

# **LEGAL PROFESSION BILL 2003**

## **EXPLANATORY NOTES**

### **General Outline**

#### **Objectives of the Legislation**

The Bill provides for reforms to the regulation of the legal profession in the interests of the administration of justice and the protection of consumers of legal services. It also facilitates legal practice on a national basis.

#### **Reasons for the objectives and how they will be achieved**

The Government has conducted a number of reviews in relation to the regulation of the legal profession. Papers were released for public consultation in 1998 and 1999 and a package of reforms was announced in December 2000. A National Competition Policy review of the existing legal practice legislation was later conducted and an issues paper was released in November 2001. A project is also being undertaken through the Standing Committee of Attorneys-General (SCAG) on national model laws for legal profession regulation (“national model laws”). In 2002, further to criticism of its complaint-handling function, the Queensland Law Society (“law society”) commissioned a report by retired Chief Judge, Mr Pat Shanahan and the Attorney-General and Minister for Justice requested a report from the Legal Ombudsman.

These reviews have identified the following outcomes as desirable:

- a consistent national approach in relation to the admission of legal practitioners;
- a statutory basis for the regulation of barristers;
- facilitating legal practice by interstate legal practitioners in Queensland;
- setting and enforcing a high level of professional ethics and standards;

- greater independence, accountability and transparency in the complaints and disciplinary processes for lawyers;
- in the context of national practice, the recognition of disciplinary action in other jurisdictions and a consistent approach in the areas of trust accounts, client agreements and fidelity and professional indemnity cover;
- greater integrity, consistency and independence as part of the cost review process;
- allowing lawyers to utilise new business structures, namely, incorporated legal practices and multidisciplinary practices; and
- a scheme for the registration of foreign lawyers.

Where the national model laws proposals are still to be finalised for consideration by SCAG, it is proposed that the reforms be implemented in two stages:

- The Bill is the first stage implementing reforms in the areas of admission, national practice, conduct rules, complaints and discipline, the financial arrangements and incorporated legal practices.
- It is expected that the remaining reforms (including in the areas of trust accounts, client agreement and costs review, fidelity cover, multi-disciplinary practices and foreign lawyers) would be included in a second Bill next year with any further changes that are desirable for consistency with the final national model laws approach.

The Bill provides for the admission of legal practitioners. Solicitors and barristers will not be admitted separately as at present. Academic qualifications and practical legal training qualifying applicants for admission in other jurisdictions that apply similar minimum criteria will be recognised.

Only Australian legal practitioners, those holding practising certificates (local or interstate), will be permitted to engage in legal practice in Queensland. The restriction will not apply to government legal officers engaged in government work. The Bill provides for local practising certificates for solicitors to be issued by the law society and for practising certificates for barristers to be issued by the Bar Association of Queensland (“bar association”). Lawyers admitted in other jurisdictions will be able to apply for local practising certificates without having to be first admitted in

Queensland. Interstate lawyers will be allowed to practise in Queensland without a local practising certificate.

There will be greater independence, accountability and transparency in the complaints and disciplinary processes for lawyers. The Bill establishes the new independent statutory office of the Legal Services Commissioner to receive and manage the investigation of complaints against lawyers and prosecute professional conduct charges in appropriate cases. Charges for minor professional conduct breaches will be heard by the Legal Practice Committee, appointed by the Governor in Council. More serious matters, potentially involving suspension, striking off or serious fines would be heard by the Legal Practice Tribunal, chaired by a Supreme Court Judge assisted by a professional member and a lay member.

Incorporated legal practices will be facilitated on a basis that is consistent with the proposals in the national model laws. That scheme is based on each incorporated legal practice having a “lawyer director” who has specific responsibilities in relation to the provision of legal services by the corporation. The lawyer director and employee legal practitioners will retain their professional obligations.

Responsibility for the statutory deposit scheme in respect of solicitors’ trust accounts and arrangements for the payment of interest on those accounts will be transferred from the law society to the Department of Justice and Attorney-General (“the Department”). Interest on statutory deposit accounts will be paid to the Legal Practitioner Interest on Trust Accounts Fund and will be allocated for statutory purposes specified in legislation, as approved by the Minister on the recommendation of the Chief Executive of the Department.

The legal profession rules in relation to conduct matters will be made as subordinate legislation and will be enforceable in disciplinary proceedings.

### **Administrative cost to Government of implementation**

The changes are to be cost neutral and funded from the Legal Practitioner Interest on Trust Accounts Fund.

## **Consistency with Fundamental Legislative Principles**

### ***Whether legislation has sufficient regard to rights and liberties of individuals (Legislative Standards Act (LSA), s4(3)(a))***

The Bill provides that incorporated legal practices must have at least one legal practitioner as a director of the corporation, called a “lawyer director”. Each lawyer director is responsible for the management of the legal services provided in this jurisdiction by the incorporated legal practice (clause 87). The Bill provides a number of matters where the actions of others are capable of being unsatisfactory professional conduct or professional misconduct by the lawyer director. These include unsatisfactory professional conduct by an Australian legal practitioner employed by the corporation, conduct of another director that adversely affects the provision of legal services by the practice and the unsuitability of another director (clause 88).

Although it may be argued that these provisions do not have sufficient regard to the rights of a lawyer director, they are considered necessary for the following reasons.

- The lawyer director is responsible for the management of legal services provided in the jurisdiction by the corporation. In facilitating the provision of legal services by a corporation, it is important that a lawyer within the corporation have clear responsibilities for the legal practice and that there be disciplinary consequences if these matters are not appropriately managed.
- The provisions are consistent with the national model laws approach to incorporated legal practices. It is an area where maximum uniformity is considered desirable in the interests of national practice.
- The conduct is only capable of constituting unsatisfactory professional conduct or professional misconduct by a lawyer director. This will be determined by the disciplinary body in all the circumstances should a discipline application be brought.

Similar provisions exist in other Queensland legislation where it is considered appropriate to heighten corporate governance responsibilities.

The Bill also provides that if a corporation commits an offence against a provision of the Act, each of the executive officers of the corporation also commits an offence. It will be a defence for the officer to prove either that the officer was not in a position to influence the corporation’s conduct in

relation to the offence or, if the officer was in that position, that the officer exercised reasonable diligence to ensure the corporation complied with the provision (Clause 371). Special provision is made for incorporated legal practices (Clauses 84, 86, 89, 102 and 109). The provisions frequently appear in principal legislation. Such provisions are considered to be warranted in association with incorporated legal practices newly being able to provide legal services and the need for accountability of executive officers of the corporations in respect of the legislative obligations on the corporations. There are appropriate defences.

***Powers to enter premises, and search for or seize documents (LSA, s4(3)(e))***

Under the Bill, investigators would be able to enter a public place, or premises with consent or under a warrant. The Bill also provides that an investigator may enter a place if 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 (clause 342). “Residence” includes a part of a place of business where a person resides. This power is considered to be justified on the basis that it is limited to the lawyer’s usual place of business. Lawyers are effectively licensed under a practising certificate scheme and as a consequence must accept that they are subject to conduct rules and complaints and disciplinary processes. A complaint may not always disclose the seriousness of the misconduct that may ultimately be uncovered through an investigation. Without a more general power of entry, there is concern that a practitioner may withdraw consent to entry if the investigator is getting close to discovering evidence of misconduct or an offence, which evidence may be destroyed before a warrant can be obtained.

***Retrospective operation (LSA, s4(3)(g))***

When an individual applies for admission as a legal practitioner in Queensland, the Supreme Court and the Legal Practitioners Admissions Board (“admissions board”) will consider suitability matters in relation to the person as part of considering the person’s eligibility and suitability to be admitted as a legal practitioner in Queensland (clause 26). Similarly, the law society or bar association will consider an individual’s suitability (including an individual admitted in another jurisdiction) when the individual applies for the grant or renewal of a practising certificate (Clause 41).

Part of considering an individual’s suitability involves considering past conduct. Past acts can be relevant in one of two ways. Firstly, whether past

conduct should disqualify the person from holding the position and being an officer of the court. Secondly, whether a number of past acts over a period of time may be indicative of an underlying problem including lack of respect for the law.

Accordingly, the Queensland Bill allows past actions to be considered, even actions that would otherwise be protected by the *Criminal Law (Rehabilitation of Offenders) Act 1986*. This approach manifests itself throughout the Bill. For example, in the definition of “suitability matter”, most of the matters listed look back in time by referring to “whether the individual is or has been an insolvent under administration” or “has been convicted of an offence in Australia or a foreign country”. It also provides “A matter is a suitability matter even if it happened before the commencement of this section.”

The provisions are considered to be justified because the Supreme Court, admissions board and other bodies charged with functions under the Act, have a legitimate role in looking at a person’s conduct as a whole and ensuring that the public is protected from a person who is not suitable to hold the position of a lawyer in the community. This is important where lawyers accept money on trust for clients, sign or witness documents for clients and are expected to act in the best interests of the clients without conflict. Further, suitability matters do not prevent a person being admitted etcetera but are part of the whole consideration of a person’s application. This approach is also included as an example in the national model laws.

### ***Immunity from proceeding or prosecution without adequate justification (LSA, s4(3)(h))***

Four clauses contain immunity provisions. Clauses 114 and 115 provide that no liability attaches to certain external administrators for acts or omissions in good faith for the purpose of carrying out or acting under the order of the Supreme Court. Clauses 216 and 229 provide that no liability attaches to various persons with regulatory responsibilities under the Act for acts or omissions in good faith. All are based on the national model laws, are limited in effect and are necessary for the administration of the Act.

### ***Legislation unambiguous, clear and precise (LSA, s4(3)(k))***

Clause 68(3) provides for conditions applicable to an interstate legal practitioner when practising in Queensland without a local practising certificate. The legal practitioner is to comply with conditions applicable under the corresponding law of the jurisdiction from which he or she holds a practising certificate and conditions under this Act. If there is an

inconsistency between those conditions, the more onerous conditions prevail to the extent of the inconsistency. Which conditions are more onerous may be unclear. The provision acknowledges the principle that interstate practitioners have no more extensive rights of practice in this jurisdiction than they do in their home jurisdiction or under the laws of this State. It is desirable that this interstate provision follow the national model laws.

***Delegation of legislative power in appropriate cases to appropriate persons. (LSA, s4(4)(a))***

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

Clause 117 provides, in relation to incorporated legal practices, for the relationship between the Act and the Corporations Act to be dealt with by regulation and for such regulations to be Corporations Law displacement provisions. This arrangement is in accordance with the national model laws and is appropriate where legislation allowing for incorporated legal practices is untried and to allow for dealing with conflicts that might not be anticipated.

Chapter 2, Part 6, division 2 sets up the prescribed accounts system in relation to the statutory deposit obligations relating to solicitors' trust. It contemplates regulations fleshing out the details of the system. Given the expected detail of these administrative provisions and the need to ensure that they are workable for financial institutions and solicitors affected, this power is considered to be justified.

Regulations are also to be used to give effect to other documents made or entered into by a regulatory authority such as administration rules and protocols. The device of allowing the regulatory bodies to make provisions about solicitors and barristers, but not to make binding provisions unless a regulation supports the provision, strikes a balance between scrutiny by Parliament and the need for self regulation.

***Institution of Parliament - amendment of an Act only by another Act. (LSA, s4(4)(a))***

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill authorises the amendment of an Act only by another Act. Clause 405 is a provision often referred to as the transitional regulation making power. The clause allows regulations to be made for the purposes of the transition and those regulations and the provision itself expire after one year.

Although it may be argued that this power does not have sufficient regard to the institution of Parliament, it is considered necessary in view of the complexity of the current amendments, the staged approach to the implementation of the reforms, new legislative issues raised by interstate lawyers, the need for the legislation to be consistent with the emerging national model laws and the need for provisions which have previously only applied to individuals to operate in respect of incorporated legal practices. It is in the public interest that there be no gaps in the legislative scheme that would adversely affect a lawyer's right to practise or their professional obligations or the operation of provisions intended to protect the public, such as in respect of professional indemnity insurance cover. Similar provisions have been used in Queensland legislation when regulatory regimes are being substantially changed. If the stage 2 amendments are effected before the stage 1 commencement the need for transitional regulations will be minimised.

### ***Henry VIII provisions***

The Bill contains a number of Henry VIII provisions and the reason for most of them is that the Bill follows the national model laws.

The incorporated legal practice provisions provide that a regulation may prohibit an incorporated legal practice or a related body corporate from providing a service or conducting a business of a kind stated under a regulation (clause 82). The Bill would already prohibit an incorporated legal practice from conducting a managed investments scheme. The intention is that a regulation would be made in respect of an activity where it is not in the public interest for the activity to be conducted in association with legal practice because of the conflicts that may be involved. Although the regulation may be seen as not having sufficient regard to the institution of Parliament, it is considered necessary because it:

- allows an early response to activities that are identified as not being in the public interest to be conducted in association with legal practice; and
- is consistent with the national model laws in respect of incorporated legal practices being developed through SCAG in an area where maximum uniformity is considered desirable in the interests of national practice.

A corporation that provides legal services is not an incorporated legal practice if the corporation is prescribed under a regulation as a corporation that is not an incorporated legal practice (clause 80). This exempting power is included to ensure that the incorporated legal practice provisions

do not have an unintended consequence for a class of corporation to which it is inappropriate that it applies. The device is also used for other definitions for the same part, specifically for defining director, officer and related body corporate, Corporations Act administrator and external administrator.

## **CONSULTATION**

### **Community**

There has been extensive community consultation through the 1998 Discussion Paper, 1999 Green Paper, the announcement of the Government's proposals in 2000 and the release of the NCP Issues Paper in 2001. The professional bodies have been consulted on the proposed changes to the regulatory structure and the Bill.

### **Government**

The Department of Premier and Cabinet and Queensland Treasury have been consulted. Departments have been consulted on consequential amendments to the terminology relating to lawyers in legislation for which they have responsibility. The Ministerial Council for Corporations has been consulted on the proposed Corporations Act displacement provision following the national model laws.

## **NOTES ON PROVISIONS**

### **CHAPTER 1—INTRODUCTION**

#### **PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides for the provisions of the Act to commence on dates fixed by proclamation.

*Clause 3* specifies the main purposes of the Bill.

#### **PART 2—INTERPRETATION**

##### *Division 1—Dictionary*

*Clause 4* provides for a dictionary in schedule 5 to define particular words used in this Act.

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

*Clause 5* defines terms used in the Act involving “lawyer”. There are transitional provisions for practitioners entered on the solicitors and barristers rolls before the commencement of the legal practitioners roll. For various provisions, the Act distinguishes between “lawyers” (admitted practitioners) and “legal practitioners” (those with practising certificates). In some cases, a provision may apply to an Australian lawyer or, in other cases to an Australian legal practitioner. Other provisions need to

distinguish the position for local as against interstate legal practitioners or lawyers.

*Clause 6* defines terms used in the Act involving “legal practitioner”. See explanation as for clause 5.

*Clause 7* defines the term “barrister” for local and interstate legal practitioners. For interstate legal practitioners, it covers the position in jurisdictions where there are not separate practising certificates for barristers.

*Clause 8* defines the term “solicitor”. For interstate legal practitioners, it covers the position in jurisdictions where there are not separate practising certificates for solicitors.

*Clause 9* defines “government legal officer”. Government legal officers are not subject to certain requirements of the Act when they engage in government work.

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

*Clause 10* defines “suitability matter” which may be relevant to whether a person is fit and proper to be admitted or hold a practising certificate.

*Clause 11* defines a “serious offence”.

*Clause 12* defines “conviction” and “quashing a conviction”.

*Clause 13* defines “information notice”.

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

*Clause 14* provides that a note in the text of this Act is part of this Act.

*Clause 15* provides for the interpretation of the time for doing things under the Act.

*Clause 16* provides in respect of grounds for specified matters under the Act to be reasonable in the circumstances.

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

### **PART 1—PRELIMINARY**

*Clause 17* provides for the main purposes of the chapter.

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

*Clause 18* provides for the main purpose of the part.

*Clause 19* provides that the part does not apply to a government legal officer engaged in government work.

*Clause 20* prohibits individuals from engaging in legal practice in this jurisdiction unless they are Australian legal practitioners. There are specified exceptions.

*Clause 21* imposes restrictions on individuals who are not Australian legal practitioners from representing or advertising that they are entitled to engage in legal practice unless the individual is an Australian legal practitioner.

*Clause 22* relates to contraventions of section 20 or 21 by an Australian lawyer who is not an Australian legal practitioner.

### **PART 3—ADMISSION OF LEGAL PRACTITIONERS**

#### *Division 1—Preliminary*

*Clause 23* specifies the main purpose of the part.

*Clause 24* specifies definitions for the part.

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

*Clause 25* specifies the eligibility requirements for admission. Academic qualifications and practical legal training from other jurisdictions which apply similar minimum criteria will be recognised.

*Clause 26* provides that 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 and for how that is to be determined.

***Division 3—Application for admission***

*Clause 27* provides for the main purposes of division 3.

*Clause 28* provides for the making of an application for admission.

*Clause 29* specifies the role of the board in helping the Supreme Court in relation to applications for admission and its powers to require an applicant to give it stated documents or information or to cooperate with inquiries by the board.

*Clause 30* provides for the role of the Supreme Court relating to applications for admission.

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

*Clause 31* provides for the main purpose of the division.

*Clause 32* allows an individual to apply to the board for early consideration of a matter that may adversely affect its assessment of the individual's suitability for admission as a legal practitioner and for an appeal against the decision of the board to the Court.

*Clause 33* provides that the Court may give directions to the board or decide matters on appeal.

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

*Clause 34* provides for the keeping by the Supreme Court of a roll of legal practitioners (the “local roll”) and for transitional arrangements in respect of the local rolls of barristers and solicitors.

*Clause 35* provides for an individual to become an officer of the Supreme Court on being admitted as a legal practitioner.

***Division 6—Miscellaneous***

*Clause 36* provides in respect of conditional admission.

*Clause 37* provides for the board’s right of appearance at the hearing of applications under the part.

*Clause 38* provides for the board to charge fees set by regulation.

**PART 4—LEGAL PRACTICE BY AUSTRALIAN LEGAL PRACTITIONERS*****Division 1—Preliminary***

*Clause 39* specifies the main purposes of the part.

*Clause 40* defines “relevant regulatory authority” as the law society for solicitors and the bar association for barristers.

*Clause 41* provides for how suitability to hold a practising certificate is to be decided under the Part.

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

*Clause 42* entitles an Australian legal practitioner, subject to this Act, to engage in legal practice in this jurisdiction and excepts government legal officers engaged in government work.

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

*Clause 43* provides for applications for the grant or renewal of a local practising certificate. The provision specifies when an Australian lawyer is eligible to, or is required to, apply for the grant or renewal of a local practising certificate. Subject to the specified exceptions, an Australian legal practitioner who engages in legal practice principally from an office 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.

*Clause 44* provides for the manner of application for a local practising certificate.

*Clause 45* provides for the professional indemnity insurance requirements for a local practising certificate and exempts government legal officers in relation to government work and legal practitioners providing in-house legal services from the requirement

*Clause 46* provides for the continuing obligations on a practitioner relating to professional indemnity insurance cover.

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

*Clause 47* applies in relation to the grant or renewal of a local practising certificate.

*Clause 48* provides for the conditions that may be imposed by the law society or bar association on local practising certificates.

*Clause 49* specifies the process where a regulatory authority imposes a condition on a practising certificate.

*Clause 50* provides that 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***

*Clause 51* provides for the conditions to which a local practising certificate is or may be subject.

*Clause 52* provides that it is a statutory condition of a local practising certificate that the holder give notification if the holder commits an offence which would need to be disclosed under the admission rules.

*Clause 53* provides in respect of a statutory condition of a local practising certificate in relation to the required minimum period for supervised practice for solicitors.

*Clause 54* makes contravention of a condition capable of being unsatisfactory professional conduct or professional misconduct.

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

*Clause 55* applies in relation to the application for a local practising certificate if a show cause event (relating to insolvency, taxation offence or serious offence) has occurred after first admission.

*Clause 56* specifies the action to be taken by a local legal practitioner if a show cause event happens to that practitioner.

*Clause 57* specifies the powers of refusal, cancellation or suspension of a local practising certificate by the relevant regulatory authority in the event of failure to show cause.

*Clause 58* provides, in addition to section 57, a regulatory authority can decide that a person is not to apply for a practising certificate for a specified period up to 5 years, for an appeal from such decision and for recognition of similar decision under a corresponding authority.

*Clause 59* provides for investigation powers under chapter 5 part 2 to apply to a matter under the division.

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

*Clause 60* relates to the application of the division.

*Clause 61* provides the grounds for amending, cancelling or suspending a person's local practising certificate including if the certificate holder is no longer fit and proper to hold the certificate.

*Clause 62* specifies the show cause process to be adopted if the relevant regulatory authority believes a ground exists to amend, cancel or suspend an individual's local practising certificate.

*Clause 63* relates to the date of effect of an amendment, suspension, cancellation or where the matter relates to the conviction of an offence for the Court to order a stay until an appeal is decided or the appeal period ends.

*Clause 64* relates to the return of a local legal practitioner's practising certificate that is amended, cancelled or suspended by the relevant regulatory authority or is replaced by another certificate.

*Clause 65* provides for other ways for amending or cancelling a local practising certificate.

*Clause 66* provides that nothing in this division prevents a regulatory authority from making a complaint about a matter to which this division relates or the commissioner investigating or referring a matter for investigation as mentioned in section 182.

### ***Division 8—Interstate legal practitioners***

*Clause 67* specifies the professional indemnity insurance requirements for interstate legal practitioners.

*Clause 68* specifies the extent of entitlement of an interstate legal practitioner to practise in this jurisdiction.

*Clause 69* provides for the relevant regulatory authority to impose conditions on interstate legal practitioners engaging in legal practice in this jurisdiction.

*Clause 70* provides for the same requirements in respect of unsupervised practice under clause 53 to interstate legal practitioners.

*Clause 71* provides that an interstate legal practitioner has all the duties and obligations of an officer of the Supreme Court, and in that respect is subject to the jurisdiction of the Supreme Court.

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

*Clause 72* enables the relevant regulatory authority, where it considers it necessary in the public interest, to immediately suspend a local practising certificate for a specified reason.

*Clause 73* provides for the duration of local practising certificates based on a financial year.

*Clause 74* provides that the holder of a local practising certificate may surrender the certificate and for the relevant regulatory authority to cancel it.

*Clause 75* provides for regulatory authorities to enter into protocols with regulatory authorities of other jurisdictions about deciding certain matters and for a protocol to have effect in this jurisdiction only to the extent it is approved under a regulation.

*Clause 76* provides for the regulatory authority to obtain information etc to help it consider whether or not to grant, renew, cancel or suspend a local practising certificate, or impose conditions on a local practising certificate.

*Clause 77* provides that a regulatory authority must keep a register of local practising certificates.

*Clause 78* provides for the fees that may be charged by a regulatory authority.

**PART 5—INCORPORATED LEGAL PRACTICES*****Division 1—Preliminary***

*Clause 79* specifies the main purpose of the part.

*Clause 80* provides for when a corporation is or is not an “incorporated legal practice”.

*Clause 81* contains definitions for the part.

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

*Clause 82* relates to the non-legal services an incorporated legal practice may provide or that an incorporated legal practice or related body corporate may not provide.

*Clause 83* provides for corporations that are eligible to be incorporated legal practices.

*Clause 84* provides that, before starting to engage in legal practice in this jurisdiction, a corporation must give the law society written notice of its intention to do so.

*Clause 85* creates an offence about advertising or representing that a corporation is an incorporated legal practice unless a section 84 notice has been given.

*Clause 86* provides for notice to be given when a corporation stops engaging in legal practice in this jurisdiction.

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

*Clause 87* requires an incorporated legal practice to have a lawyer director and specifies the responsibilities of a lawyer director.

*Clause 88* specifies the obligations of a lawyer director relating to conduct of others in relation to the incorporated legal practice.

*Clause 89* provides that an incorporated legal practice cannot be without a lawyer director for more than 7 days and for the required notice to the law society and for action that may be taken by the law society in that event.

*Clause 90* preserves the obligations and privileges of an Australian legal practitioner who is an officer or employee of an incorporated legal practice.

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

*Clause 91* provides for the provisions of this Act relating to insurance to apply with any necessary changes to incorporated legal practices in relation

to the provision of legal services in the same way that they apply to Australian legal practitioners.

*Clause 92* relates to matters pertaining to conflicts of interest, in respect of the interests of the incorporated legal practice or related body corporate.

*Clause 93* provides for the disclosure obligations that apply when a person engages an incorporated legal practice to provide services that the person might reasonably assume to be legal services (unless the practice provides only legal services in this jurisdiction).

*Clause 94* provides for the effect of non-disclosure under section 93.

*Clause 95* provides for the application of a legal profession rule to Australian legal practitioners who are officers or employees of incorporated legal practices.

*Clause 96* provides for restrictions on advertising by Australian legal practitioners to apply to advertising by an incorporated legal practice in relation to the provision of legal services.

*Clause 97* provides for advertisement by incorporated legal practices for the purposes of disciplinary proceedings to be taken to have been authorised by each lawyer director.

*Clause 98* provides for requirements relating to trust accounts that apply to an incorporated legal practice.

*Clause 99* provides for application to incorporated legal practices of the fidelity fund requirements.

*Clause 100* provides for the extension of vicarious liability relating to failure to account and dishonesty to incorporated legal practices.

*Clause 101* provides that 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.

*Clause 102* prohibits an incorporated legal practice from specified kinds of involvement with a disqualified person.

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

*Clause 103* provides for the audit of incorporated legal practice by an ILP authority (ie the commissioner or the law society).

*Clause 104* specifies the investigative powers of an ILP authority for audits and investigations in respect of an incorporated legal practice.

*Clause 105* specifies the powers of an ILP authority to examine persons in relation to an incorporated legal practice investigation .

*Clause 106* specifies an ILP authority's powers relating to the inspection of books of an incorporated legal practice.

*Clause 107* specifies an ILP authority's powers to hold hearings for the purposes of an investigation of an incorporated legal practice.

*Clause 108* specifies various matters in connection with an investigation that are capable of being unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner or a lawyer director.

*Clause 109* provides for an ILP authority, on specified grounds, to apply to the Supreme Court for an order disqualifying a corporation from providing legal services in this jurisdiction.

*Clause 110* provides for an ILP authority, on specified grounds, to apply to the Supreme Court for an order disqualifying a person from managing an incorporated legal practice.

*Clause 111* provides that an ILP authority may disclose information to the Australian Securities and Investments Commission.

### ***Division 6—External administration***

*Clause 112* provides for an ILP authority to intervene in external administration proceedings under the *Corporations Act 2001 (Cth)* and for the court, when exercising its jurisdiction in the proceedings, to 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.

*Clause 113* provides, as for section 112, in respect of external administration proceedings under other legislation.

*Clause 114* provides for the Court to resolve issues where an incorporated legal practice is subject to receivership under this Act and external administration under *Corporations Act 2001 (Cth)*.

*Clause 115* provides for the Court to resolve issues where an incorporated legal practice is subject to receivership under this Act and external administration under another Act.

***Division 7 - Miscellaneous***

*Clause 116* provides for Courts to make arrangements for communicating and cooperating with other courts or tribunals in connection with the exercise of powers under this part.

*Clause 117* provides for the making of a regulation to provide for a provision of the Part to be a Corporations legislation displacement provision for the purposes of the *Corporations Act 2001(Cth)*, section 5G.

*Clause 118* makes it an offence for a person to cause or induce a lawyer director, or any other Australian legal practitioner who provides legal services or an incorporated legal practice, to contravene this Act or his or her professional obligations as an Australian legal practitioner.

*Clause 119* provides that a regulation may provide for a training requirement for lawyer director.

**PART 6—FINANCIAL ARRANGEMENTS FOR THOSE WHO MAY ENGAGE IN LEGAL PRACTICE IN THIS JURISDICTION*****Division 1—Preliminary***

*Clause 120* provides for the main purposes of the part.

*Clause 121* provides for definitions for the part.

*Clause 122* specifies the relationship with the *Trust Accounts Act 1973*.

***Division 2—Prescribed accounts***

*Clause 123* provides that a regulation may prescribe for matters relating to a prescribed account.

*Clause 124* provides that 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.

***Division 3—Interest on trust accounts paid to departmen***

*Clause 125* provides for the chief executive to enter into arrangements with financial institutions about the financial institution paying interest to the department on prescribed accounts and trust accounts kept by solicitors.

***Division 4—Legal Practitioner Interest on Trust Accounts Fund***

*Clause 126* establishes the Legal Practitioner Interest on Trust Accounts Fund, provides for amounts that are received for the fund and that those amounts are not received or held for the State.

*Clause 127* provides for the purposes for which payments can be made from the Fund.

*Clause 128* provides for the Minister to decide distribution payments under section 127 and for the chief executive to make recommendations to the Minister.

*Clause 129* provides for the submission of budgets by a potential beneficiary.

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

***Division 1—Preliminary***

*Clause 130* provides for the main purposes of the part.

*Clause 131* provides that the power to make a legal profession rule or an administration rule is not limited to matters for which this Act specifically authorises the making of a legal profession rule or an administrative rule.

*Clause 132* provides the definitions for the part.

***Division 2—Legal profession rules***

*Clause 133* provides for the legal profession rules to be made by Governor in Council.

*Clause 134* relates to the individuals to whom a legal profession rule may be expressed to apply.

*Clause 135* authorises certain matters that may be provided under a barristers rule.

*Clause 136* provides that a solicitors rule or barristers rule may apply to government legal officers.

*Clause 137* imposes a limit on the matters that can be provided for in rules in respect of incorporated legal practices in so far as they relate to non-legal services.

*Clause 138* provides for the law society and bar association to make recommendations to the Minister about legal profession rules.

*Clause 139* provides for the committee to make recommendations to the Minister about a legal profession rule.

*Clause 140* provides for public notice by a regulatory authority that proposes to make a recommendation about a legal profession rule.

*Clause 141* provides for the legal profession rule to be binding on those to whom they apply.

*Clause 142* provides that a regulation may be made in relation to any matter for which a legal profession rule may be made and that a provision of a legal profession rule does not have effect to the extent that it is inconsistent with this Act or a regulation.

*Clause 143* provides for the relationship between a legal profession rule and an administration rule.

***Division 3—Administration rules***

*Clause 144* provides for regulatory authorities to make administration rules.

*Clause 145* provides for the rules in relation to professional indemnity cover.

*Clause 146* provides that an 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.

*Clause 147* requires a regulatory authority to make its administration rule publicly available.

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

### ***Division 1—Preliminary***

*Clause 148* provides for the main purpose of the part.

*Clause 149* provides that this part does not affect a function or power under chapter 3.

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

*Clause 150* provides for notification by the board to a corresponding authority relating to an application for admission.

*Clause 151* provides for notification to other jurisdictions about removal from the local roll.

*Clause 152* provides for the regulatory authority to provide notice of various actions to corresponding authorities.

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

*Clause 153* provides for local lawyers and local legal practitioners to give notice of removal from an interstate roll.

*Clause 154* provides for local lawyers and local legal practitioners to give notice of removal from a foreign country roll.

*Clause 155* provides for the notice requirements.

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

*Clause 156* provides for pre-emptory removal of local lawyer’s name from the local roll following removal in another jurisdiction.

*Clause 157* provides for pre-emptory cancellation of local practising certificate following removal of name from an interstate roll.

*Clause 158* provides for an Australian lawyer to apply for a “prevention order” where he or she reasonably expects that the practitioner’s name will be removed from an interstate roll.

*Clause 159* provides for the show cause procedure for removal of lawyer’s name from the local roll following removal in foreign country.

*Clause 160* provides that a local authority may give information to another local authority.

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

**PART 1—PRELIMINARY**

***Division 1—Purposes***

*Clause 161* provides for the main purposes of this chapter.

***Division 2—Interpretation***

*Clause 162* provides for the meaning of “unsatisfactory professional conduct”.

*Clause 163* provides for the meaning of “professional misconduct”.

*Clause 164* provides for conduct capable of being unsatisfactory professional conduct or professional misconduct.

*Clause 165* defines the meaning of “respondent”.

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

*Clause 166* provides for Australian lawyers to whom this chapter applies.

*Clause 167* provides for conduct in this jurisdiction of an Australian lawyer to which the chapter applies.

*Clause 168* applies to the conduct of a local legal practitioner to which the chapter applies.

*Clause 169* applies in respect of the employees of a law firm.

***Division 3—Commissioner’s obligations for complaints***

*Clause 170* provides for the duties of the commissioner to deal with complaints.

*Clause 171* provides for the duties of the commissioner to keep complainants informed.

**PART 2—MAKING COMPLAINTS**

*Clause 172* provides for the conduct about which a complaint can be made under the chapter.

*Clause 173* provides for the making of a complaint against an Australian lawyer or law practice employee.

*Clause 174* provides for the commissioner to require the complainant to provide further information or verify the complaint.

*Clause 175* provides for complaints made over 3 years after the conduct concerned.

*Clause 176* provides for the summary dismissal of complaints.

*Clause 177* provides for the withdrawal of complaints by the commissioner.

*Clause 178* provides for the commissioner to delay dealing with a complaint for specified reasons.

### **PART 3—MEDIATION FOR COMPLAINTS INVOLVING CONSUMER DISPUTE**

*Clause 179* provides for the definitions for the part.

*Clause 180* provides for mediation of complaints which only involve conduct disputes.

*Clause 181* provides for the mediation of complaints that involve conduct disputes and an issue of unsatisfactory professional conduct or professional misconduct.

### **PART 4—STARTING INVESTIGATIONS BASED ON COMPLAINT OR WITHOUT A COMPLAINT**

*Clause 182* provides for a referral of a complaint or the investigation matter to the law society or bar association for a report.

*Clause 183* provides for the commissioner to investigate a complaint or investigation matter.

*Clause 184* provides for an Australian lawyer to be notified of a complaint or investigation matter.

*Clause 185* provides for the role of law society or bar association in investigating complaints.

*Clause 186* provides for an investigating entity to be able to require an Australian lawyer to give an explanation of a matter being investigated, appear before it and produce documents.

*Clause 187* provides for submissions to be made by Australian lawyers.

*Clause 188* provides that, for investigating a complaint, an investigating entity may refer a matter for a cost assessment.

## **PART 5—DISCIPLINE**

### ***Division 1—Decision of commissioner***

*Clause 189* provides for the commissioner to make a decision after or during an investigation.

*Clause 190* enables the commissioner to dismiss a complaint.

*Clause 191* provides for the keeping of a record by the commissioner of a decision about a complaint or investigation matter.

### ***Division 2—Proceedings in disciplinary body***

*Clause 192* provides for the commissioner to start a disciplinary proceeding.

*Clause 193* provides for a disciplinary body to hear proceedings.

*Clause 194* provides for variations to disciplinary proceedings.

*Clause 195* provides for joinder of disciplinary proceedings.

***Division 3—Decisions of disciplinary bodies***

*Clause 196* provides for orders by the tribunal after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter if the tribunal is satisfied that the Australian lawyer is guilty of unsatisfactory professional conduct or professional misconduct.

*Clause 197* provides for the filing of decisions of the tribunal about discipline applications.

*Clause 198* provides for the filing of decisions of the committee about discipline applications.

*Clause 199* provides for the filing of committee decisions.

*Clause 200* provides for entities to comply with orders of the disciplinary body.

*Clause 201* provides for interim orders.

*Clause 202* provides for costs orders.

*Clause 203* provides that the part does not affect other remedies.

**PART 6—COMPENSATION ORDERS*****Division 1—Preliminary***

*Clause 204* provides for the meaning of “compensation order”.

***Division 2—Compensation orders***

*Clause 205* provides for limits on compensation orders relating to pecuniary loss.

*Clause 206* provides for the effect of a compensation order.

*Clause 207* provides that other remedies are not affected by the recovery of an amount awarded by a compensation order.

## **PART 7—APPEALS FROM DECISIONS OF DISCIPLINARY BODIES**

*Clause 208* provides for an appeal from a decision of the tribunal to the Court of Appeal by a party or the Minister.

*Clause 209* provides for an appeal from a decision of the committee to the tribunal.

*Clause 210* applies in relation to a decision of the Court of Appeal in relation to a decision of committee.

## **PART 8—PUBLICATION OF DISCIPLINARY ACTIONS**

*Clause 211* provides for the definitions for the part.

*Clause 212* provides for the commissioner to keep a “discipline register”.

*Clause 213* provides that the commissioner may publicise disciplinary action taken against an individual in any way the commissioner considers appropriate.

*Clause 214* provides for disciplinary action taken because of infirmity, injury or illness not to be recorded without consent.

*Clause 215* provides for removal from the register on the quashing of a decision on a disciplinary action.

*Clause 216* provides that no liability is incurred by a protected person in relation to anything done or omitted to be done in good faith for certain purposes.

*Clause 217* provides in respect of an order of a tribunal about the required disclosure of information.

## **PART 9—INTER-JURISDICTIONAL PROVISIONS**

*Clause 218* provides that the commissioner may enter into arrangements (“protocols”) with corresponding authorities about investigating and dealing with conduct that appears to have happened in more than one jurisdiction and the matters that the protocols may provide for.

*Clause 219* provides that the commissioner may request another jurisdiction to investigate a complaint.

*Clause 220* provides for a request by another jurisdiction to investigate a complaint.

*Clause 221* provides for the sharing of relevant information with corresponding authorities.

*Clause 222* provides for the commissioner to consult and co-operate with corresponding authorities.

*Clause 223* provides for compliance with certain orders made under corresponding laws.

*Clause 224* provides that other functions and powers of a person or body apart from this part are not affected.

## **PART 10—MISCELLANEOUS**

*Clause 225* provides that the commissioner must produce information about the making of complaints and the procedure for dealing with complaints, ensure that information is available to members of the public on request and give help to members of the public in making complaints.

*Clause 226* allows the commissioner to develop performance criteria.

*Clause 227* provides for reports to the Minister.

*Clause 228* provides an offence of improper disclosure of information.

*Clause 229* provides for protection from liability for appropriate persons.

*Clause 230* provides for the affect of requirements under this Chapter or Ch. 5, part 2 on confidentiality of client communications.

*Clause 231* provides that a complainant is taken to have waived legal professional privilege to enable the practitioner to disclose to the appropriate authorities any information necessary for the investigating and dealing with the complaint.

## **CHAPTER 4—ESTABLISHMENT OF ENTITIES FOR THIS ACT, AND RELATED MATTERS**

### **PART 1—LEGAL SERVICES COMMISSIONER**

#### *Division 1—Preliminary*

*Clause 232* sets out the main purposes of the part.

#### *Division 2—Appointment*

*Clause 233* provides that there is to be a Legal Services Commissioner.

*Clause 234* provides for the appointment of the commissioner.

*Clause 235* provides for the term of the commissioner's appointment.

*Clause 236* provides for the commissioner's remuneration and conditions.

*Clause 237* provides for an acting commissioner to be appointed.

*Clause 238* provides for when the Governor in Council can terminate the commissioner's appointment.

*Clause 239* provides for resignation by the commissioner.

***Division 3—Functions***

*Clause 240* provides for the commissioner's functions and right of appearance in proceedings.

***Division 4—Legal Services Commission***

*Clause 241* provides for the establishment of the Legal Services Commission.

*Clause 242* requires the chief executive to provide the commission with resources.

*Clause 243* provides for the preservation of rights if a public service officer is appointed or engaged under the Part.

*Clause 244* provides for the preservation of rights if, on appointment, the person becomes a public service officer.

*Clause 245* provides for the preservation of rights if a public service officer is seconded.

*Clause 246* provides for the commissioner to delegate the commissioner's powers under this Act, other than this power of delegation.

**PART 2—DISCIPLINARY TRIBUNAL*****Division 1—Preliminary***

*Clause 247* provides for the main purpose of the part.

***Division 2—Establishment of Legal Practice Tribunal and related matters***

*Clause 248* provides for the establishment, members and chairperson of the Legal Practice Tribunal.

*Clause 249* provides for the way the tribunal is to operate.

*Clause 250* provides for the tribunal's jurisdiction.

*Clause 251* provides for the tribunal's powers.

*Clause 252* provides for the tribunal's rule-making power.

*Clause 253* provides for the chairperson to make practice directions.

*Clause 254* provides for the registrar of the tribunal.

*Clause 255* provides for the tribunal's seal.

### ***Division 3—Panels, members of panels and related matters***

*Clause 256* provides for the establishment of a lay panel and a practitioner panel to help the tribunal.

*Clause 257* provides for the appointment of panel members.

*Clause 258* provides for the remuneration and appointment conditions of panel members.

*Clause 259* provides for the termination of appointment of panel members.

*Clause 260* provides for the resignation of panel members.

### ***Division 4—Role of tribunal members and panel members***

*Clause 261* provides for the role of the chairperson, tribunal and panel members.

*Clause 262* provides for the disclosure of conflicts of interest.

### ***Division 5—Constitution of tribunal for hearings***

*Clause 263* provides for how the tribunal is constituted for a hearing.

***Division 6—Other provisions***

*Clause 264* provides for the institution of proceedings by the commissioner.

*Clause 265* provides for contempt of tribunal.

*Clause 266* provides for conduct that is contempt and an offence.

*Clause 267* provides for the protection of members, legal practitioners and witnesses in tribunal proceedings.

**PART 3—LEGAL PRACTICE COMMITTEE*****Division 1—Preliminary***

*Clause 268* provides for the main purpose of the part.

*Clause 269* provides for the definitions for the part.

***Division 2—Establishment, membership of committee and functions and powers***

*Clause 270* provides for the establishment of the Legal Practice Committee.

*Clause 271* provides for membership of the committee.

*Clause 272* provides for the term of appointment of members.

*Clause 273* provides for the functions and powers of committee.

*Clause 274* provides for administrative support for the committee by the commissioner.

***Division 3—Provisions about committee members***

*Clause 275* provides for matters relating to the eligibility for membership of the committee.

*Clause 276* provides for termination of the appointment of a committee member.

*Clause 277* provides for the resignation of a committee member.

*Clause 278* provides for the appointment of a deputy chairperson of the committee.

*Clause 279* provides for the remuneration and allowances of lay members.

***Division 4—Provisions about committee performing advisory functions***

*Clause 280* provides for the application of the division to the committee in performing its advisory functions.

*Clause 281* provides the committee may conduct its business in the way it considers appropriate.

*Clause 282* provides for the times and places of meetings.

*Clause 283* provides for what is a quorum for the committee.

*Clause 284* provides for presiding at meetings.

*Clause 285* provides for the conduct of meetings.

*Clause 286* provides for the keeping of minutes of meetings and records of resolutions.

*Clause 287* provides for the disclosure of interests.

***Division 5—Provisions applying to committee for hearings***

*Clause 288* provides for how the committee is to be constituted for a hearing.

*Clause 289* provides for the conduct of the hearing.

*Clause 290* provides for the disclosure of interests.

*Clause 291* provides for the protection of members.

## **PART 4—PROVISIONS APPLYING TO EACH DISCIPLINARY BODY**

### ***Division 1—Parties to proceedings***

*Clause 292* specifies the parties to a proceeding in a disciplinary body for a discipline application and matters relating to appearance.

### ***Division 2—Conduct of proceedings***

*Clause 293* provides that a hearing before a disciplinary body must be open to the public, unless the disciplinary body otherwise directs.

*Clause 294* provides for the procedure for hearing by a disciplinary body.

*Clause 295* provides for when a disciplinary body may proceed in the absence of a party.

*Clause 296* provides for when a matter may be decided on affidavit evidence.

*Clause 297* provides for the standard of proof.

### ***Division 3—Powers of disciplinary body***

*Clause 298* provides that the disciplinary body has the power to disregard procedural lapses.

*Clause 299* provides for the disciplinary body to give directions for hearings.

*Clause 300* provides that a disciplinary body can require the person to attend a hearing at a stated time and place to give evidence or to produce stated documents or things.

*Clause 301* provides in respect of the authentication of documents.

#### ***Division 4—Offences***

*Clause 302* provides for an offence for a person stating anything to a disciplinary body that the person knows is false or misleading.

*Clause 303* provides for an offence for a person giving to a disciplinary body a document containing information the person knows is false or misleading.

## **PART 5—LEGAL PRACTITIONERS ADMISSIONS BOARD**

#### ***Division 1—Preliminary***

*Clause 304* provides for the main purpose of the part.

*Clause 305* provides for the definitions for the part.

#### ***Division 2—Establishment and membership of board***

*Clause 306* establishes the Legal Practitioners Admissions Board.

*Clause 307* provides for membership of the board.

#### ***Division 3—Board's functions and powers***

*Clause 308* provides for the functions of the board.

*Clause 309* provides for administrative support of the board by the law society.

**Division 4—Provisions about board members**

*Clause 310* provides for a member's term of appointment.

*Clause 311* provides for a chairperson and deputy chairperson.

*Clause 312* provides for eligibility for membership.

*Clause 313* provides for termination of appointment of a board member.

*Clause 314* provides for the resignation of a board member.

***Division 5—Board business***

*Clause 315* provides for the board to conduct its business in the way it considers appropriate.

*Clause 316* provides for the times and places of meetings.

*Clause 317* provides for the quorum for the board to be 4 members.

*Clause 318* provides for presiding at meetings.

*Clause 319* provides for the conduct of meetings.

*Clause 320* provides for the board to keep minutes of its meetings and a record of its resolutions.

*Clause 321* provides for the disclosure of interests.

***Division 6—Miscellaneous***

*Clause 322* provides for the application of certain Acts to the board.

## **CHAPTER 5—SUITABILITY REPORTS AND INVESTIGATIONS**

### **PART 1—SUITABILITY REPORTS**

#### *Division 1—Preliminary*

*Clause 323* provides for the main purpose of the part.

*Clause 324* provides for the definitions for the part.

#### *Division 2—Police reports*

*Clause 325* provides for the circumstances where a relevant regulatory authority may ask for a police report.

#### *Division 3—Health assessments*

*Clause 326* provides that a relevant authority may require a person to undergo a health assessment 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.

*Clause 327* provides for the appointment of the health assessor.

*Clause 328* provides for the health assessor conducting all or part of a health assessment to prepare a report about the assessment.

*Clause 329* provides for the relevant authority that appoints a health assessor to be liable for the cost of the assessment.

*Clause 330* provides for how the report may be used.

***Division 4—General***

*Clause 331* provides for the confidentiality of suitability report.

*Clause 332* provides for the operation of this part in respect of the board and a relevant authority.

**PART 2—INVESTIGATORS AND THEIR POWERS*****Division 1—Preliminary***

*Clause 333* provides for the main purpose of the part.

*Clause 334* provides for the definitions for the part.

***Division 2—Investigators***

*Clause 335* provides for the appointment and qualifications of an investigator.

*Clause 336* provides for the appointment conditions and limit on powers of an investigator.

*Clause 337* provides that the commissioner must issue an identity card to each investigator.

*Clause 338* provides for the production or display of an identity card by an investigator.

*Clause 339* provides for when an investigator ceases to hold office.

*Clause 340* provides for resignation by an investigator.

*Clause 341* provides for the return of identity card when a person ceases to be an investigator.

***Division 3—Entry to places***

*Clause 342* provides for an investigator's powers to enter places.

*Clause 343* provides in relation to entry with consent.

*Clause 344* provides that an investigator may apply to a magistrate for a warrant for a place.

*Clause 345* provides for the issue of a warrant.

*Clause 346* provides for an application for warrant by electronic communication and duplicate warrant in urgent or special circumstances.

*Clause 347* provides in relation to a defect in relation to a warrant.

*Clause 348* specifies the procedure before entry under a warrant.

***Division 4—Powers of investigators after entry***

*Clause 349* specifies the general powers of an investigator after entering places.

*Clause 350* provides that an investigator may require the occupier of the place, or a person at the place, to give the investigator reasonable help and information.

***Division 5—Power of investigators to seize evidence***

*Clause 351* provides for seizure of things at a place entered under section 342.

*Clause 352* provides for an investigator to secure seized things.

*Clause 353* makes it an offence for a person to tamper with seized things.

*Clause 354* specifies the powers of the investigator in support of seizure.

*Clause 355* provides that an investigator must give a receipt for it to the person from whom a thing was seized.

*Clause 356* provides for the forfeiture of seized things.

*Clause 357* provides for how forfeited things are to be dealt with.

*Clause 358* provides for the return of seized things.

*Clause 359* provides for the owner to have access to seized things.

### ***Division 6—General enforcement matters***

*Clause 360* provides for notice of damage to be given to the owner if an investigator (or a person acting under the direction of an investigator) damages property.

*Clause 361* provides for a person to claim compensation for loss or expense because of the exercise or purported exercise of a power under division 3, 4 or 5.

*Clause 362* provides for an offence if a person states anything to an investigator that the person knows is false or misleading.

*Clause 363* provides for an offence if a person gives a document to an investigator that contains information that the person knows is false or misleading.

*Clause 364* provides an offence for obstructing investigators.

*Clause 365* provides an offence for impersonating an investigator.

## **CHAPTER 6—MISCELLANEOUS MATTERS**

### **PART 1—JURISDICTION OF THE SUPREME COURT**

*Clause 366* provides that the Act does not affect the inherent jurisdiction and power of the Supreme Court in relation to the control and discipline of local lawyers and local legal practitioners. It also provides for that jurisdiction to extend to an interstate legal practitioner and for the Court to be able to make any order that a disciplinary body may make under the Act.

*Clause 367* provides for the jurisdiction of Supreme Court in respect of applications and appeals.

*Clause 368* provides for the Court to grant injunctions including in respect of conduct that would contravene the Act.

## **PART 2—SUSPECTED OFFENCES AND PARTICULAR ASSOCIATES**

*Clause 369* provides for when relevant entities have to report suspected offences.

*Clause 370* prohibits local legal practitioners without approval from having associates who are proscribed or convicted persons.

*Clause 371* provides for the circumstances where offences by a corporation are also offences by executive officers.

*Clause 372* provides that offences under the Act are summary offences.

*Clause 373* provides for the time for bringing a proceeding for a summary offence under the Act.

*Clause 374* specifies matters in relation to appointments and authority that may be presumed proof is required by reasonable notice.

*Clause 375* provides for signatures to be evidence of the signatures that they purport to be.

*Clause 376* provide for certain documents to be evidence of what they purport to be or contain.

## **PART 3—OTHER MATTERS**

*Clause 377* provides in respect of approved forms.

*Clause 378* provides for the making of regulations.

## **PART 4—AMENDMENT OF ACTS**

*Clause 379* provides for Acts to be amended as provided in Schedule 1.

## **PART 5—TRANSITIONAL, SAVINGS AND REPEAL PROVISIONS**

### *Division 1—Definitions for part*

*Clause 380* provides for the definitions for the part.

### *Division 2—Transitional provisions relating to ch 2, pt 2 (Reservation of legal work and related matters)*

*Clause 381* provides that an act or omission that happened before commencement may be relevant to an offence under ch 2, pt 2.

*Clause 382* provides in respect of proceedings for offences committed before the commencement.

### *Division 3—Transitional provisions relating to ch 2, pt 3 (Admission of legal practitioners)*

*Clause 383* provides in respect of applications for admission made before commencement but not heard by Supreme Court before the commencement.

*Clause 384* provides that a reference in an Act to an applicant or application for admission as a barrister or for admission as a solicitor 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)***

*Clause 385* provides that if a person who was a barrister immediately before the commencement applies for the grant or renewal of practising certificate the person is an Australian legal practitioner at the time the person makes the application.

*Clause 386* provides for actions before commencement that continue to have effect.

***Division 5 —Transitional provisions relating to ch 2, pt 7 (Legal profession rules governing those who may engage in legal practice in this jurisdiction)***

*Clause 387* provides for the continuation of rules of law society.

*Clause 388* provides for the bar association not to have to comply with the newspaper notice requirements when recommending, for a barristers rule, the bar association rules in force immediately before the commencement of the section.

***Division 6—Transitional provisions relating to ch 3 (Complaints investigation matters and discipline)***

*Clause 389* provides for how complaints made to the law society before commencement and not finally dealt with are to be dealt with under this Act.

*Clause 390* provides for how complaints made to the legal ombudsman before commencement but not finally dealt with are to be dealt with under this Act.

*Clause 391* provides for the basis for a complaint in relation to conduct before commencement.

***Division 7—Transitional provisions relating to ch 4 (Establishment of entities for this Act, and related matters)***

*Clause 392* provides that the commissioner may start proceedings mentioned in s5D(5) of *Queensland Law Society Act 1952*.

***Division 8—Transitional provisions relating to the Legal Practitioners Act 1995***

*Clause 393* provides for the main purposes of the division.

*Clause 394* provides for the expiry of particular provisions of the Legal Practitioners Act.

*Clause 395* provides for the amendment and relocation of s58 of the Legal Practitioners Act.

*Clause 396* provides for transitional provisions in respect of accounts kept by the law society under s 51 of the Legal Practitioners Act.

*Clause 397* provides for the repeal of remaining provisions of Legal Practitioners Act.

*Clause 398* provides for the interpretation of references to Legal Practitioners Act in other Acts and documents and related matters.

*Clause 399* provides for the interpretation of references in documents or Acts to Acts mentioned in the Legal Practitioners Act and related matters.

*Clause 400* provides for the preservation of appeal rights under the Legal Practitioners Act.

***Division 9—Transitional provisions relating to the Queensland Law Society Act 1952***

*Clause 401* provides for the main purposes of this division.

*Clause 402* repeals the provisions of the QLS Act relating to the solicitors complaints tribunal.

*Clause 403* repeals the provisions of the QLS Act relating to the legal ombudsman.

*Clause 404* provides for amendment of QLS Act as provided in Schedule 4.

***Division 9—Regulation-making power for transitional purposes***

*Clause 405* provides for a transitional regulation-making power to make provisions of a saving or transitional nature for which:

- it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition the operation of the Legal Practitioners Act, and the QLS Act to this Act;
- for the application of this Act, the *Queensland Law Society Act 1952* and the *Trust Accounts Act 1973* to incorporated legal practices; and
- for any matters for which this Act does not make sufficient provision.

A transitional regulation may have retrospective operation to a day not earlier than the commencement of the section.

*Schedule 1* provides for consequential amendments to other Acts

*Schedule 2* amends the *Legal Practitioners Act 1995*, section 58.

*Schedule 3* is the Schedule to which *Legal Practitioners Act 1995*, section 58 as amended is to be relocated.

*Schedule 4* amendment of *Queensland Law Society Act 1952*.

*Schedule 5* is the dictionary for the definitions used in the Act.