ended or has not been terminated.

**“interstate lawyer”** see section 5.<sup>172</sup>

**“interstate legal practitioner”** see section 6.<sup>173</sup>

**“interstate practising certificate”** means a practising certificate granted under a corresponding law.

**“interstate roll”** means a roll of legal practitioners kept under a corresponding law.

**“investigation”** see section 332.

**“investigation matter”** see section 182.

**“investigator”** see section 332.

**“jurisdiction”** means a State.

**“law firm”** means a partnership consisting of Australian lawyers.

**“law practice”** means—

- (a) an Australian lawyer who is a sole practitioner; or
- (b) a law firm; or

<sup>172</sup> Section 5 (Meaning of terms involving “lawyer”)

<sup>173</sup> Section 6 (Meaning of terms involving “legal practitioner”)

## SCHEDULE 5 (continued)

(c) an incorporated legal practice.

**“law practice employee”** means an employee of a law practice engaged in the activities associated with the relevant practice.

**“law society”** means the Queensland Law Society Incorporated as established under the *Queensland Law Society Act 1952*, section 4.

**“lawyer director”**—

- (a) in relation to an incorporated legal practice—see section 81; or
- (b) in relation to a law practice—means a lawyer director of a law practice that is an incorporated legal practice.

**“lay panel”** means the panel established under section 254(1)(a).

**“Legal Practitioners Act”**, for chapter 6, part 5, see section 381.

**“legal profession rule”** see section 132.

**“legal services”** means work done, or business transacted, in or associated with the ordinary course of legal practice.

**“local lawyer”** see section 5.<sup>174</sup>

**“local legal practitioner”** see section 6.<sup>175</sup>

**“local practising certificate”** means a practising certificate, or another document about the renewal, granted by the law society or bar association under this Act.

**“local roll”** see section 34(1).

**“misconduct”** of a law practice employee means misconduct that consists of either an act or omission by the law practice employee.

**“officer”**, of a corporation, see section 81.

**“panel member”** means an individual holding an appointment to the lay panel or the practitioner panel under chapter 4, part 2, division 3.

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

- (a) legal training by participation in course work;

<sup>174</sup> Section 5 (Meaning of terms involving “lawyer”)

<sup>175</sup> Section 6 (Meaning of terms involving “legal practitioner”)

## SCHEDULE 5 (continued)

- (b) legal training under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise.

**“practising certificate”** means a practising certificate granted under this Act or a corresponding law.

**“practitioner panel”** means the panel established under section 254(1)(b).

**“prescribed account”** see section 121.

**“professional misconduct”** see section 163.<sup>176</sup>

**“professional obligations”**, of an Australian lawyer, see section 81.

**“QLS Act”**, for chapter 6, part 5, see section 381.

**“qualified employee”** means an employee of a law practice who is an Australian legal practitioner.

**“quashing a conviction”** see section 12.

**“registrar”** see the *Supreme Court of Queensland Act 1991*, schedule 2.

**“regulatory authority”** means—

- (a) in relation to another jurisdiction—

- (i) if there is only one regulatory authority for the other jurisdiction—that regulatory authority; or
- (ii) if there are separate regulatory authorities for the other 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; or

- (b) otherwise—the law society or the bar association.

**“related body corporate”** see section 81.

**“relevant authority”**, for chapter 5, part 1, see section 322.

**“relevant law”** means—

- (a) this Act; or
- (b) the *Legal Practitioners Act 1995* as in force at any time before or after the commencement of this definition; or

<sup>176</sup> Section 163 (Meaning of “professional misconduct”)

## SCHEDULE 5 (continued)

- (c) the *Queensland Law Society Act 1952* as in force at any time before or after the commencement of this definition; or
- (d) the *Trust Accounts Act 1973* as in force at any time before or after the commencement of this definition.

**“relevant practice”** means legal services provided by a law practice.

**“relevant regulatory authority”** see section 40.

**“serious offence”** see section 11.

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

- (a) a conviction for a serious offence or 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 lawyer; or
  - (iii) other persons are prohibited from disclosing the identity of the offender; or
- (b) becoming an insolvent under administration.

**“show cause notice”**, for chapter 2, see section 62.

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

**“solicitor”**—

- (a) for chapter 2, part 6—see section 121; and
- (b) for chapter 4, part 3—see section 267; and
- (c) for chapter 4, part 5—see section 303; and
- (d) otherwise—see section 8.

**“solicitors complaints tribunal”** see the *Queensland Law Society Act 1952*, section 3.

**“solicitors rule”** see section 133.

**“staff”**, in relation to the office of the commissioner, see section 240.

**“subject person”**, for chapter 5, part 1, see section 322.

**“suitability matter”**, in relation to an individual, see section 10.

## SCHEDULE 5 (continued)

**“suitability report”**, for chapter 5, part 1, see section 322.

**“supervised legal practice”** means legal practice by an individual—

- (a) as an employed lawyer of a law practice if—
  - (i) a least 1 partner, lawyer director or other employee of the law practice is an Australian lawyer who holds an unrestricted practising certificate; and
  - (ii) the individual engages in legal practice under the supervision of an Australian lawyer mentioned in subparagraph (i); or
- (b) as a partner in a law firm if—
  - (i) at least 1 other partner is an Australian lawyer who holds an unrestricted practising certificate; and
  - (ii) the individual engages in legal practice under the supervision of an Australian lawyer mentioned in subparagraph (i); or
- (c) in a capacity approved under an administration rule.

**“Supreme Court”**, for chapter 2, part 3, see section 24.

**“tax offence”** means an offence under the *Taxation Administration Act 1953* (Cwlth), whether committed in or outside this jurisdiction.

**“this jurisdiction”** means this State.

**“tribunal”** means the Legal Practice Tribunal established under section 246.

**“tribunal member”** means a member of the tribunal constituting the tribunal to hear and decide a discipline application.

**“tribunal rules”** see section 250.

**“trust account”**, for chapter 2, part 6, see section 121.

**“unrestricted practising certificate”** means an Australian practising certificate that—

- (a) is not subject to a condition under section 53<sup>177</sup> or a similar condition under a corresponding law; and

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177 Section 53 (Statutory condition regarding legal practice as solicitor)

## SCHEDULE 5 (continued)

- (b) does not limit or is not subject to a condition that limits the holder to practise as or in the manner of a barrister; and
- (c) is not subject to another condition, other than a condition requiring the certificate holder to participate or complete continuing legal education or a condition prescribed under a regulation for this definition; and
- (d) for an interstate practising certificate—is not subject to a condition similar to a condition under section 53<sup>178</sup> and whose holder would not be subject to a condition under that section if the holder were to apply for and be granted a local practising certificate.

**“unsatisfactory professional conduct”** see section 162.

**“unsupervised legal practice”** means legal practice engaged in by an Australian legal practitioner who is entitled to engage in legal practice as a solicitor and whose practising certificate is not subject to a condition requiring the practitioner to complete a period of supervised legal practice as a solicitor.

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178 Section 53 (Statutory condition regarding legal practice as solicitor)