Queensland

Legal Profession Act 2007

Current as at [Not applicable]

Indicative reprint note
This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Legal Profession (Strengthening Disciplinary Matters) Amendment Bill 2026. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

The point-in-time date for this indicative reprint is the introduction date for the Legal Profession (Strengthening Disciplinary Matters) Amendment Bill 2026—12 May 2026.

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Legal Profession Act 2007

An Act to provide for admission to, and the regulation of, the legal profession, and for entities involving members of the legal profession, and for other purposes

Chapter 1 Introduction

Part 1.1 Preliminary

1 Short title

This Act may be cited as the *Legal Profession Act 2007*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- part 3.2, divisions 1 to 4, other than sections 217, 223 and 226
- part 7.6, division 6, other than section 698.

3 Main purposes

The main purposes of this Act are as follows—

(a) to provide for the regulation of legal practice in this jurisdiction in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;

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(b) to facilitate the regulation of legal practice on a national basis across State borders.

Part 1.2 Interpretation

Division 1 Dictionary

4 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

Division 2 Meaning of various terms

5 Terms relating to lawyers

(1) An ***Australian lawyer*** is a person who is admitted to the legal profession under this Act or a corresponding law.

(2) A ***local lawyer*** is a person who is admitted to the legal profession under this Act, whether or not the person is also admitted under a corresponding law.

(3) An ***interstate lawyer*** is a person who is admitted to the legal profession under a corresponding law, but not under this Act.

(4) In this section—

this Act includes a previous Act.

6 Terms relating to legal practitioners

(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 not a local practising certificate.

7 Terms relating to associates and principals of law practices

(1) An ***associate***, of a law practice, is—

(a) an Australian legal practitioner who is—

(i) a sole practitioner if the law practice is constituted by the practitioner; or

(ii) a partner in the law practice if the law practice is a law firm; or

(iii) a legal practitioner director in the law practice if the law practice is an incorporated legal practice; or

(iv) a legal practitioner partner in the law practice if the law practice is a multi-disciplinary partnership; or

(v) an employee of, or consultant to, the law practice; or

(b) an agent of the law practice who is not an Australian legal practitioner; or

(c) an employee of the law practice who is not an Australian legal practitioner; or

(d) an Australian-registered foreign lawyer who is a partner in the law practice; or

(e) a person who is a partner in the multi-disciplinary partnership but who is not an Australian legal practitioner; or

(f) an Australian-registered foreign lawyer who has a relationship with the law practice, that is a class of relationship prescribed under a regulation.

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(2) A ***legal practitioner associate***, of a law practice, is an associate of the practice who is an Australian legal practitioner.

(3) A ***lay associate***, of a law practice, is an associate of the practice who is not an Australian legal practitioner.

(4) A ***principal***, of a law practice, is an Australian legal practitioner who is—

(a) a sole practitioner if the law practice is constituted by the practitioner; or

(b) a partner in the law practice if the law practice is a law firm; or

(c) a legal practitioner director in the law practice if the law practice is an incorporated legal practice; or

(d) a legal practitioner partner in the law practice if the law practice is a multi-disciplinary partnership.

8 Home jurisdiction

(1) The ***home jurisdiction***, for an Australian legal practitioner, is the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted.

(2) The ***home jurisdiction***, for an Australian-registered foreign lawyer, is the jurisdiction in which the lawyer's only or most recent current registration was granted.

(3) The ***home jurisdiction***, for an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer, is—

(a) if only 1 jurisdiction is the home jurisdiction for the only associate of the practice who is an Australian legal practitioner or for all the associates of the practice who are Australian legal practitioners—that jurisdiction; or

(b) if no 1 jurisdiction is the home jurisdiction for all the associates of the practice who are Australian legal practitioners—

(i) the jurisdiction in which the office is situated at which the associate performs most of his or her duties for the practice; or

(ii) if a jurisdiction can not be decided under subparagraph (i)—the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at elections for the jurisdiction; or

(iii) if a jurisdiction can not be decided under subparagraph (i) or (ii)—the jurisdiction decided under criteria prescribed under a regulation.

9 Suitability matters

(1) Each of the following is a ***suitability matter*** in relation to a natural person—

(a) whether the person is currently of good fame and character;

(b) whether the person is or has been an insolvent under administration;

(c) whether the person is or has been a legal practitioner director of an incorporated legal practice while the practice is or was a chapter 5 body corporate;

(d) whether the person is or has been a director of a corporation while the corporation is or was a chapter 5 body corporate;

(e) whether the person has been convicted of an offence in Australia or a foreign country, and if so—

(i) the nature of the offence; and

(ii) how long ago the offence was committed; and

(iii) the person's age when the offence was committed;

(f) whether the person engaged in legal practice in Australia—

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(i) when not admitted to the legal profession, or not holding a practising certificate, as required under a relevant law or a corresponding law; or

(ii) if admitted to the legal profession, in contravention of a condition on which admission was granted; or

(iii) if holding an Australian practising certificate, in contravention of a condition applicable to the certificate or while the certificate was suspended;

(g) whether the person has practised law in a foreign country—

(i) when not permitted under a law of that country to do so; or

(ii) if permitted to do so, in contravention of a condition of the permission;

(h) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following—

(i) a relevant law;

(ii) a corresponding law;

(iii) a corresponding foreign law;

(i) whether the person—

(i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or

(ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt;

(j) whether the person's name has been removed from—

(i) a local roll but has not since been restored to or entered on a local roll; or

(ii) an interstate roll, but has not since been restored to or entered on an interstate roll; or

(iii) a foreign roll;

(k) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;

(l) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;

(m) 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 person;

(n) whether the person is or has been subject to an order under this Act, a previous Act, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;

(o) whether the person currently is unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner;

(p) a matter declared under an Act to be a suitability matter.

(2) A matter under subsection (1) is a suitability matter even though it happened before the commencement of this section.

10 Information notices

(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) if the person may appeal to the Supreme Court or another court against the decision—

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(i) that the person may appeal to the court against the decision; and

(ii) the day by which the appeal must be started.

Note—

See sections 265(4) and 277(4) in relation to appeals that may, in the circumstances, be made to a court other than the Supreme Court.

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

(3) If a person may appeal within a number of days after the day the 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.

11 References to convictions for offences

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

12 Meaning of *government legal officer* and *engaged in government work* and related matters

(1) A ***government legal officer*** is a person 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;

Note—

Under the *Public Sector Act 2022*, section 274, this Act applies to a public service entity mentioned in the *Public Sector Act 2022*, section 9(b) and its employees as if the entity were a department.

(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, a person 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 in the course of the officer's duties for the entity in relation to which the person is an employee or appointee.

Example of engaged in government work—

A public service officer employed by the Department of Justice and Attorney-General is engaged in legal practice at the Department of Education. The officer's duties for the Department of Justice and Attorney-General while working at the Department of Education include providing advice to that department as a client of the Department of Justice and Attorney-General.

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

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(4) If a provision under this Act does not apply to a government legal officer engaged in government work, the provision applies to the person who is the government legal officer if the person 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) A government legal officer who is an Australian lawyer does not have any fewer rights, privileges, protections or immunities than an Australian lawyer who is not a government legal officer.

(7) A government legal officer who is not an Australian lawyer is subject to the same limitations and obligations to which a government legal officer who is an Australian lawyer is subject.

(8) The provisions of this Act 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.

(9) A government legal officer who is an Australian lawyer but does not hold a current local practising certificate may—

(a) if the officer was admitted to the legal profession as a barrister before 1 July 2004 or engages in government work in the manner of a barrister—call himself or herself a barrister or another term that describes the way the officer engages in government work; or

(b) if the officer was admitted to the legal profession as a solicitor before 1 July 2004 or engages in government work in the manner of a solicitor—call himself or herself a solicitor or another term that describes the way the officer engages in government work.

(10) Without limiting another subsection, if under an Act an Australian lawyer is allowed to witness a document even though the lawyer does not hold a current local practising certificate—

(a) nothing in this section prevents a government legal officer who is an Australian lawyer but does not hold a current local practising certificate from witnessing the document; and

(b) when witnessing the document, the government legal officer may include a description or title that is correct at the time, including, for example—

(i) the title of lawyer or Australian lawyer; or

(ii) another title involving the government legal officer's employment or appointment as mentioned subsection (1).

(11) For a person 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 Jurisdiction of Supreme Court and related matters

13 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 as mentioned in section 78; and

(b) may be exercised by making—

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(i) any order the committee may make under this Act; or

(ii) any order or direction the tribunal may make under this Act or the QCAT Act.

14 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 13.

(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.

15 Appeal period for appeal to Supreme Court

(1) This section applies if a provision of this Act provides that a person has a stated number of days to appeal to the Supreme Court (the ***appeal period***).

(2) The court may allow a person who may appeal within the appeal period to appeal after that appeal period if the court considers it appropriate having regard to the extent of, and reasons for, the delay.

16 Hearing and deciding particular action without a jury

(1) This section applies if an action in relation to any description of civil liability arising out of the business of practising as an Australian legal practitioner is before a court and any person who may be made liable in that action is indemnified under a contract of insurance under a relevant law.

(2) If, apart from this section, the action may be heard and decided by a jury in that court, the action must be heard and decided by a judge without a jury.

Division 4 Other interpretation matters

17 Notes in text may indicate difference to language in corresponding law

A note in the text in this Act is sometimes used to indicate why the language in this Act may be different to the language used in corresponding laws.

Example—

This Act often refers to a law of this jurisdiction, including this Act. Under the *Acts Interpretation Act 1954*, section 7, the reference to a law includes a reference to statutory instruments made or in force under the law. Accordingly, a reference to this Act includes, for example, a regulation or legal profession rules made or in force under this Act.

18 Timing for doing things

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 is required.

19 Grounds that are reasonable in the circumstances

(1) If, under this Act, a person is required 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

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the belief or suspicion, on grounds that are reasonable in the circumstances.

(3) If, under this Act, an entity is required to consider that a particular matter is appropriate 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.

(4) The following are examples of entities for subsection (3)—

(a) a disciplinary body;

(b) the board;

(c) a regulatory authority;

(d) the commissioner;

(e) an investigator.

20 References to parts in this Act

(1) A reference in this Act to a part by a number is a reference to the part, designated by that number, of this Act.

(2) A reference under another Act to a part of this Act by a number without reference to a chapter is a reference to the part, designated by that number, in this Act.

Chapter 2 General requirements for engaging in legal practice

Part 2.1 Preliminary

21 Simplified overview of ch 2

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

(a) legal practice is engaged in only by persons who are properly qualified and hold a current practising certificate; and

(b) only persons who are eligible and fit and proper persons for admission to the legal profession are admitted; 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) police reports and health assessment reports may be obtained for purposes stated in this Act; and

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

(f) a corporation may engage in legal practice as an incorporated legal practice while it has a legal practitioner director, and a partnership, consisting of at least 1 partner who is not an Australian legal practitioner, may engage in providing legal services in this jurisdiction if there is at least 1 legal practitioner partner; and

(g) foreign lawyers may practise foreign law in this jurisdiction as a recognised aspect of legal practice in this jurisdiction to encourage and facilitate the

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internationalisation of legal services and the legal services sector.

(2) Subsection (1) is intended only as a guide to readers as to the general scheme of this chapter.

Part 2.2 Reservation of legal work

Division 1 Preliminary

22 Main purposes for pt 2.2

The main purposes of this part are as follows—

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

(b) to protect consumers by ensuring that persons carrying out legal work are entitled to do so.

23 Part does not apply to a person if authorised under a Commonwealth law or a government legal officer

(1) This part does not apply to—

(a) a person authorised to engage in legal practice under a law of the Commonwealth; or

(b) a government legal officer engaged in government work.

(2) However, subsection (1) does not prevent this part applying to a person only because the person has been enrolled as a barrister or solicitor, as a barrister and solicitor or as a legal practitioner, of the High Court of Australia.

Division 2 Prohibitions

24 Prohibition on engaging in legal practice when not entitled

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

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) Subsection (1) does not apply to engaging in legal practice of the following kinds—

(a) legal practice engaged in under the authority of a law of this jurisdiction or the Commonwealth;

(b) legal practice engaged in by an incorporated legal practice under part 2.7;

(c) the practice of foreign law by an Australian-registered foreign lawyer under part 2.8;

(d) work performed by a trustee company, or a person employed by a trustee company, in the course of—

(i) preparing a will; or

(ii) carrying out any other activities involving the administration of trusts, the estate of a living or deceased person or the affairs of a living person;

(e) legal practice prescribed under a regulation.

(3) Also, subsection (1) does not apply to an Australian lawyer if the lawyer—

(a) has applied under section 49 to the law society for a local practising certificate and has not been given a notice that the law society has refused to grant the application, or refused to consider the application, as mentioned in section 51; and

(b) is employed in or by a law practice and the lawyer has informed the law practice that he or she has applied for,

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but not yet been granted, a local practising certificate by the law society.

(3A) It is declared that neither a POA licensee nor a POA employee is engaging in legal practice only because the licensee or employee provides, prepares or completes a property contract or other document as part of performing either of the following (each of which is a ***POA licensee's work***)—

(a) the work of a POA licensee;

(b) other work ancillary or incidental to the work of a POA licensee and part of the ordinary course of business undertaken generally by a POA licensee.

(3B) However, a POA licensee's work does not include—

(a) giving legal advice in relation to a property contract or other document; or

(b) providing, preparing or completing a document prescribed under a regulation.

(3C) For subsection (3A), it is immaterial that a fee is charged by the POA licensee for a transaction in relation to which the POA licensee or POA employee provides, prepares or completes a property contract or other document.

(3D) However, it is material as to whether or not a person who is a POA licensee or POA employee is engaging in legal practice in this jurisdiction if the person commits an offence against the *Property Occupations Act 2014*, section 219.

(3E) A POA licensee or POA employee ***prepares or completes*** a property contract or other document—

(a) by inserting information in a blank space, or crossing or leaving out an alternative included, in the property contract or other document; or

(b) by inserting a term into, or altering a term of, the property contract or other document if—

(i) the insertion or alteration—

(A) is authorised by a party to the proposed property contract or other document as an insertion or alteration; or

(B) is given in writing to the licensee or employee by a party to the proposed property contract or other document as an insertion or alteration; or

(C) was previously prepared by an Australian legal practitioner, whether or not in connection with the property contract or other document; and

Note for subsubparagraph (C)—

The provision allows the use of a precedent.

(ii) the licensee or employee does not change the insertion or alteration except in relation to—

(A) changing a detail about the transaction that is the subject of the property contract or other document; or

(B) crossing or leaving out an alternative, or changing the grammatical form of words, of the insertion or alteration.

Example of preparing or completing a property contract—

A POA licensee gives a property contract to a seller to sign. The licensee has prepared or completed the property contract by printing the relevant form from the REIQ website and by filling in required details, including the names and addresses of the seller and buyer and the address and description of the property. The licensee also crossed out words when there were alternatives set out in the property contract.

Also the POA licensee inserted 2 special conditions into the property contract. The first special condition is one the seller gave to the licensee because the property is located within a gated community and the condition related to the standard covenants for the community. The second special condition is about financing and the licensee used a special condition known by the POA licensee to have been prepared by an Australian legal practitioner for another transaction but changed details to ensure the property contract read properly.

(4) A person is not entitled to recover any amount in relation to anything the person did in contravention of subsection (1).

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(5) A person may recover from someone else (the ***other person***), as a debt due to the person, any amount the person paid to the other person for anything the other person did in contravention of subsection (1).

(6) A regulation may make provision about the application, with or without stated changes, of provisions of this Act to persons engaged in legal practice of a kind mentioned in subsection (2) other than paragraphs (a) and (b).

(7) In this section—

other document means—

(a) an approved form, under an Act, relevant to a POA licensee's work; or

(b) a document provided, prepared or completed as part of a POA licensee's work in connection with transactions relevant to a property contract;

but does not include a property contract or a document of a kind prescribed under a regulation as mentioned in subsection (3B)(b).

POA employee means a real estate salesperson under the *Property Occupations Act 2014*, whether or not the real estate salesperson is also a property agent under that Act.

POA licensee means an auctioneer, real estate agent or resident letting agent under the *Property Occupations Act 2014*.

property contract means—

(a) a form of contract or agreement generally recognised and accepted for use by POA licensees when carrying out activities authorised by the *Property Occupations Act 2014* in dealing with real property or an interest in real property; or

(b) a form of contract or agreement, or a proposed contract or agreement, relating to real property or an interest in real property that was previously prepared by an Australian legal practitioner.

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

24A Moving applications for admission

(1) This section applies to a person who is both a government legal officer and an Australian lawyer, whether or not the person is an Australian legal practitioner.

(2) Also, this section applies to—

(a) a person who—

(i) is an Australian lawyer employed by a corporation other than an incorporated legal practice; and

(ii) holds a practising certificate subject to a condition that the person must not engage in legal practice other than for providing in-house legal services; or

(b) a person who—

(i) is an Australian lawyer; and

(ii) is a volunteer at a community legal service; and

(iii) holds a practising certificate subject to a condition that the person must not engage in legal practice other than as a volunteer at a community legal service.

(3) Despite section 24(1), the person may move an application for admission if, and only if, the board has, under the admission rules, recommended the applicant's admission without conditions.

(4) The person does not fail to comply with any of the following conditions of the person's practising certificate merely because the person moves an application for admission under subsection (3)—

(a) a condition that the person must not engage in legal practice other than as a government legal officer engaged in government work;

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(b) a condition that the person may engage in legal practice other than as a government legal officer engaged in government work if the legal practice is limited to legal practice as a volunteer at a community legal service;

(c) a condition mentioned in subsection (2)(a)(ii) or (b)(iii).

(5) In this section—

volunteer, at a community legal service, means a person who provides legal services for the community legal service under an arrangement that does not entitle the person to be paid an amount of money for the provision of the legal services.

25 Prohibition on representing or advertising entitlement to engage in legal practice when not entitled

(1) A person must not represent or advertise that the person is entitled to engage in legal practice unless the person is an Australian legal practitioner.

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) A director, officer, employee or agent of a body corporate must not represent or advertise that the body corporate is entitled to engage in legal practice unless the body corporate is an incorporated legal practice.

Maximum penalty—300 penalty units or 2 years imprisonment.

(3) Subsections (1) and (2) do not apply to a representation or advertisement about a person being entitled to engage in legal practice as mentioned in section 24(2).

(4) Also, subsection (1) does not apply to a representation or advertisement about a person being entitled to engage in legal practice as mentioned in section 24(3).

(5) A reference in this section to a person—

(a) representing or advertising that the person is entitled to engage in legal practice; or

(b) representing or advertising that a body corporate is entitled to engage in legal practice;

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

26 Associates who are disqualified or convicted persons

(1) A law practice must not have a lay associate whom any principal or legal practitioner associate of the practice knows to be either of the following unless the lay associate is approved by the law society under subsection (2)—

(a) a disqualified person;

(b) a person who has been convicted of a serious offence.

(2) The law society may, on application, approve a person as a lay associate for this section.

(3) An approval under this section may be subject to stated conditions.

(4) If the law society refuses an application mentioned in subsection (2) or imposes a condition on the approval—

(a) the law society 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 decision.

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

Maximum penalty—200 penalty units.

(6) This section does not apply in circumstances prescribed under a regulation.

(7) In this section—

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lay associate, in relation to a law practice, includes a consultant to the law practice, however described—

(a) who is not an Australian legal practitioner; and

(b) who provides legal or related services to the law practice, other than services prescribed under a regulation.

Note—

The term 'lay associate' is also defined in section 7(3).

Division 3 General

27 Professional discipline

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

(2) Nothing in this part affects any liability that a person who is an Australian lawyer but not an Australian legal practitioner may have under chapter 4, and the person may be punished for an offence under this part as well as being dealt with under chapter 4 in relation to the same matter.

Part 2.3 Admission of local lawyers

Division 1 Preliminary

28 Main purposes of pt 2.3

The main purposes of this part are as follows—

(a) in the interests of the administration of justice and for the protection of consumers of legal services, to provide a system under which only applicants who have appropriate academic qualifications and practical legal

training and who are otherwise fit and proper persons to be admitted to the legal profession are qualified for admission to the legal profession under this Act;

(b) to provide for the recognition of equivalent qualifications and training that apply to applicants for admission to the legal profession in other jurisdictions.

29 Definitions for pt 2.3

In this part—

admission rules means the rules under the *Supreme Court of Queensland Act 1991*, section 85, for admission to the legal profession under this Act and for associated matters.

applicant for admission means a person who makes an application for admission.

application for admission means an application under section 34 for admission to the legal profession under this Act.

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 judge of the Supreme Court—a single Supreme Court judge; or

(b) for giving a direction mentioned in section 32(3)(b)—a single judge of the Supreme Court; or

(c) for deciding an appeal made under section 33A—a single judge of the Supreme Court; or

(d) otherwise—the Court of Appeal.

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Division 2 Eligibility and suitability for admission

30 Eligibility for admission to the legal profession under this Act

(1) A person is eligible for admission to the legal profession under this Act only if the person—

(a) is a natural person 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; and

(d) has sufficient knowledge of written and spoken English to engage in legal practice.

(2) In this section—

approved academic qualifications means academic qualifications that are approved under the admission rules for admission to the legal profession under this Act.

approved practical legal training requirements means legal training requirements that are approved under the admission rules for admission to the legal profession under this Act.

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

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

Note—

The board is the Legal Practitioners Admissions Board.

31 Suitability for admission

(1) A person is suitable for admission to the legal profession under this Act only if the person is a fit and proper person to be admitted.

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

(a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and

(b) other matters that the Supreme Court considers relevant.

(3) However, the Supreme Court may consider a person to be a fit and proper person to be admitted to the legal profession under this Act despite a suitability matter because of the circumstances relating to the matter.

32 Early consideration of suitability

(1) This section applies if a person considers a matter may adversely affect an assessment as to whether the person is a fit and proper person to be admitted to the legal profession under this Act.

(2) The person may apply, in the approved form, to the board for a declaration that a matter stated in the application, including, for example, a suitability matter, will not, without more, adversely affect the board's assessment as to whether the person is a fit and proper person to be admitted to the legal profession under this Act.

(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;

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Not authorised—indicative only

(c) refuse to make the declaration.

(4) If an application is referred to the Supreme Court under subsection (3)(b), the court may give a direction to the board as the court considers appropriate.

(5) A declaration made under subsection (3)(a), or under a direction given under subsection (4), is binding on the board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.

33 Appeal to Court of Appeal against board's refusal to make suitability declaration

(1) This section applies if, on referral of an application under section 32(3)(b), the Supreme Court directs the board to refuse to make a declaration mentioned in section 32(2).

(2) The board must give the applicant for the declaration an information notice about the refusal.

(3) The applicant may, within 28 days after being given the information notice, appeal to the Court of Appeal against the refusal.

(4) The appeal is by way of rehearing on the evidence given in the matter before the Supreme Court.

(5) However, subsection (4) 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.

(6) The Court of Appeal may make any order it considers appropriate on the appeal.

(7) For the appeal, section 10(1) applies to the information notice as if the reference in the provision to the decision were a reference to the refusal mentioned in subsection (1).

33A Appeal to Supreme Court against board's refusal to make suitability declaration

(1) This section applies if the board decides under section 32(3)(c) to refuse to make a declaration mentioned in section 32(2).

(2) The board must give the applicant for the declaration an information notice about the decision.

(3) The applicant may appeal to the Supreme Court against the decision.

Division 3 Admission to the legal profession under this Act

34 Application for admission to the legal profession

(1) A person may apply to the Supreme Court to be admitted to the legal profession under this Act.

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

35 Role of Supreme Court relating to application for admission

(1) The Supreme Court must hear and decide each application for admission in the way the court considers appropriate.

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

(a) make an order admitting the applicant to the legal profession as a lawyer if the court is satisfied the applicant for admission is—

(i) eligible for admission to the legal profession under this Act; and

(ii) a fit and proper person to be admitted to the legal profession under this Act; or

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Not authorised—indicative only

(b) refuse the application if the court is not satisfied as mentioned in paragraph (a).

(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 court may rely on a recommendation of the board under section 39.

36 Conditions

(1) This section applies to a person admitted to the legal profession if—

(a) the person's admission under this Act or a previous Act was subject to a condition, whether or not the condition has been amended since it was imposed; and

(b) the condition as imposed or amended has not lapsed or been revoked.

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

(a) revoke or vary the condition on which the person was admitted to the legal profession, whether on application of the person or on the court's own initiative;

(b) order the removal of the person's name from the local roll for contravening the condition.

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

37 Roll of persons admitted to the legal profession as a lawyer

(1) The Supreme Court must keep a roll of persons admitted to the legal profession, as a lawyer, under this Act.

(2) The local roll must include—

(a) the roll of solicitors and roll of barristers, as kept by the Supreme Court and as in existence immediately before 1 July 2004; and

(b) the roll of legal practitioners, as kept by the Supreme Court from 1 July 2004 to immediately before the commencement of this section.

(3) After the Supreme Court makes an order admitting a person to the legal profession under this Act—

(a) the registrar for the Supreme Court district at which the Supreme Court is sitting must, under the admission rules, enter the person's name on the local roll; and

(b) the person must sign the local roll.

(4) The person's admission to the legal profession under this Act takes effect when the person signs the local roll.

(5) Subject to the admission rules, the Brisbane registrar may give written directions to any other registrar about keeping the local roll.

38 Local lawyer is officer of Supreme Court

(1) A person becomes an officer of the Supreme Court on being admitted to the legal profession under this Act.

(2) A person who immediately before the commencement of this section was an officer of the Supreme Court, because of the person's admission as a barrister, solicitor or legal practitioner continues to be an officer of the court.

(3) A person ceases to be an officer of the Supreme Court under this section if the person's name is removed from the local roll.

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Division 4 Powers and functions of board

39 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 to the legal profession under this Act; and

(c) the applicant is a fit and proper person for admission to the legal profession under this Act, 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) 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.

40 Consideration of applicant's eligibility and suitability

(1) To help the board to consider an application for admission, the board may, by notice to the applicant for admission, require the applicant—

(a) to give the board stated documents or information; or

(b) to cooperate with any inquiries by the board that it considers appropriate.

(2) An applicant's failure to comply with a notice under subsection (1) by the date stated in, and in the way required by, the notice is a ground for recommending to the Supreme Court that the applicant not be admitted to the legal profession under this Act.

(3) 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.

Division 5 Miscellaneous

41 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 or a reference of an application for a direction of the court.

42 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 2.4 Legal practice by Australian legal practitioners

Division 1 Preliminary

43 Main purposes of pt 2.4

The main purposes of this part are as follows—

(a) to facilitate the national practice of law by ensuring that Australian legal practitioners can engage in legal practice in this jurisdiction and to provide for the certification of Australian lawyers whether or not admitted to the legal profession in this jurisdiction;

(b) to provide a system for the granting and renewing of local practising certificates.

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Division 2 Legal practice in this jurisdiction by Australian legal practitioners

44 Entitlement to practise in this jurisdiction

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

(2) Also, a government legal officer engaged in government work is, subject to this Act, entitled to engage in legal practice in this jurisdiction as a government legal officer 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 Local practising certificates generally

45 Local practising certificates generally

(1) Practising certificates may be granted under this part.

(2) A regulatory authority may decide the categories of local practising certificates to be granted by it.

(3) It is a statutory condition of a local practising certificate that the holder must not hold another local practising certificate, or an interstate practising certificate, that is in force during the currency of the first-mentioned certificate.

46 Suitability to hold local practising certificate

(1) This section has effect for the purposes of section 51 and any other provision of this Act where the question of whether or not a person is a fit and proper person to hold, or to continue to hold, a local practising certificate is relevant.

(2) A regulatory authority of this jurisdiction, in considering whether a person 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 person, and any of the following, whether happening before or after the commencement of this section—

(a) whether the person obtained an Australian practising certificate because of incorrect or misleading information;

(b) whether the person has contravened a condition of an Australian practising certificate held by the person;

(c) whether the person has contravened a relevant law or a corresponding law;

(d) whether the person has contravened—

(i) an order of a disciplinary body or the former disciplinary body; or

(ii) an order of a corresponding disciplinary body, or of a court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a corresponding disciplinary body;

(e) without limiting any other paragraph, whether the person has failed to pay an amount for which the person is or was liable under a relevant law or a corresponding law, including, for example, an amount payable to the fidelity fund or other costs or expenses for which the person is liable under a relevant law;

(f) whether, without limiting paragraph (e), the person has contravened a provision of a relevant law or a corresponding law about professional indemnity insurance;

(g) whether the person is or was a legal practitioner director of an incorporated legal practice while the practice is or was insolvent;

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(h) whether the person is or was a director of a corporation while the corporation is or was insolvent;

(i) other matters the authority thinks are appropriate.

(3) A person may be considered a fit and proper person to hold, or to continue to hold, a local practising certificate even though the person is within any of the categories of the matters mentioned in subsection (2), if the relevant authority considers that the circumstances warrant the decision.

(4) If a matter was—

(a) disclosed in an application for admission to the legal profession in this or another jurisdiction; and

(b) decided by the Supreme Court or the board, or a Supreme Court of another jurisdiction or corresponding authority of another jurisdiction corresponding to the board, not to be sufficient for refusing admission to the legal profession;

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

47 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 suspended or cancelled.

(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 suspended or cancelled.

(3) If an application for the renewal of a local practising certificate is received before the time stated in the regulatory authority's administration rules for applying for a renewal but

the application has not been decided by the following 1 July, the certificate—

(a) continues in force on and from 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 suspended or cancelled; and

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

48 Local legal practitioner is officer of Supreme Court

A person who is not already an officer of the Supreme Court becomes an officer of the Supreme Court on being granted a local practising certificate.

Division 4 Grant or renewal of local practising certificates

49 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 under this section.

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

(a) in the case of a lawyer who is not an Australian legal practitioner at the time of making the application—

(i) the lawyer reasonably expects to be engaged in legal practice solely or principally in this

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jurisdiction during the currency of the certificate or renewal applied for; or

(ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practical to decide whether it applies to the lawyer—the lawyer's place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia; or

(b) in the case of a lawyer who is an Australian legal practitioner at the time of making the application—

(i) the jurisdiction in which the lawyer engages in legal practice solely or principally is this jurisdiction; or

(ii) the lawyer holds a current local practising certificate and engages in legal practice in another jurisdiction under an arrangement of a temporary nature; or

(iii) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or

(iv) if subparagraphs (i), (ii) and (iii) do not apply to the lawyer or it is not reasonably practical to decide whether subparagraph (i), (ii) or (iii) applies to the lawyer—the lawyer's place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia.

(3) For subsection (2)(b), the jurisdiction in which an Australian lawyer engages in legal practice solely or principally is to be decided by reference to the lawyer's legal practice during the certificate period current at the time—

(a) the application is made; or

(b) in the case of a late application—the application should have been made.

(4) An Australian lawyer is not eligible to apply for the grant or renewal of a local practising certificate in relation to a financial year if the lawyer would also be the holder of another Australian practising certificate for that year, but this subsection does not limit the factors deciding ineligibility to apply for the grant or renewal of a local practising certificate.

(5) An Australian lawyer must not apply for the grant or renewal of a local practising certificate if the lawyer is not eligible to make the application.

(6) An Australian legal practitioner who—

(a) engages in legal practice solely or principally in this jurisdiction during a financial year; and

(b) reasonably expects to engage in legal practice solely or principally in this jurisdiction in the following financial year;

must apply for the grant or renewal of a local practising certificate in relation to the following financial year.

(7) Subsection (6) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that the practitioner reasonably expected to engage in legal practice solely or principally in this jurisdiction under an arrangement that is of a temporary nature.

(8) However, subsection (7) ceases to operate in relation to an interstate legal practitioner at the end of the period prescribed by a regulation for the subsection.

(9) A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia and, accordingly, an Australian lawyer who is engaged or expects to be engaged in legal practice principally in a foreign country is nevertheless eligible to apply for the grant or renewal of a local practising certificate if the lawyer otherwise meets the requirements of this section.

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Note—

The purpose of subsection (9) is to deal with a case where a person practises both in Australia and overseas. In that case, overseas practice is to be disregarded (even if it forms the principal portion of the person's overall practice), so that eligibility is decided by reference to the person's practice in Australia.

50 Manner of application

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

(a) made in the approved form of the relevant regulatory authority; and

(b) made in the way provided for under the administration rules of the relevant regulatory authority; and

(c) for an application for renewal—made within the period stated in the administration rules of the relevant regulatory authority.

(2) The approved form may require the applicant to disclose matters that may affect the applicant's eligibility for the grant or renewal of a local practising certificate or the question whether the applicant is a fit and proper person to hold a local practising certificate.

(3) The approved form may indicate that particular kinds of matters previously disclosed in a particular way need not be disclosed for the purposes of the current application.

51 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, when granting or renewing a certificate, impose conditions as mentioned in section 53.

(3) The regulatory authority may refuse—

(a) to consider an application if—

(i) it is not made under this Act; or

(ii) fees and costs payable under this Act have not been paid; or

(b) to grant or renew a local practising certificate if the applicant has not complied with the administration rules of the authority relating to the application.

(4) The regulatory authority must not grant a local practising certificate unless it is satisfied that the applicant—

(a) was eligible to apply for the grant when the application was made; and

(b) is a fit and proper person to hold the certificate.

(5) The regulatory authority must not renew a local practising certificate if it is satisfied that the applicant—

(a) was not eligible to apply for the renewal of the certificate when the application was made; or

(b) is not a fit and proper person to continue to hold the certificate.

Note—

See section 46 (Suitability to hold local practising certificate).

(6) Also, the regulatory authority must not grant or renew a local practising certificate if the authority considers the applicant's circumstances have changed since the application was made and the applicant would, having regard to information that has come to the authority's attention, not have been eligible to make the application when the application is being considered.

(7) If the regulatory 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

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(b) for the renewal of a certificate—a new local practising certificate or a notice of renewal.

(8) The regulatory authority must give the applicant an information notice if the authority—

(a) refuses to grant or renew a local practising certificate; or

(b) imposes a condition on the certificate and the applicant does not agree to the condition.

(9) The applicant may appeal to the Supreme Court against the decision to refuse to grant or renew the local practising certificate as mentioned in subsection (8).

Note—

For matters relevant to the imposition of conditions, see section 54.

Division 5 Conditions on local practising certificates

52 Conditions generally

A local practising certificate is subject to the following—

(a) a condition imposed by the relevant regulatory authority at the time the certificate is granted unless the condition is revoked at a later time;

(b) a statutory condition as mentioned in section 45, 55, 56 or 57;

(c) a condition imposed or amended under division 6 or 7;

(d) a condition imposed or amended under chapter 4 or under a corresponding law;

(e) a condition imposed or amended under a regulation, the legal profession rules or the administration rules.

53 Conditions imposed by law society or bar association

(1) At the time a regulatory authority grants a local practising certificate, the authority may impose any reasonable and relevant condition on the practising certificate.

(2) A condition may be about any of the following—

(a) requiring the certificate holder to undertake or complete—

(i) continuing legal education; or

(ii) stated legal education or training;

(b) limiting the certificate holder to supervised legal practice in the way stated in the condition or to the practice of areas of law stated in the condition;

(c) controlling, restricting or prohibiting the operation of a trust account;

(d) restricting the certificate holder to particular conditions concerning employment or supervision;

(e) a matter agreed to by the certificate holder.

(3) Subsection (2) does not limit the matters about which a condition may be imposed under this section.

(4) The regulatory authority must not impose a condition requiring the certificate holder to undertake and complete stated legal education or training unless—

(a) the regulatory authority is satisfied that it is reasonable to require the stated legal education or training to be undertaken, having regard to—

(i) when the holder undertook his or her previous academic studies or legal training, or obtained the previous legal experience; or

(ii) the certificate holder's conduct; or

(b) the condition is 1 that is imposed generally on certificates holders or a class of certificates holders.

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(5) A regulatory authority's power to impose a condition mentioned in subsection (2)(a) is not limited by, and does not limit, the regulatory authority's power to impose a condition under its administration rules about a matter mentioned in section 231(2)(e).

54 Applications relating to conditions

(1) This section applies if a regulatory authority imposes a condition on a practising certificate, other than a condition applying in relation to a practising certificate under the authority's legal profession rules or administration rules.

(2) If the applicant did not apply for a practising certificate to be 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 decision to impose the condition.

(3) The regulatory authority may revoke a condition imposed on a practising certificate, 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 a certificate holder applies 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 decision to impose the condition.

55 Statutory condition regarding conditions imposed on interstate admission

It is a statutory condition of a local practising certificate that the certificate holder must not contravene the following—

(a) a condition that was imposed on the holder's admission to the legal profession under a corresponding law (an ***imposed condition***) if the imposed condition is still in force;

(b) an imposed condition as amended from time to time.

56 Statutory condition regarding practice as solicitor

(1) It is a statutory condition of a local practising certificate for a solicitor that the certificate holder must engage in supervised legal practice only, until the certificate holder has completed—

(a) if the certificate holder completed supervised legal training to qualify for admission to the legal profession in this or another jurisdiction—a period or periods equivalent to 18 months supervised legal practice, worked out under a regulation, after the day the holder's first practising certificate was granted; or

(b) if the holder completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction—a period or periods equivalent to 2 years supervised legal practice, worked out under a regulation, after the day the holder's first practising certificate was granted.

(2) Subsection (1) has effect subject to any other conditions that relate to engaging in supervised legal practice as a solicitor after a period or periods mentioned in that subsection.

(3) The law society may exempt a person or class of persons from the requirement for supervised legal practice under subsection (1) or may reduce a period mentioned in that subsection for a person or class of persons, if satisfied the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to—

(a) the length and nature of any legal practice previously engaged in by the person or persons; and

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(b) the length and nature of any legal practice engaged in by the supervisors, if any, who previously supervised the legal practice engaged in by the person or persons.

(4) An exemption under subsection (3) may be given unconditionally or subject to conditions the law society considers appropriate.

(5) In this section—

supervised legal training means practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise.

57 Statutory condition regarding notification of offence

(1) It is a statutory condition of a local practising certificate that the certificate holder must give notice to the relevant regulatory authority if the certificate holder is—

(a) convicted of an offence that would have to be disclosed under the admission rules for an application for admission; or

(b) charged with a serious offence.

(2) The notice must be in the approved form and given to the regulatory authority within 7 days after—

(a) if the certificate holder is convicted of an offence—the day the person is convicted; or

(b) if the certificate holder is charged with an offence—the day the person is charged.

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

(4) This section does not apply to a show cause event to which division 7 applies.

58 Compliance with conditions

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

Example—

If a person 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. The contravention may constitute unsatisfactory professional conduct or professional misconduct under section 420.

Division 6 Amendment, suspension or cancellation of local practising certificates

59 Application of this division

This division does not apply to a show cause event in relation to which a regulatory authority may exercise a power under division 7.

60 Grounds for amending, suspending or cancelling a local practising certificate

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

(a) the certificate holder is no longer a fit and proper person to hold the certificate;

Note—

See section 46 (Suitability to hold local practising certificate).

(b) the certificate holder does not have, or no longer has, professional indemnity insurance that complies with this Act in relation to the 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, or has been,

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engaging in legal practice that the holder is not entitled to engage in under this Act.

61 Amending, suspending or cancelling a local practising certificate

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

(a) states the proposed action and—

(i) if the proposed action is to amend the certificate—states the proposed amendment; and

(ii) if the proposed action is to suspend the certificate—states the proposed suspension period; and

(b) states the grounds for proposing to take the proposed action; and

(c) outlines the facts and circumstances that form the basis for the authority's belief; and

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

(2) If, after considering all written 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 a less onerous way the authority considers appropriate because of the written representations; or

(b) if the show cause notice stated the proposed action was to suspend the practising certificate for a stated period—

(i) suspend the certificate for a period no longer than the stated period; or

(ii) amend the certificate in a less onerous way the authority considers appropriate because of the written representations; or

(c) if the show cause notice stated the proposed action was to cancel the practising certificate—

(i) cancel the certificate; or

(ii) suspend the certificate for a period; or

(iii) amend the certificate in a less onerous way the authority considers appropriate because of the written representations.

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

(a) the authority must give the certificate holder an information notice about the decision; and

(b) the certificate holder may appeal to the Supreme Court against the decision.

(4) In this section—

amend, in relation to a local practising certificate, means amend or impose a condition that a regulatory authority may impose at the time of granting a local practising certificate, as mentioned in section 53, otherwise than at the request of the holder of the certificate.

62 Operation of amendment, suspension or cancellation of local practising certificate

(1) This section applies if a decision is made to amend, suspend or cancel a local practising certificate under section 61 or 69.

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

(a) the day that the information notice about the decision is given to the certificate holder;

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Not authorised—indicative only

(b) the day stated in the information notice.

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

(a) the Supreme Court may, on application by the certificate holder, order that the amendment, suspension or cancellation be stayed until—

(i) the end of the time to appeal against the conviction; or

(ii) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends; and

(b) the amendment, suspension or cancellation does not have effect during any period for which the stay is in force.

(4) If the practising certificate is amended, suspended or cancelled because the certificate holder has been convicted of an offence and a court quashes the conviction—

(a) the amendment or suspension ceases to have effect when the court quashes the conviction; or

(b) the cancellation ceases to have effect when the court quashes the conviction and the certificate is restored as if it had merely been suspended.

63 Immediate amendment or suspension of local practising certificate

(1) This section applies if the relevant regulatory authority in relation to a local legal practitioner considers it necessary in the public interest to take action under this section in relation to that legal practitioner, whether or not action in relation to the legal practitioner has been started otherwise than under this division or division 7.

(2) The relevant regulatory authority may immediately amend a local practising certificate of the legal practitioner to provide for either of the following—

(a) imposing or amending conditions about controlling or otherwise regulating conditions about the legal practitioner's trust account;

(b) suspending stated operations in relation to the certificate holder's trust account or directing the certificate holder not to operate the account.

(3) The relevant regulatory authority may immediately suspend the local practising certificate of the legal practitioner for any of the following reasons, whether it happened before or after the commencement of this section—

(a) there is a show cause event in relation to the legal practitioner;

(b) the regulatory authority believes there is any ground mentioned in section 60 that would justify the suspension or cancellation of the local practising certificate under section 61;

(c) any other ground that the regulatory authority considers warrants suspension of the local practising certificate in the public interest.

(4) The relevant regulatory authority amends or suspends a local practising certificate by giving an information notice to the local legal practitioner about the regulatory authority's decision to amend or suspend.

(5) The information notice must also state that the local legal practitioner may make written representations to the regulatory authority about the amendment or suspension.

(6) Subject to subsection (9), the practising certificate continues to be subject to the amendment or suspension 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 61(3);

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Not authorised—indicative only

(b) the end of 56 days after the information notice is given to the local legal practitioner under this section.

(7) If the local legal practitioner makes written representations to the regulatory authority about the amendment or suspension, the authority must consider the written representations.

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

(9) Also—

(a) the regulatory authority may apply to the Supreme Court for an order extending the period of the amendment or suspension; and

(b) if the court considers it appropriate and the amendment or suspension has not ended under subsection (6), the court may extend the period of the amendment or suspension for a further period of not more than 56 days after the date of the court's order.

(10) The regulatory authority must give the certificate holder an information notice about its decision to apply under subsection (9) for an order extending the period of the suspension or amendment.

64 Removal from local roll

(1) If a local legal practitioner's name is removed from the local roll or a local legal practitioner ceases to be an Australian lawyer, the regulatory authority must cancel the practising certificate by information notice given to the legal practitioner.

(2) Section 61 does not apply in a case to which this section applies.

65 Consensual amendment or cancellation etc.

(1) Subsection (2) applies if—

(a) a local legal practitioner applies, in the approved form, to the regulatory authority to amend or cancel the 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 practitioner's interests; and

(ii) the practitioner agrees in writing to the amendment.

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

(3) Section 61 does not apply in a case to which this section applies.

66 Relationship of div 6 with ch 6

(1) An investigator appointed by a regulatory authority may exercise powers under chapter 6 for a matter under this division, as if the matter were the subject of a complaint.

(2) Accordingly, the provisions of chapter 6 apply in relation to a matter under this division, and so apply with any necessary changes.

(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 from investigating or referring a matter for investigation as mentioned in section 435.

Not authorised—indicative only

Not authorised—indicative only

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

67 Application for local practising certificate if show cause event happened after first admission

(1) This section applies if—

(a) a person is applying for the grant of a local practising certificate under this Act; and

(b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person was first admitted to the legal profession, however the admission was expressed at the time of that admission.

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

(a) about the show cause event; and

(b) explaining why, despite the event, the person considers himself or herself to be a fit and proper person to hold a local practising certificate.

(3) However, a person need not give a statement under subsection (2) if the person (as a previous applicant for a local practising certificate or as the holder of a local practising certificate previously in force) has previously given the regulatory authority—

(a) a statement under this section or under the *Legal Profession Act 2004*, section 62; or

(b) a notice and statement under section 68, or under the *Legal Profession Act 2004*, section 63, for the show cause event;

explaining why, despite the event, the person considers himself or herself to be a fit and proper person to hold a local practising certificate.

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

68 Requirement if show cause event

(1) If a show cause event happens in relation to a local legal practitioner, the practitioner must give to the relevant regulatory authority both of the following—

(a) within 7 days after the date of the event—notice, in the approved form, that the event happened;

(b) within 28 days after the date of the event—a written statement explaining why, despite the event, the practitioner continues to be a fit and proper person to hold a local practising certificate.

(2) The regulatory authority must give a copy of the notice and the statement under subsection (1) to the commissioner.

(3) However, if a written statement is given after the 28 days mentioned in subsection (1)(b), the regulatory authority may accept the statement and take it into consideration.

69 Refusal, amendment, suspension or cancellation of local practising certificate because of failure to show cause

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

(a) is required by section 67 or 68 to give a written statement relating to a matter to the regulatory authority and the applicant or certificate holder has not done so; or

(b) has given a written statement under section 67 or 68 but the authority does not consider that the applicant or certificate holder has shown in the statement that the person is a fit and proper person to hold or to continue to hold a local practising certificate.

Not authorised—indicative only

Not authorised—indicative only

(2) For subsection (1)(b), a written statement accepted by the regulatory authority as mentioned in section 68(3) is taken to be given under section 67.

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

(a) the authority must give the applicant or certificate holder an information notice about the decision; and

(b) the applicant or certificate holder may appeal to the Supreme Court against the decision.

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

70 Restriction on making further application

(1) This section applies if a regulatory authority decides under section 69 to refuse to grant or renew a local practising certificate or to cancel a local practising certificate.

(2) The authority may also decide that the applicant or certificate holder is not entitled to apply for the grant of a local practising certificate for a stated period of not more than 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 69(3)(a) and the applicant or certificate holder may also appeal to the Supreme Court against the decision.

(4) Subject to—

(a) a successful appeal against a decision under this section; or

(b) a successful appeal against a decision under this section (as in force before the commencement of this subsection), the *Legal Profession Act 2004*, section 65, or under a corresponding law;

a person against whom the decision has been made is not entitled to apply for the grant of a local practising certificate during the period stated in the decision.

71 Relationship of div 7 with ch 6

(1) An investigator appointed by a regulatory authority may exercise powers under chapter 6 for a matter under this division, as if the matter were the subject of a complaint.

(2) Accordingly, the provisions of chapter 6 apply in relation to a matter under this division, and so apply with any necessary changes.

(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 from investigating or referring a matter for investigation as mentioned in section 435.

Division 8 Further provisions relating to local practising certificate

72 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 relevant regulatory authority to which the local practising certificate is surrendered may cancel the certificate.

73 Return of local practising certificate

(1) This section applies if a local practising certificate is amended, suspended or cancelled by a relevant regulatory authority under division 6 or 7.

(2) The regulatory authority may—

(a) give the certificate holder a 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 14 days; or

Not authorised—indicative only

Not authorised—indicative only

(b) include in an information notice that the authority must give to the certificate holder under division 6 or 7 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 14 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.

Division 9 Interstate legal practitioners

74 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) has been approved under, or complies with the requirements of, the corresponding law of the practitioner's home jurisdiction; and

(iii) is for at least $1.5m inclusive of defence costs unless, without affecting subparagraph (i) or (ii), the practitioner engages in legal practice solely as or in the manner of a barrister; or

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

Maximum penalty—300 penalty units or 2 years imprisonment.

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

(3) This section does not apply to an interstate legal practitioner who—

(a) is a government legal officer; and

(b) is engaged in legal practice in this jurisdiction only to the extent that the practitioner is engaging in government work; and

(c) has an indemnity or immunity, whether provided by law or governmental policy, that is applicable in relation to that practice.

75 Extent of entitlement of interstate legal practitioner to practise in this jurisdiction

(1) This part does not authorise an interstate legal practitioner to engage in legal practice in this jurisdiction to a greater extent than a local legal practitioner could be authorised under a local practising certificate.

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

(a) is subject to—

(i) specific provisions under this Act applying to interstate legal practitioners; and

(ii) any conditions imposed by the relevant regulatory authority under section 76 in relation to the interstate legal practitioner; and

Not authorised—indicative only

Not authorised—indicative only

(b) is, to the greatest practicable extent and with all necessary changes—

(i) the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and

(ii) subject to any condition applicable to the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on his or her admission to the legal profession in this or another jurisdiction.

(3) If there is an inconsistency between conditions mentioned in subsection (2)(a) and conditions mentioned in subsection (2)(b), the conditions the relevant regulatory authority considers more onerous prevail to the extent of the inconsistency.

(4) An interstate legal practitioner must not engage in legal practice in this jurisdiction in a way that is not authorised under this Act or in contravention of any condition mentioned in this section.

76 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 the authority may impose under this Act on a local practising certificate at the time it 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

(b) the interstate legal practitioner may appeal to the Supreme Court against the decision.

(4) An interstate legal practitioner must not contravene a condition imposed under this section.

77 Special provision about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction

(1) An interstate legal practitioner must not engage in unsupervised legal practice in this jurisdiction unless—

(a) if the practitioner completed supervised legal training to qualify for admission to the legal profession—the practitioner has undertaken a period or periods equivalent to 18 months supervised legal practice, worked out under a regulation, after the date the practitioner's first practising certificate was granted; or

(b) if the interstate legal practitioner completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction—the practitioner has undertaken a period or periods equivalent to 2 years supervised legal practice, worked out under a regulation, after the date the practitioner's first practising certificate was granted.

(2) However, subsection (1)—

(a) does not apply if the interstate legal practitioner is exempt from the requirement for supervised legal practice in the practitioner's home jurisdiction; or

(b) applies to the interstate legal practitioner only to the extent of a shorter period if the required period of supervised legal practice has been reduced for the practitioner in the practitioner's home jurisdiction.

(3) In this section—

supervised legal training means practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise.

Not authorised—indicative only

Not authorised—indicative only

78 Interstate legal practitioner is officer of Supreme Court

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

Division 10 Miscellaneous

79 Protocols

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

(a) the jurisdiction in 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 practising certificate.

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

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

(4) A jurisdiction protocol, or an amendment, revocation or replacement of a jurisdiction protocol, has effect in this jurisdiction only to the extent it is approved under a regulation.

80 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—

(a) to grant or renew a local practising certificate; or

(b) to amend, suspend or cancel 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 not to grant or renew a local practising certificate, or to amend, suspend or cancel 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).

81 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—

Not authorised—indicative only

Not authorised—indicative only

(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 ensure that an up-to-date version of its register is available, without charge, for public inspection—

(a) at the authority's principal place of business during normal working hours; or

(b) on the authority's internet site or an internet site identified on the authority's internet site.

(4) However, a regulation may provide for a person's name not to be included in the register or for that person's name as it appears in the register not to be available for public inspection.

Example of a regulation—

A regulation may provide for a system of applying to a regulatory authority for the suppression of a person's name if the person is being stalked by a previous client or has been otherwise threatened with violence by someone.

82 Supreme Court orders about conditions

(1) A regulatory authority may apply to the Supreme Court for an order that an Australian lawyer not contravene a condition imposed under this part.

(2) The Supreme Court may make any order it considers appropriate on the application.

83 Regulatory authority may charge reasonable fees

(1) A regulatory authority may charge fees for services that it provides, including, for example, the services provided by the authority as part of performing its functions under this Act.

Example of a service that a regulatory authority provides as part of performing its functions under this Act—

granting or renewing a practising certificate

(2) The fee for a service must be reasonable having regard to the cost to the regulatory authority of performing all of its functions under this Act and the funding that the authority has received under this Act, and a fee for a service is not unreasonable only because the particular fee is more than the cost of providing the specific service.

(3) The fees set by a regulatory authority must be included in its administration rules.

(4) Despite subsection (1), a regulatory authority may not charge a fee for a service provided to another entity that has functions under this Act except so far as the other entity has arranged, on a commercial basis, for the regulatory authority to perform a service associated with the functions of the other entity.

Part 2.5 Suitability reports

Division 1 Preliminary

84 Main purpose of pt 2.5

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.

85 Definitions for pt 2.5

In this part—

commissioner of police means the commissioner of the police service.

interstate registration means registration under a corresponding law as a locally registered foreign lawyer under that law.

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Not authorised—indicative only

Note—

A person granted interstate registration would be an interstate-registered foreign lawyer under this Act.

legal practice includes the practice of foreign law in this jurisdiction by a foreign lawyer.

local registration means registration under this Act as a locally registered foreign lawyer.

registration means local registration or interstate registration.

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 local registration, for the holder of a local practising certificate or for a locally registered foreign lawyer—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; or

(d) an applicant for registration as a locally registered foreign lawyer; or

(e) a locally registered foreign lawyer.

suitability report means a police report or health assessment report prepared under this part, the *Legal Profession Act 2004*, chapter 7, part 1, or a corresponding law, and includes a copy of a report or a part of a report or copy.

Division 2 Police reports

86 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 or a locally registered foreign lawyer unless the authority considers it appropriate.

(3) Subsection (2) applies to the regulatory authority in relation to a local legal practitioner whether or not the 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

87 Health assessment

(1) This section applies if a relevant authority believes a subject person currently is unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner.

(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—

Not authorised—indicative only

Not authorised—indicative only

(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 unless the person and the relevant authority agree, in writing, to an earlier date.

(5) The subject person may appeal to the Supreme Court against the decision.

88 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.

89 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 whether the person is currently unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner; and

(b) if the health assessor finds that the person is unable to do so, the health assessor's recommendations, if any, as to a condition—

(i) the Supreme Court could impose on the person's admission to the legal profession that would make, or would be likely to make, the person suitable to engage in legal practice; or

(ii) the relevant authority could impose on the person's practising certificate or local registration that would make, or would be likely to make, the person suitable to engage in legal practice.

(3) The health assessor must give the health assessment report to the relevant authority and a copy to the subject person.

90 Payment for health assessment and report

(1) 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.

(2) However, if the report of the health assessor is adverse to a person, the relevant authority may ask the person, by written notice, to pay the authority the amount of the cost of the assessment.

(3) The amount requested is a debt to the regulatory authority.

Not authorised—indicative only

Not authorised—indicative only

91 Use of health assessment report

(1) A report about a subject person is not admissible in any proceeding, and a person can not be compelled to produce the report or to give evidence about the report or its contents in any proceeding.

(2) Subsection (1) does not apply in relation to—

(a) a proceeding relating to an application by the subject person for admission to the legal profession under this Act, for local registration, for admission to the legal profession in another jurisdiction or for interstate registration; or

(b) a proceeding on an appeal by the subject person against, or on an application by the subject person for a review of, a decision of a relevant authority of this or another jurisdiction—

(i) refusing to grant or renew a practising certificate or registration; or

(ii) imposing conditions on a practising certificate or registration; or

(iii) amending or cancelling a practising certificate or registration.

(3) Subsection (1) does not apply if the report is admitted or produced, or evidence about the report or its contents is given, in a proceeding with the consent of—

(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, the *Legal Profession Act 2004*, chapter 7, part 1, division 3, or a corresponding law, and includes a copy of a report or a part of a report or copy.

Division 4 General

92 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 whether before or after the commencement of this section.

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 person has applied for admission to the legal profession; 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 for the grant or renewal of local registration; or

Not authorised—indicative only

Not authorised—indicative only

(ii) the imposition or proposed imposition of conditions on a local practising certificate or local registration; or

(iii) the amendment, suspension or cancellation or the proposed amendment, suspension or cancellation, of a local practising certificate or local registration; or

(b) disclosure of the suitability report or information in it is made to the regulatory authority of another jurisdiction when the person to whom it relates is an applicant for the grant or renewal of a practising certificate or the grant or renewal of interstate registration, or the holder of an interstate practising certificate or an interstate-registered foreign lawyer, 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 local registration, or the amendment, suspension or cancellation of a practising certificate or local registration, is taken or a decision is taken not to proceed with any 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.

93 Operation of pt 2.5

(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 2.6 Inter-jurisdictional provisions regarding admission and practising certificates

Division 1 Preliminary

94 Main purpose of pt 2.6

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 relation to the admission of persons to the legal profession and their right to engage in legal practice in Australia.

95 Relationship of this part with ch 4

This part does not affect a function or power under chapter 4.

Division 2 Notifications to be given by local authorities to interstate authorities

96 Notification to other jurisdictions about application for admission

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

Not authorised—indicative only

Not authorised—indicative only

(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 39 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 to the legal profession 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.

97 Notification to other jurisdictions about removal from local roll

(1) This section applies if a person's name is removed from the local roll, except if the removal happens under section 103.

(2) The Brisbane registrar must give the corresponding authority of each other jurisdiction, and the registrar or other proper officer of the High Court of Australia, written notice of the removal.

(3) The notice must state the following—

(a) the person's name and address as last known to the Brisbane registrar;

(b) the date the person's name was removed from the roll;

(c) the reason for removing the person's name;

(d) other information prescribed under a regulation.

98 Law society and bar association to notify other jurisdictions about particular matters

(1) Subsection (2) applies if—

(a) a regulatory authority takes any of the following actions in relation to an Australian lawyer—

(i) a refusal to grant or renew a local practising certificate for the lawyer;

(ii) a suspension or cancellation of the lawyer's local practising certificate; or

(b) the lawyer is successful in an appeal to the Supreme Court against a decision to take an action mentioned in paragraph (a).

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

(3) The notice must state each of the following—

(a) the lawyer's name and address as last known to the regulatory authority;

(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 corresponding authorities written notice of a condition imposed on an Australian lawyer's local practising certificate.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Notifications to be given by lawyers to local authorities

99 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 103.

100 Lawyer to give notice of interstate orders

(1) This section applies if an order is made under a corresponding law recommending that the name of a local lawyer be removed from the local roll.

(2) As soon as practicable (but not more than 7 days) after the local lawyer is given notice of the action or otherwise becomes aware of it, the lawyer must give the Brisbane registrar written notice of the order.

Maximum penalty—200 penalty units.

(3) If an order is made under a corresponding law in relation to a local legal practitioner that—

(a) the practitioner's local practising certificate be suspended or cancelled; or

(b) a local practising certificate not be granted to the practitioner for a period; or

(c) an order that conditions be imposed on the practitioner's local practising certificate;

the practitioner must, as soon as practicable (but not more than 7 days) after the practitioner is given notice of the order or otherwise becomes aware of it, give the regulatory authority who granted or renewed the practitioner's local practising certificate written notice of the order.

Maximum penalty—200 penalty units.

101 Lawyer to give notice of foreign regulatory action

(1) This section applies if a foreign regulatory action has been taken in relation to a person.

(2) If the person is a local lawyer, as soon as practicable (but not more than 7 days) after the person is given notice of the action or otherwise becomes aware of it, the person must give the Brisbane registrar written notice of the action taken.

Maximum penalty—200 penalty units.

(3) If the person is a local legal practitioner, as soon as practicable (but not more than 7 days) after the person is given notice of the action or otherwise becomes aware of it, the person must give the regulatory authority who granted or renewed the practitioner's local practising certificate written notice of the action taken.

Maximum penalty—200 penalty units.

102 Provisions relating to requirement to notify

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

(a) state his or her name and address; and

(b) disclose full details of the action to which the notice relates, including the date on which that action was taken; and

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

Not authorised—indicative only

Not authorised—indicative only

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

103 Peremptory 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 107(1)(a) 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 making an application for admission.

104 Peremptory cancellation of local practising certificate following removal of name from interstate roll

(1) This section applies if—

(a) a person's name is removed from an interstate roll but he or she remains an Australian lawyer; and

(b) the person is the holder of a local practising certificate; and

(c) no order under section 107(1)(b) is, at the time of that removal, in force in relation to the person'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 person notice of the date on which it proposes to cancel the local practising certificate.

(4) The relevant regulatory authority must give the person notice of the cancellation, unless notice of the date of the proposed cancellation was previously given.

(5) Nothing in this section prevents the former local lawyer from applying for a local practising certificate at a later time.

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

(1) This section applies if the appropriate authority is satisfied that—

(a) foreign regulatory action has been taken in relation to a local lawyer, whether before or after the commencement of this section; and

(b) no order mentioned in section 107(1)(a) is in force in relation to the action taken.

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

(3) If the local lawyer does not satisfy the appropriate authority that his or her name should not be removed from the local roll, the appropriate authority may apply to the Supreme Court for

Not authorised—indicative only

Not authorised—indicative only

an order that the local lawyer's name be removed from the local roll.

(4) Before applying for an order that the local lawyer's name be removed, the appropriate authority must afford the local lawyer a reasonable opportunity to show cause why his or her name should not be removed.

(5) The Supreme Court may, on application made under this section, order the local lawyer's name be removed from the local roll or may refuse to do so.

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

(7) In this section—

appropriate authority means—

(a) if the local lawyer holds a local practising certificate—the relevant regulatory authority in relation to the local lawyer; or

(b) if the local lawyer does not hold a local practising certificate but holds an interstate practising certificate—the regulatory authority as agreed between the regulatory authorities; or

(c) if the local lawyer holds neither a local practising certificate nor an interstate practising certificate—the law society.

106 Show cause procedure for cancellation of local practising certificate following foreign regulatory action

(1) This section applies if a regulatory authority that granted or renewed a practising certificate is satisfied that—

(a) foreign regulatory action has been taken in relation to a the local legal practitioner, whether before or after the commencement of this section; and

(b) no order mentioned in section 107(1)(b) is in force in relation to the foreign regulatory action.

(2) The regulatory authority may give the local legal practitioner a notice stating that the regulatory authority proposes to cancel the local practising certificate unless the practitioner shows cause to the authority why the certificate should not be cancelled.

(3) The regulatory authority must afford the person a reasonable opportunity to show cause why his or her practising certificate should not be cancelled.

(4) If the local legal practitioner does not satisfy the regulatory authority that the practising certificate should not be cancelled, the regulatory authority may cancel the certificate.

(5) The regulatory authority must give the local legal practitioner an information notice about its decision to cancel the practising certificate.

(6) The person may appeal to the Supreme Court against a decision of the relevant regulatory authority to cancel his or her practising certificate.

(7) The Supreme Court may make any order it considers appropriate on the appeal.

107 Order for non-removal of name or non-cancellation of local practising certificate

(1) If an Australian lawyer reasonably expects his or her name will be removed from an interstate roll or foreign regulatory action will be taken against him or her, the lawyer may apply to the Supreme Court for either or both of the following—

(a) an order that his or her name not be removed from the local roll under section 103 or 105;

(b) an order that his or her local practising certificate not be cancelled under section 104 or 106.

(2) The Supreme Court—

(a) may make the order or orders applied for if satisfied about each of the following—

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Not authorised—indicative only

(i) the Australian lawyer's name is likely to be removed from the interstate roll or the foreign regulatory action is likely to be taken;

(ii) the reason for the removal of the name, or the taking of the foreign regulatory action, will not involve disciplinary action or the possibility of disciplinary action; or

(b) may refuse to make an order.

(3) An order under this section may be made subject to any conditions the Supreme Court considers appropriate and remains in force for the period stated in it.

(4) The Supreme Court may revoke an order made under this section.

(5) If the Supreme Court revokes an order made under this section, to the extent relevant, when the revocation takes effect the other provisions of this division apply as if the Australian lawyer's name were removed from the interstate roll or the foreign regulatory action were taken.

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

108 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 any other local authority.

(2) In this section—

local authority means an entity relevant to this jurisdiction that has functions or powers under this Act.

Part 2.7 Incorporated legal practices and multi-disciplinary partnerships

Division 1 Preliminary

109 Main purposes of pt 2.7

The main purposes of this part are as follows—

(a) to regulate the provision of legal services by corporations in this jurisdiction;

(b) to regulate the provision of legal services in this jurisdiction in conjunction with the provision of other services, whether by a corporation or persons acting in partnership together.

110 Definitions for pt 2.7

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 the regulation as a director.

legal practitioner director means a director of an incorporated legal practice who is an Australian legal practitioner holding a

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Not authorised—indicative only

practising certificate entitling the practitioner to practise as a principal of a law practice.

legal practitioner partner means a partner of a multi-disciplinary partnership who is an Australian legal practitioner holding a practising certificate entitling the practitioner to practise as a principal of a law practice.

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 any other body corporate, or a body corporate of a kind, prescribed under a regulation—a person stated or described in the regulation.

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.

Division 2 Incorporated legal practices providing legal services

111 Nature 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 only legal services that the corporation provides are either or both of the following—

(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 the corporation is prescribed under a regulation as a corporation that is not an incorporated legal practice.

(4) Despite subsection (2) and (3), a corporation that is not an incorporated legal practice as mentioned in those subsections must comply with any regulation applying provisions of this part, with or without changes, to that corporation.

(5) Nothing in this part affects or applies to the provision by an incorporated legal practice of legal services in 1 or more other jurisdictions.

112 Non-legal services and businesses of incorporated legal practices

(1) An incorporated legal practice may provide any service and conduct any business that the corporation may lawfully provide or conduct, except as provided by this section.

(2) An incorporated legal practice, or a related body corporate of an incorporated legal practice, must not conduct a managed investment scheme.

(3) 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 a regulation mentioned in subsection (3) is a ground for banning an incorporated legal practice under section 132.

Not authorised—indicative only

Not authorised—indicative only

113 Corporations eligible to be incorporated legal practices

(1) Subject to this part, a corporation is 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 an Act or law, whether of this jurisdiction, the Commonwealth or another jurisdiction, under which the corporation is incorporated or its affairs are regulated.

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

114 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 notice, in the law society 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—

(a) for a person guilty under the Criminal Code, chapter 2, of an offence—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 law society 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 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 or at the direction of

the corporation for anything the corporation did in contravention of subsection (2).

(7) This section does not apply to a corporation mentioned in section 111(2) or (3).

115 Prohibition on corporations or directors etc. representing that corporation is incorporated legal practice

(1) 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 114.

Maximum penalty—300 penalty units.

(2) 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 114.

Maximum penalty—300 penalty units or 2 years imprisonment.

(3) A reference in this section to representing or advertising that a corporation is an incorporated legal practice includes—

(a) for the corporation—the corporation doing anything that states or implies that the corporation is entitled to engage in legal practice; or

(b) for a director, officer, employee or agent of a corporation—the director, officer, employee or agent of the corporation doing anything that states or implies that the corporation is entitled to engage in legal practice.

116 Notice of termination of provision of legal services

(1) 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 notice, in the law society approved form, of that fact.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—

(a) for a person guilty under the Criminal Code, chapter 2, of an offence—20 penalty units; or

(b) for a corporation—100 penalty units.

(2) A regulation may make provision about circumstances that may be taken into account when deciding whether and when a corporation stops engaging in legal practice in this jurisdiction.

(3) Circumstances prescribed under a regulation are examples, and do not limit, whether and when a corporation stops engaging in legal practice in this jurisdiction.

Division 3 Legal practitioner directors, and other legal practitioners employed by incorporated legal practices

117 Incorporated legal practice must have legal practitioner director

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

(2) Each legal practitioner director of an incorporated legal practice is, for the purposes of this Act, responsible for the management of the legal services provided in this jurisdiction by the practice.

(3) Each legal practitioner director of an incorporated legal practice must ensure that appropriate management systems are implemented and kept to enable the provision of legal services by the 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) If it ought reasonably to be apparent to a legal practitioner director of an incorporated legal practice that the provision of legal services by the practice will result in breaches of the professional obligations of an Australian legal practitioner or other obligations imposed under this Act, the director must take all reasonable action available to the director to ensure that—

(a) the breaches do not happen; and

(b) if a breach has happened—appropriate remedial action is taken in relation to the breach.

(5) Nothing in this part derogates from the obligations or liabilities of a director of an incorporated legal practice under another law.

(6) The reference in subsection (1) to a legal practitioner director does not include a reference to a person who is not validly appointed as a director, but this subsection does not affect the meaning of the expression 'legal practitioner director' in other provisions of this Act.

118 Obligations of legal practitioner director relating to misconduct

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

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

(b) conduct of another 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 another director, not being an Australian legal practitioner, of the incorporated legal

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Not authorised—indicative only

practice to be a director of a corporation that provides legal services.

(2) A legal practitioner director is not guilty of unsatisfactory professional conduct or professional misconduct under subsection (1) if the director establishes that he or she took all reasonable steps to ensure the following as the case requires—

(a) Australian legal practitioners employed by the incorporated legal practice did not engage in conduct or misconduct mentioned in subsection (1)(a);

(b) directors, other than Australian legal practitioners, of the incorporated legal practice did not engage in conduct mentioned in subsection (1)(b);

(c) unsuitable directors, not being Australian legal practitioners, of the incorporated legal practice were not appointed or holding office as mentioned in subsection (1)(c).

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

119 Incorporated legal practice without legal practitioner director

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

(2) If an incorporated legal practice stops having a legal practitioner director, the practice must give notice to the law society of that fact, in the law society approved form, as soon as possible after the practice stops having a legal practitioner director.

Maximum penalty—

(a) for a person guilty under the Criminal Code, chapter 2, of an offence—60 penalty units; or

(b) for a corporation—300 penalty units.

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

Maximum penalty—

(a) for a person guilty under the Criminal Code, chapter 2, of an offence—180 penalty units; or

(b) for a corporation—900 penalty units.

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

(a) it has at least 1 legal practitioner director; or

(b) a person is appointed under this section, or the provisions of a corresponding law, in relation to the practice.

(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 person nominated by the law society, in the absence of a legal practitioner director, to perform or discharge the functions or duties conferred or imposed on a legal practitioner director under this part.

(6) An Australian legal practitioner is not eligible to be appointed under this section unless the legal practitioner holds an unrestricted practising certificate.

(7) The appointment under this section of a person to perform or discharge functions or duties of a legal practitioner director does not, for any other purpose, confer or impose on the person any of the other functions or duties of a director of the incorporated legal practice.

(8) An incorporated legal practice does not contravene subsection (1) during any period during which a person holds an appointment under subsection (5) in relation to the practice.

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(9) The reference in this section to a legal practitioner director does not include a reference to a person who is not validly appointed as a director, but this subsection does not affect the meaning of the expression 'legal practitioner director' in other provisions of this Act.

120 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, or any obligations under any law, of an Australian legal practitioner; and

(b) does not lose the professional privileges of an Australian legal practitioner.

(2) For the 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 legal practitioner directors—the practice were a partnership of the legal practitioner directors and the employees of the practice were employees of the legal practitioner directors; and

(b) for an incorporated legal practice with only 1 legal practitioner director—the practice were a sole practitioner and the employees of the practice were employees of the legal practitioner 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 pro bono by the Australian legal practitioners employed by the practice.

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

121 Professional indemnity insurance

(1) An incorporated legal practice must not engage in legal practice in this jurisdiction unless it has professional indemnity insurance that complies with the requirements prescribed under a regulation about professional indemnity insurance for an incorporated legal practice.

Maximum penalty—

(a) for a person guilty under the Criminal Code, chapter 2, of an offence—300 penalty units or 2 years imprisonment; or

(b) for a corporation—1,500 penalty units.

(2) An incorporated legal practice engaging in legal practice in this jurisdiction must comply with its obligations under the indemnity rules.

Maximum penalty—

(a) for a person guilty under the Criminal Code, chapter 2, of an offence—300 penalty units or 2 years imprisonment; or

(b) for a corporation—1,500 penalty units.

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

Not authorised—indicative only

Not authorised—indicative only

122 Conflicts of interest

(1) For the application of any law (including the common law) or the legal profession rules relating to conflicts of interest to the conduct of an Australian legal practitioner who is—

(a) a legal practitioner director of an incorporated legal practice; or

(b) an officer or employee of an incorporated legal practice;

the interests of the incorporated legal practice or any related body corporate are also taken to be those of the practitioner (in addition to any interests that the practitioner has apart from this subsection).

(2) Legal profession rules may be made for or in relation to additional duties and obligations in connection with conflicts of interest arising out of the conduct of an incorporated legal practice.

123 Disclosure obligations

(1) This section applies if a person engages an incorporated legal practice to provide services that the person might reasonably assume to be legal services, but does not apply if the practice provides only legal services in this jurisdiction.

(2) Each legal practitioner director of the incorporated legal practice, and any employee who is an Australian legal practitioner and who provides the services for the practice, must ensure that a disclosure, complying with the requirements of this section and a regulation, is made for this section to the person about the services.

Maximum penalty—100 penalty units.

(3) The disclosure must be made by giving the person a written notice—

(a) setting out the services to be provided; and

(b) stating whether or not all the legal services will be provided by an Australian legal practitioner; and

(c) if some or all of the legal services to be provided 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 legal services; and

(d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.

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

(a) the way in which a disclosure is to be made;

(b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by an incorporated legal practice.

(5) Without limiting subsection (4), the additional matters may include the kind of services provided by the incorporated legal practice and whether those services are or are not covered by the provisions of this Act, including, for example, provisions about insurance.

(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, on more than 1 occasion or on an on-going basis.

124 Effect of non-disclosure on provision of particular services

(1) This section applies if—

(a) section 123 applies to a service that is provided to a person who has engaged an incorporated legal practice to provide the service and that the person might reasonably assume to be a legal service; and

(b) a disclosure has not been made under that section about the service.

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Not authorised—indicative only

(2) The standard of care owed by the practice in relation to the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

125 Application of legal profession rules

Legal profession rules, so far as they apply to an Australian legal practitioner, apply to an Australian legal practitioner who is an officer or employee of an incorporated legal practice, unless the rules otherwise provide.

126 Requirements relating to advertising

(1) A restriction imposed under this Act or another 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.

(2) If a restriction mentioned in subsection (1) is limited to a particular branch of the legal profession or persons who practise in a particular style of legal practice, the restriction applies only to the extent that the incorporated legal practice carries on the business of that branch of the legal profession or in that particular style of legal practice.

(3) An advertisement made in contravention of a restriction under this section is, for the purposes of a disciplinary proceeding taken against an Australian legal practitioner, taken to have been authorised by each legal practitioner director of the incorporated legal practice.

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

127 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 a proceeding based on the vicarious liability of an incorporated legal practice—

(a) a civil proceeding 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) a civil proceeding 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 the proceeding, 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.

128 Sharing of receipts, revenue or other income

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

(2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 129, and has effect subject to section 220.

129 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

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Not authorised—indicative only

(b) is a partner of the incorporated legal practice in a business that includes the provision of legal services; or

(c) shares the receipts, revenue or other income arising from the provision of legal services by the incorporated legal practice; or

(d) is engaged or paid for the provision of legal services by the incorporated legal practice.

Maximum penalty—

(a) for a person guilty under the Criminal Code, chapter 2, of an offence—60 penalty units; or

(b) for a corporation—300 penalty units.

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

Division 5 Ensuring compliance with this Act by incorporated legal practices

130 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, the legal profession rules or the administration rules, so far as they apply to incorporated legal practices; and

(b) the management of the provision of legal services by the incorporated legal practice, including the supervision of officers and employees providing the services.

(2) An audit may be conducted whether or not a complaint has been made against a person in relation to the provision of legal services by the incorporated legal practice.

(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 provided by an ILP authority to a corresponding authority; and

(d) may be taken into account for—

(i) a discipline application involving legal practitioner directors or other persons; or

(ii) the grant, renewal, amendment, suspension or cancellation of a practising certificate.

131 Application of chapter 6

Chapter 6 applies to an audit under this division.

132 Banning of incorporated legal practices

(1) The Supreme Court may, on 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

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Not authorised—indicative only

(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 legal practitioner director or an Australian legal practitioner who is an officer or employee of the corporation is found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction;

(b) 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 112 or a regulation made under that section;

(d) the incorporated legal practice has contravened section 129;

(e) an officer of the incorporated legal practice who is acting in the management of the incorporated legal practice is the subject of an order—

(i) under section 133 or provisions of a corresponding law that correspond to that section; or

(ii) under section 158 or provisions of a corresponding law that correspond to that section.

(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 a person guilty under the Criminal Code, chapter 2, of an offence—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.

133 Disqualification from managing incorporated legal practice

(1) The Supreme Court may, on 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, from managing corporations; and

(b) the disqualification is justified.

(2) The Supreme Court may, on 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.

Not authorised—indicative only

Not authorised—indicative only

(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 taken to be disqualified from managing a corporation under this section.

134 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.

Division 6 External administration

135 External administration proceedings under Corporations Act

(1) This section applies to a proceeding in any court under the Corporations Act, chapter 5—

(a) relating to a corporation that is a chapter 5 body corporate and that is or was an incorporated legal practice; or

(b) relating to a corporation that is or was an incorporated legal practice becoming a chapter 5 body corporate.

(2) Each ILP authority is entitled to intervene in the proceeding, unless the court decides that the proceeding does not concern

or affect the provision of legal services by the incorporated legal practice.

(3) The court may, when exercising its jurisdiction in the proceeding, 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.

136 External administration proceedings under other legislation

(1) This section applies to a proceeding for the external administration, however expressed, of an incorporated legal practice but does not apply to a proceeding to which section 135 applies.

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

(3) The court may, when exercising its jurisdiction in the proceeding, 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.

Not authorised—indicative only

Not authorised—indicative only

(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.

137 Incorporated legal practice that is subject to receivership under this 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 chapter 5 receiver; and

(b) the appointment of a Corporations Act administrator.

(2) The chapter 5 receiver is under a duty to notify the Corporations Act administrator of the appointment of the chapter 5 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.

(3) The chapter 5 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 a proceeding mentioned in section 135 has been started.

(4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the chapter 5 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 proceeding, unless the court decides that the proceeding does 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 Corporations Act, section 5G, in relation to the provisions of chapter 5 of that Act.

(7) In this section—

chapter 5 receiver means a receiver appointed under section 512.

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.

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

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

(a) the appointment of a chapter 5 receiver; and

(b) the appointment of an external administrator.

(2) The chapter 5 receiver is under a duty to notify the external administrator of the appointment of the chapter 5 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the external administrator.

(3) The chapter 5 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 chapter 5 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.

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

Not authorised—indicative only

Not authorised—indicative only

(6) In this section—

chapter 5 receiver means a receiver appointed under section 512.

external administrator means a person who is—

(a) appointed to exercise powers under an Act other than this Act, or under an Act of the Commonwealth or another jurisdiction; and

(b) prescribed under a regulation for this definition.

Division 7 Miscellaneous provisions relating to incorporated legal practices

139 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.

140 Relationship of Act to constitution of incorporated legal practice

A provision under this Act 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.

141 Relationship of Act to legislation establishing incorporated legal practice

(1) This section applies to a corporation, established by or under a law whether or not of this jurisdiction, that is an incorporated legal practice but is not a company under the Corporations Act.

(2) The provisions of this Act that apply to an incorporated legal practice prevail, to the extent of any inconsistency, over

provisions of the legislation under which the corporation is established or regulated that are prescribed under a regulation.

142 Relationship of Act to Corporations legislation and certain other instruments

(1) A regulation may declare a provision under this Act that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of the Corporations Act, section 5G.

(2) A regulation may declare a matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted under this Act to be an excluded matter for the purposes of the Corporations Act, section 5F, in relation to—

(a) the whole of the Corporations legislation; or

(b) a stated provision of the Corporations legislation; or

(c) the Corporations legislation other than a stated provision; or

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

(3) In this section—

matter includes act, omission, body, person or thing.

143 Undue influence

A person, whether or not an officer or employee of an incorporated legal practice, must not cause or induce, or attempt to cause or induce, a legal practitioner director, or another Australian legal practitioner who provides legal services for the practice, to contravene this Act or the practitioner's professional obligations as an Australian legal practitioner.

Maximum penalty—300 penalty units.

Not authorised—indicative only

Not authorised—indicative only

Division 8 Multi-disciplinary partnerships

144 Nature of multi-disciplinary partnership

(1) A partnership is a ***multi-disciplinary partnership*** if it is a partnership between 1 or more Australian legal practitioners and 1 or more other persons who are not Australian legal practitioners, and the partnership business includes the provision of legal services in this jurisdiction as well as other services.

(2) However, a partnership consisting only of 1 or more Australian legal practitioners and 1 or more Australian-registered foreign lawyers is not a multi-disciplinary partnership.

(3) Nothing in this part affects or applies to the provision by a multi-disciplinary partnership of legal services in 1 or more other jurisdictions.

145 Conduct of multi-disciplinary partnerships

(1) An Australian legal practitioner may be in partnership with a person who is not an Australian legal practitioner, if the partnership business includes the provision of legal services.

(2) Subsection (1) does not prevent an Australian legal practitioner from being in partnership with a person who is not an Australian legal practitioner, if the partnership business does not include the provision of legal services.

(3) A regulation may prohibit an Australian legal practitioner from being in partnership with a person providing a service or conducting a business of a kind stated under the regulation, if the partnership business includes the provision of legal services.

146 Notice of intention to start practice in multi-disciplinary partnership

(1) Before an Australian legal practitioner starts to provide legal services in this jurisdiction as a partner in a multi-disciplinary partnership, the practitioner must give the law society notice, in the law society approved form, of his or her intention to do so.

Maximum penalty—100 penalty units.

(2) A regulation may prescribe particulars to be included in the law society approved form.

147 General obligations of legal practitioner partners

(1) Each legal practitioner partner of a multi-disciplinary partnership is, for the purposes only of this Act, responsible for the management of the legal services provided in this jurisdiction by the partnership.

(2) Each legal practitioner partner must ensure that appropriate management systems are implemented and kept to enable the provision of legal services by the multi-disciplinary partnership—

(a) under the professional obligations of Australian legal practitioners and other obligations imposed under this Act; and

(b) so that the obligations of legal practitioner partners, and employees who are Australian legal practitioners, are not affected by other partners and employees of the partnership.

148 Obligations of legal practitioner partner relating to misconduct

(1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner partner of a multi-disciplinary partnership—

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(a) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the multi-disciplinary partnership;

(b) conduct of another partner, not being an Australian legal practitioner, of the multi-disciplinary partnership that adversely affects the provision of legal services by the partnership;

(c) the unsuitability of another partner, not being an Australian legal practitioner, of the multi-disciplinary partnership to be a member of a partnership that provides legal services.

(2) A legal practitioner partner of a multi-disciplinary partnership must ensure that all reasonable action available to the legal practitioner partner is taken to deal with any unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the partnership.

149 Actions of partner who is not an Australian legal practitioner

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

(a) the partner is a member of a partnership and the partnership business includes the provision of legal services;

(b) the partner receives a fee, gain or reward for business of the partnership that is the business of an Australian legal practitioner;

(c) the partner holds out, advertises or represents himself or herself as a member of a partnership where the partnership business includes the provision of legal services;

(d) the partner shares with another partner the receipts of business of the partnership that is the business of an Australian legal practitioner.

(2) Subsection (1) is subject to any other provision that expressly applies to a partner of a multi-disciplinary partnership who is not an Australian legal practitioner.

150 Obligations and privileges of Australian legal practitioner who is partner or employee

(1) An Australian legal practitioner who provides legal services in the capacity of a partner or an employee of a multi-disciplinary partnership—

(a) is not excused from compliance with the professional obligations, or other obligations under any law, of an Australian legal practitioner; and

(b) does not lose the professional privileges of an Australian legal practitioner.

(2) 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 a partner or employee of a multi-disciplinary partnership.

151 Conflicts of interest

(1) For the application of any law (including the common law) or the legal profession rules relating to conflicts of interest to the conduct of an Australian legal practitioner who is—

(a) a legal practitioner partner of a multi-disciplinary partnership; or

(b) an employee of a multi-disciplinary partnership;

the interests of the partnership or any partner of the multi-disciplinary partnership are also taken to be the interests of the practitioner concerned (in addition to any interests that the practitioner has apart from this subsection).

(2) Legal profession rules may be made for or in relation to additional duties and obligations in connection with conflicts

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of interest arising out of the conduct of a multi-disciplinary partnership.

152 Disclosure obligations

(1) This section applies if a person engages a multi-disciplinary partnership to provide services that the person might reasonably assume to be legal services.

(2) Each legal practitioner partner of the multi-disciplinary partnership, and any employee of the partnership who is an Australian legal practitioner and who provides the services on behalf of the partnership, must ensure that a disclosure that complies with the requirements of this section and a regulation made for this section is made to the person about the services.

Maximum penalty—100 penalty units.

(3) The disclosure must be made by giving the person a written notice—

(a) setting out the services to be provided; and

(b) stating whether or not all the legal services will be provided by an Australian legal practitioner; and

(c) if some or all of the legal services to be provided 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 legal services; and

(d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.

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

(a) the way in which a disclosure is to be made;

(b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by a multi-disciplinary partnership.

(5) Without limiting subsection (4), the additional matters may include the kind of services provided by the multi-disciplinary partnership and whether those services are or are not covered by the provisions of this Act, including, for example, provisions about insurance.

(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, on more than 1 occasion or on an on-going basis.

153 Effect of non-disclosure on provision of particular services

(1) This section applies if—

(a) section 152 applies in relation to a service that is provided to a person who has engaged a multi-disciplinary partnership to provide the service and that the person might reasonably assume to be a legal service; and

(b) a disclosure has not been made under that section in relation to the service.

(2) The standard of care owed by the multi-disciplinary partnership in relation to the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

154 Application of legal profession rules

Legal profession rules, so far as they apply to an Australian legal practitioner, apply to the following unless the rules otherwise provide—

(a) an Australian legal practitioner who is a legal practitioner partner of a multi-disciplinary partnership;

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

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155 Requirements relating to advertising

(1) A restriction imposed under this Act or another Act in connection with advertising by Australian legal practitioners applies to advertising by a multi-disciplinary partnership in relation to the provision of legal services.

(2) If a restriction mentioned in subsection (1) is limited to a particular branch of the legal profession or persons who practise in a particular style of legal practice, the restriction applies only to the extent that the multi-disciplinary partnership carries on the business of that branch of the legal profession or that particular style of legal practice.

(3) An advertisement by a multi-disciplinary partnership about the provision of services that include legal services is, for the purposes of a disciplinary proceeding against an Australian legal practitioner, taken to have been authorised by each legal practitioner partner of the multi-disciplinary partnership.

(4) This section does not apply if the provision by which the restriction is imposed expressly excludes its application to multi-disciplinary partnerships.

156 Sharing of receipts, revenue or other income

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

(2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 157, and has effect subject to section 220.

157 Disqualified persons

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

(a) be a partner of a disqualified person in the multi-disciplinary partnership; or

(b) share with a disqualified person the receipts, revenue or other income arising from the provision of legal services by the multi-disciplinary partnership; or

(c) employ or pay a disqualified person in connection with the provision of legal services by the multi-disciplinary partnership.

158 Prohibition on partnership with particular partner who is not an Australian legal practitioner

(1) This section applies to a person who—

(a) is not an Australian legal practitioner; and

(b) is or was a partner of an Australian legal practitioner.

(2) The Supreme Court may, on application by the commissioner or the law society, make an order prohibiting an Australian legal practitioner from being a partner of a person to whom this section applies and who is stated in the order in relation to a business that includes the provision of legal services if the court is satisfied that—

(a) the person is not a fit and proper person to be a partner; or

(b) the person has been found guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct; or

(c) for a corporation—the corporation has, under section 132, been disqualified from providing legal services in this jurisdiction or there are grounds for disqualifying the corporation from providing legal services in this jurisdiction.

(3) An order made under this section may be revoked by the Supreme Court on application by the law society, the

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commissioner or by the person against whom the order was made.

(4) The death of an Australian legal practitioner does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the practitioner.

(5) A regulation may make provision about the publication and notification of orders made under this section.

159 Undue influence

A person, whether or not a partner or employee of a multi-disciplinary partnership, must not cause or induce, or attempt to cause or induce, either of the following persons to contravene this Act or the person's professional obligations as an Australian legal practitioner—

(a) a legal practitioner partner of a multi-disciplinary partnership;

(b) an employee of a multi-disciplinary partnership who provides legal services and who is an Australian legal practitioner.

Maximum penalty—300 penalty units.

Division 9 Miscellaneous

160 Obligations of practitioners not affected

Except as provided by this part, nothing in this part affects an obligation imposed on—

(a) a legal practitioner director of an incorporated legal practice, or an Australian legal practitioner who is an employee of an incorporated legal practice, under this Act or another Act in his or her capacity as an Australian legal practitioner; or

(b) a legal practitioner partner of, or an Australian legal practitioner who is an employee of, a multi-disciplinary partnership under this Act or another Act in his or her capacity as an Australian legal practitioner.

161 Regulation

(1) A regulation may provide for the following—

(a) the legal services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships;

(b) other services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships in circumstances where a conflict of interest relating to the provision of legal services may arise.

(2) A regulation prevails over any inconsistent provision of the legal profession rules.

(3) A regulation may provide that a breach of a provision of a regulation is capable of constituting unsatisfactory professional conduct or professional misconduct—

(a) for an incorporated legal practice—by a legal practitioner director, or by the Australian legal practitioner responsible for the breach, or both; or

(b) for a multi-disciplinary partnership—by a legal practitioner partner of the multi-disciplinary partnership, or by the Australian legal practitioner responsible for the breach, or both.

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Part 2.8 Legal practice by foreign lawyers

Division 1 Preliminary

162 Main purpose of pt 2.8

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

163 Definitions for pt 2.8

In this part—

Australia includes the external Territories.

Australian law means law of the Commonwealth or of a jurisdiction.

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

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

local registration certificate means a registration certificate given under this part.

overseas-registered foreign lawyer means an individual who is properly registered to engage in legal practice in a foreign country by the foreign registration authority for the country.

practise foreign law means doing work, or transacting business, in this jurisdiction concerning foreign law, being work or business of a kind that, if it concerned the law of this

jurisdiction, would ordinarily be done or transacted by an Australian legal practitioner.

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

164 This part does not apply to Australian legal practitioners

(1) This part does not apply to an Australian legal practitioner, including an Australian legal practitioner who is also an overseas-registered foreign lawyer.

(2) Accordingly, nothing in this part requires or enables an Australian legal practitioner, including an Australian legal practitioner who is also an overseas-registered foreign lawyer, to be registered as a foreign lawyer under this Act in order to practise foreign law in this jurisdiction.

Division 2 Practice of foreign law

165 Requirement for registration

(1) A person must not practise foreign law in this jurisdiction unless the person is—

(a) an Australian-registered foreign lawyer; or

(b) an Australian legal practitioner.

Maximum penalty—200 penalty units.

(2) However, a person does not contravene subsection (1) if the person is an overseas-registered foreign lawyer—

(a) who—

(i) practises foreign law in this jurisdiction for 1 or more periods that do not exceed in aggregate 90 days in any period of 12 months; or

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(ii) is subject to a restriction imposed under the *Migration Act 1958* (Cwlth) that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person; and

(b) who—

(i) does not keep an office for the purpose of practising foreign law in this jurisdiction; or

(ii) does not become a partner or director of a law practice.

166 Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction

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

167 Scope of practice

(1) An Australian-registered foreign lawyer may provide only the following legal services in this jurisdiction—

(a) doing work, or transacting business, concerning the law of a foreign country if the lawyer is registered by the foreign registration authority for the country;

(b) legal services, including appearances, in relation to an arbitration proceeding of a kind prescribed under a regulation;

(c) legal services, including appearances, in relation to a proceeding before a body other than a court, being a proceeding in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of a country mentioned in paragraph (a) is essential;

(d) legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed under a regulation.

(2) Nothing in this part authorises an Australian-registered foreign lawyer to appear in any court, except on the lawyer's own behalf, or to practise Australian law in this jurisdiction.

(3) Despite subsection (2), an Australian-registered foreign lawyer may advise on the effect of an Australian law if—

(a) the giving of advice on Australian law is necessarily incidental to the practice of foreign law; and

(b) the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

168 Form of practice

(1) An Australian-registered foreign lawyer may, subject to any conditions attaching to the foreign lawyer's registration, practise foreign law—

(a) on the foreign lawyer's own account; or

(b) in partnership with 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both, in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under a law of this jurisdiction; or

(c) as a director or employee of an incorporated legal practice or a partner or employee of a multi-disciplinary partnership that is permitted by a law of this jurisdiction; or

(d) as an employee of an Australian legal practitioner or law firm in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the employment would be permitted under a law of this jurisdiction; or

(e) as an employee of an Australian-registered foreign lawyer.

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

169 Application of Australian professional ethical and practice standards

(1) An Australian-registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by an Australian legal practitioner in practising Australian law in this jurisdiction, be capable of constituting unsatisfactory professional conduct or professional misconduct.

(2) Chapter 4 applies to a person who—

(a) is an Australian-registered foreign lawyer; or

(b) was an Australian-registered foreign lawyer when the relevant conduct allegedly happened, but is no longer an Australian-registered foreign lawyer (in which case chapter 4 applies as if the person were an Australian-registered foreign lawyer);

and so applies as if references in chapter 3 to an Australian legal practitioner were references to a person of that kind.

(3) A regulation may make provision in relation to the application, with or without changes, of the provisions of chapter 4 for the purposes of this section.

(4) Without limiting the matters that may be taken into account in deciding whether a person should be disciplined for a contravention of subsection (1), the following matters may be taken into account—

(a) whether the conduct of the person was consistent with the standard of professional conduct of the legal profession in any foreign country where the person is registered;

(b) whether the person contravened the subsection wilfully or without reasonable excuse.

(5) Without limiting another provision of this section or the orders that may be made under chapter 4 as applied by this section, the following orders may be made under that chapter as applied by this section—

(a) an order that a person's registration under this Act as a foreign lawyer be cancelled;

(b) an order that a person's registration under a corresponding law as a foreign lawyer be cancelled.

170 Designation

(1) An Australian-registered foreign lawyer may use only the following designations—

(a) the lawyer's own name;

(b) a title or business name that the lawyer is authorised by law to use in a foreign country where the lawyer is registered by a foreign registration authority;

(c) subject to this section, the name of a foreign law practice with which the lawyer is affiliated or associated whether as a partner, director, employee or otherwise;

(d) if the lawyer is a principal of any law practice in Australia whose principals include both 1 or more Australian-registered foreign lawyers and 1 or more Australian legal practitioners—a description of the practice that includes reference to both Australian legal practitioners and Australian-registered foreign lawyers.

Examples for paragraph (d)—

- solicitors and locally registered foreign lawyers
- Australian solicitors and US attorneys

(2) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the practice's name in or in connection with practising foreign law in this jurisdiction only if—

(a) the lawyer indicates, on the lawyer's letterhead or another document used in this jurisdiction to identify the

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Not authorised—indicative only

lawyer as an overseas-registered foreign lawyer, that the foreign law practice practises only foreign law in this jurisdiction; and

(b) the lawyer has provided the law society with acceptable evidence that the lawyer is a principal of the foreign law practice.

(3) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the name of the practice as mentioned in this section whether or not other principals of the practice are Australian-registered foreign lawyers.

(4) This section does not authorise the use of a name or other designation that contravenes any requirements of the law of this jurisdiction concerning the use of business names or that is likely to lead to any confusion with the name of any established domestic law practice or foreign law practice in this jurisdiction.

171 Letterhead and other identifying documents

(1) An Australian-registered foreign lawyer must indicate, in each public document distributed by the lawyer in connection with the lawyer's practice of foreign law, the fact that the lawyer is an Australian-registered foreign lawyer and is restricted to the practice of foreign law.

(2) Subsection (1) is satisfied if the lawyer includes in the public document the words—

(a) 'registered foreign lawyer' or 'registered foreign practitioner'; and

(b) 'entitled to practise foreign law only'.

(3) An Australian-registered foreign lawyer may, but need not, include any or all of the following on any public document—

(a) an indication of all foreign countries in which the lawyer is registered to engage in legal practice;

(b) a description of himself or herself, and any law practice with which the lawyer is affiliated or associated, in any of the ways designated in section 170.

(4) In this section—

public document includes any business letter, statement of account, invoice, business card, and promotional and advertising material.

172 Advertising

(1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the law society or by law on the legal practice engaged in by an Australian legal practitioner that are relevant to the practice of law in this jurisdiction.

(2) Without limiting subsection (1), an Australian-registered foreign lawyer must not advertise, or use any description on the lawyer's letterhead or another document used in this jurisdiction to identify the lawyer as a lawyer, in any way that—

(a) might reasonably be regarded as—

(i) false, misleading or deceptive; or

(ii) suggesting that the Australian-registered foreign lawyer is an Australian legal practitioner; or

(b) contravenes a regulation.

173 Foreign lawyer employing Australian legal practitioner

(1) An Australian-registered foreign lawyer may employ 1 or more Australian legal practitioners.

(2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

(3) An Australian legal practitioner employed by an Australian-registered foreign lawyer may practise foreign law.

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Not authorised—indicative only

(4) An Australian legal practitioner employed by an Australian-registered foreign lawyer must not do either of the following—

(a) provide advice on Australian law to, or for use by, the Australian-registered foreign lawyer;

(b) otherwise practise Australian law in this jurisdiction in the course of that employment.

(5) Subsection (4) does not apply to an Australian legal practitioner employed by a law firm, a partner of which is an Australian-registered foreign lawyer, if at least 1 other partner is an Australian legal practitioner.

(6) Any period of employment of an Australian legal practitioner by an Australian-registered foreign lawyer can not be used to satisfy a requirement imposed by a condition on a local practising certificate to complete a period of supervised legal practice.

174 Trust money and trust accounts

(1) Subject to this section, the provisions of part 3.3 and any other provisions under this Act relating to requirements about trust money and trust accounts apply to Australian-registered foreign lawyers in the same way as they apply to law practices and Australian legal practitioners.

(2) A regulation may make provision in relation to the application, with or without changes, of the provisions of this Act relating to trust money and trust accounts for the purposes of this section.

(3) In this section—

money includes money other than in this jurisdiction.

175 Professional indemnity insurance

(1) An Australian-registered foreign lawyer must, at all times while practising foreign law in this jurisdiction, comply with 1 of the following—

(a) the foreign lawyer must have professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian legal practitioners in any jurisdiction;

(b) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a), the foreign lawyer—

(i) must have professional indemnity insurance that covers the practice of foreign law in this jurisdiction and that complies with the relevant requirements of a foreign law or foreign registration authority; and

(ii) if the insurance is for less than $1.5m (inclusive of defence costs), must provide a disclosure statement to each client disclosing the level of cover;

(c) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) or (b), the foreign lawyer must provide a disclosure statement to each client stating that the lawyer does not have complying professional indemnity insurance.

(2) A disclosure statement must be made in writing before, or as soon as practicable after, the foreign lawyer is retained in the matter.

(3) A disclosure statement provided to a person before the foreign lawyer is retained in a matter is taken to be provided to the person as a client for the purposes of this section.

(4) A disclosure statement is not valid unless it is given under, and complies with, any applicable requirements of a regulation.

176 Fidelity cover

A regulation may provide that provisions of part 3.6 apply to prescribed classes of Australian-registered foreign lawyers and so apply with any changes stated in the regulation.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Local registration of foreign lawyers generally

177 Local registration of foreign lawyers

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

178 Duration of registration

(1) Registration as a foreign lawyer granted under this Act is in force from the day stated in the local registration certificate until the end of the financial year in which it is granted, unless the registration is sooner suspended or cancelled.

(2) Registration as a foreign lawyer renewed under this Act is in force until the end of the financial year following its previous period of currency, unless the registration is sooner suspended or cancelled.

(3) If an application for the renewal of registration as a foreign lawyer has not been decided by the following 1 July, the registration—

(a) continues in force on and from that 1 July until the law society renews or refuses to renew the registration or the holder withdraws the application for renewal, unless the registration is sooner suspended or cancelled; and

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

179 Local registered foreign lawyer is not officer of Supreme Court

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

Division 4 Application for grant or renewal of local registration

180 Application for grant or renewal of registration

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

181 Manner of application

(1) An application for the grant or renewal of registration as a foreign lawyer must be—

(a) made in the law society approved form; and

(b) accompanied by the fees prescribed under a regulation.

(2) Different fees may be set according to different factors decided by the law society.

(3) The fees are not to be greater than the maximum fees for a local practising certificate.

(4) The law society may also require the applicant to pay any reasonable costs and expenses incurred by it in considering the application, including, for example, costs and expenses of making inquiries and obtaining information or documents about whether the applicant meets the criteria for registration.

(5) The fees and costs must not include any component for compulsory membership of any professional association.

(6) The law society approved form may require the applicant to disclose—

(a) matters that may affect the law society's consideration of the application for the grant or renewal of registration; and

(b) particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section.

Not authorised—indicative only

Not authorised—indicative only

(7) The law society approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.

(8) The law society approved form may indicate that stated kinds of matters or particulars previously disclosed in a particular way need not be disclosed for the purposes of the current application.

182 Requirements regarding applications for the grant or renewal of registration

(1) An application for the grant of registration as a foreign lawyer under this Act must state the applicant's educational and professional qualifications.

(2) An application for the grant or renewal of registration must—

(a) state that the applicant is registered to engage in legal practice by 1 or more stated foreign registration authorities in 1 or more foreign countries; and

(b) state that the applicant is not an Australian legal practitioner; and

(c) state that the applicant is not the subject of any disciplinary proceeding in Australia or a foreign country, including any preliminary investigations or action that might lead to a disciplinary proceeding in his or her capacity as—

(i) an overseas-registered foreign lawyer; or

(ii) an Australian-registered foreign lawyer; or

(iii) an Australian lawyer; and

(d) state whether the applicant has been convicted of an offence in Australia or a foreign country, and if so—

(i) the nature of the offence; and

(ii) how long ago the offence was committed; and

(iii) the applicant's age when the offence was committed; and

(e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country; and

(f) state—

(i) that the applicant is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place; and

(ii) whether or not the applicant is subject to any special conditions in engaging in legal practice in any place;

as a result of any criminal, civil or disciplinary proceeding in Australia or a foreign country; and

(g) state any special conditions imposed in Australia or a foreign country as a restriction on legal practice engaged in by the applicant or any undertaking given by the applicant restricting the applicant's practice of law; and

(h) give consent to the making of inquiries of, and the exchange of information with, any foreign registration authorities that the law society considers appropriate regarding the applicant's activities in engaging in legal practice in the places concerned or otherwise regarding matters relevant to the application; and

(i) state which provisions under section 175(1) the applicant proposes to rely on and be accompanied by supporting proof of the relevant matters; and

(j) provide the information, or be accompanied by the other information or documents, or both, that is stated in the application form or in material accompanying the application form.

(3) The application must, if the law society so requires, be accompanied by an original instrument, or a copy of an original instrument, from each foreign registration authority stated in the application that—

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(a) verifies the applicant's educational and professional qualifications; and

(b) verifies the applicant's registration by the authority to engage in legal practice in the foreign country concerned and the date of registration; and

(c) describes anything done by the applicant in engaging in legal practice in that foreign country of which the authority is aware and that the authority believes has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place.

(4) The applicant must, if the law society so requires, certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.

(5) The law society may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the law society.

(6) If the accompanying instrument is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the law society.

Division 5 Grant or renewal of registration

183 Grant or renewal of local registration

(1) The law society must consider an application that has been made for the grant or renewal of registration as a foreign lawyer and may—

(a) grant or refuse to grant the registration; or

(b) renew or refuse to renew the registration.

(2) The law society may, when granting or renewing registration, impose conditions as mentioned in section 203.

(3) If the law society grants or renews the registration, the law society must give the applicant a registration certificate or a notice of renewal.

(4) If the law society decides not to grant or renew the registration, or imposes a condition on the registration that the applicant has not agreed to as part of the grant or renewal of the registration—

(a) the law society must give the person an information notice about the law society's decision; and

(b) the person may appeal to the Supreme Court against the decision.

(5) A notice of renewal may be in the form of a new registration certificate or another form the law society considers appropriate.

184 Requirement to grant or renew registration if criteria satisfied

(1) The law society must grant an application for registration as a foreign lawyer if the law society—

(a) is satisfied the applicant is registered to engage in legal practice in 1 or more foreign countries and is not an Australian legal practitioner; and

(b) considers an effective system exists for regulating engaging in legal practice in 1 or more of the foreign countries; and

(c) considers the applicant is not, as a result of a criminal, civil or disciplinary proceeding, subject to—

(i) any special conditions in engaging in legal practice in any of the foreign countries; and

(ii) any undertakings concerning engaging in legal practice in any of the foreign countries;

that would make it inappropriate to register the person; and

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(d) is satisfied the applicant demonstrates an intention to commence practising foreign law in this jurisdiction within a reasonable period if registration were granted;

unless the law society refuses the application under this part.

(2) The law society must grant an application for renewal of an applicant's registration, unless the law society refuses renewal under this part.

(3) Residence or domicile in this jurisdiction is not to be a prerequisite for or a factor in entitlement to the grant or renewal of registration.

185 Refusal to grant or renew registration

(1) The law society may refuse to consider an application that purports to be an application if it is not made under this Act.

(2) The law society may refuse to grant or renew an applicant's registration if—

(a) the application is not accompanied by, or does not contain, the information required under this part; or

(b) the applicant has contravened this Act or a corresponding law; or

(c) the applicant has contravened an order of a disciplinary body, the former disciplinary body or a corresponding disciplinary body, including but not limited to an order to pay any fine or costs; or

(d) the applicant has contravened an order of a regulatory authority of any jurisdiction to pay any fine or costs; or

(e) the applicant has failed to comply with a requirement under this Act to pay a contribution to, or levy for, the fidelity fund; or

(f) the applicant has contravened a requirement under this Act about professional indemnity insurance; or

(g) the applicant has failed to pay any expenses of external intervention payable under this Act; or

(h) the applicant's foreign legal practice is in receivership (however described).

(3) The law society may refuse to grant or renew an applicant's registration if the regulatory authority of another jurisdiction has under a corresponding law—

(a) refused to grant or renew the applicant's registration; or

(b) suspended or cancelled the applicant's registration.

(4) The law society may refuse to grant registration if satisfied that the applicant is not a fit and proper person to be registered after considering—

(a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section; and

(b) how long ago the offence was committed; and

(c) the person's age when the offence was committed.

(5) The law society may refuse to renew registration if satisfied that the applicant is not a fit and proper person to continue to be registered after considering—

(a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section, other than an offence disclosed in a previous application to the law society; and

(b) how long ago the offence was committed; and

(c) the person's age when the offence was committed.

(6) The law society may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.

(7) If the law society refuses to grant or renew an application for registration as a locally registered foreign lawyer under this section—

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(a) the law society must give the person an information notice about the law society's decision; and

(b) the person may appeal to the Supreme Court against the decision.

(8) Nothing in this section affects the operation of division 7.

Division 6 Amendment, suspension or cancellation of local registration

186 Application of pt 2.8, div 6

This part does not apply to a matter mentioned in division 7.

187 Grounds for amending, suspending or cancelling registration

(1) Each of the following is a ground for amending, suspending or cancelling a person's registration as a foreign lawyer—

(a) the registration was obtained because of incorrect or misleading information;

(b) the person fails to comply with a requirement of this part;

(c) the person fails to comply with a condition imposed on the person's registration;

(d) the person becomes the subject of disciplinary proceedings, including any preliminary investigations or action that might lead to disciplinary proceedings, in Australia or a foreign country in his or her capacity as—

(i) an overseas-registered foreign lawyer; or

(ii) an Australian-registered foreign lawyer; or

(iii) an Australian lawyer;

(e) the person has been convicted of an offence in Australia or a foreign country;

(f) the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country;

(g) the person does not meet the requirements of section 175;

(h) another ground the law society considers sufficient.

(2) Subsection (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under section 203.

188 Amending, suspending or cancelling registration

(1) If the law society believes a ground exists to amend, suspend or cancel a person's registration in this jurisdiction as a foreign lawyer (the ***proposed action***), the law society must give the person a notice (the ***show cause notice***) that—

(a) states the proposed action and—

(i) if the proposed action is to amend the person's registration—the proposed amendment; or

(ii) if the proposed action is to suspend the person's registration—the proposed suspension period; and

(b) states the grounds for proposing to take the proposed action; and

(c) states an outline of the facts and circumstances that form the basis for the law society's belief; and

(d) invites the person to make written representations to the law society, within a stated time of not less than 28 days, as to why the proposed action should not be taken.

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

(a) if the show cause notice stated the proposed action was to amend the person's registration—amend the

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registration in the way stated, or in another way the law society considers appropriate because of the written representations; or

(b) if the show cause notice stated the proposed action was to suspend the person's registration for a stated period—suspend the registration for a period no longer than the stated period; or

(c) if the show cause notice stated the proposed action was to cancel the person's registration—

(i) cancel the registration; or

(ii) suspend the registration for a period; or

(iii) amend the registration in a less onerous way the law society considers appropriate because of the written representations.

(3) If the law society decides to amend, suspend or cancel the person's registration—

(a) the law society must give the person an information notice about the law society's decision; and

(b) the person may appeal to the Supreme Court against the decision.

(4) In this section—

amend, in relation to registration, means amend the registration under section 203 during its currency, otherwise than at the request of the foreign lawyer concerned.

189 Operation of amendment, suspension or cancellation of registration

(1) This section applies if a decision is made to amend, suspend or cancel a person's registration under section 188.

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

(a) the day the information notice about the decision is given to the person;

(b) the day stated in the information notice.

(3) If the person's registration is amended, suspended or cancelled because the person has been convicted of an offence—

(a) the Supreme Court may, on application by the person, order that the amendment, suspension or cancellation be stayed until—

(i) the end of the time to appeal against the conviction; or

(ii) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends; and

(b) the amendment, suspension or cancellation does not have effect during any period for which the stay is in force.

(4) If the person's registration is amended, suspended or cancelled because the person has been convicted of an offence and the conviction is quashed—

(a) the amendment or suspension ceases to have effect when the conviction is quashed; or

(b) the cancellation ceases to have effect when the conviction is quashed and the person's registration is restored as if it had merely been suspended.

190 Other ways of amending or cancelling registration

(1) This section applies if—

(a) a locally registered foreign lawyer requests the law society to amend or cancel the person's registration and the law society proposes to give effect to the request; or

(b) the law society proposes to amend a locally registered foreign lawyer's registration only for a formal or clerical

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reason or in another way that does not adversely affect the person's interests.

(2) The law society may amend or cancel the registration as mentioned in subsection (1) by written notice given to the person.

(3) Section 188 does not apply to an amendment or cancellation under this section.

191 Relationship of this division with ch 4

Nothing in this division prevents a complaint being made or an investigation matter being started under chapter 4 about a matter to which this division relates.

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

192 Applicant for local registration—show cause event

(1) This section applies if—

(a) a person is applying for registration as a foreign lawyer under this Act; and

(b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person first became an overseas-registered foreign lawyer.

(2) As part of the application, the applicant must give the law society a written statement, as required under a regulation—

(a) about the show cause event; and

(b) explaining why, despite the event, the applicant is a fit and proper person to be a locally registered foreign lawyer.

(3) However, the applicant need not give a statement under subsection (2) if the applicant has previously given the law

society a statement under this section, or a notice and statement under section 193, for the event explaining why, despite the event, the applicant is a fit and proper person to be a locally registered foreign lawyer.

193 Locally registered foreign lawyer—show cause event

(1) This section applies to a show cause event that happens in relation to a locally registered foreign lawyer.

(2) The locally registered foreign lawyer must give the law society both of the following—

(a) within 7 days after the day of the event—notice, in the law society 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 person considers himself or herself to be a fit and proper person to be a locally registered foreign lawyer.

(3) However, if a written statement is provided after the 28 days mentioned in subsection (2)(b), the law society may accept the statement and take it into consideration.

194 Refusal, amendment, suspension or cancellation of local registration—failure to show cause

(1) The law society may refuse to grant or renew, or may amend, suspend or cancel, local registration if the applicant for registration or the locally registered foreign lawyer—

(a) is required by section 192 or 193 to give a written statement relating to a matter to the law society and the applicant or foreign lawyer has not done so; or

(b) has given a written statement under section 192 or 193 but the law society does not consider the applicant or foreign lawyer has shown in the statement that, despite the show cause event concerned, he or she is a fit and proper person to be a locally registered foreign lawyer.

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(2) For subsection (1)(b), a written statement accepted by the law society as mentioned in section 193(3) is taken to have been given under section 193.

(3) If the law society decides to refuse to grant or renew an application for local registration, or to amend, suspend or cancel the registration of, a locally registered foreign lawyer—

(a) the law society must give the person an information notice about the decision; and

(b) the person may appeal to the Supreme Court against the decision.

195 Restriction on making further applications

(1) If the law society decides under this division to cancel a person's registration, the law society may also decide that the person is not entitled to apply for registration under this part for a stated period of not more than 5 years.

(2) A person in relation to whom a decision has been made under this section, or under a provision of a corresponding law that corresponds to this section, is not entitled to apply for registration under this part during the period stated in the decision.

(3) If the law society makes a decision under this section—

(a) the law society must give the person an information notice about the decision; and

(b) the person may appeal to the Supreme Court against the decision.

196 Relationship of this division with pt 4.6 and ch 6

(1) The law society has and may exercise powers under part 4.6 and chapter 6, in relation to a matter under this division, as if the matter were the subject of a complaint under chapter 4.

(2) Accordingly, the provisions of part 4.6 and chapter 6, apply in relation to a matter under this division, and so apply with any necessary changes.

(3) Nothing in this division prevents a complaint being made or an investigation matter being started under chapter 4 about a matter to which this part relates.

Division 8 Further provisions relating to local registration

197 Immediate suspension of registration

(1) This section applies, despite sections 188 and 189, if the law society considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer.

(2) The law society may immediately suspend the person's registration for any of the following reasons, whether they happened before or after the commencement of this section—

(a) the locally registered foreign lawyer has become an insolvent under administration;

(b) the locally registered foreign lawyer has been convicted of a serious offence or tax offence;

(c) a ground exists on which the certificate could be suspended or cancelled under section 188.

(3) The law society suspends the person's registration by giving an information notice to the person about the law society's decision to suspend.

(4) The information notice must also state that the person may make written representations to the law society about the suspension.

(5) Subject to subsection (8), the person's registration continues to be suspended until the earlier of the following—

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(a) the time at which the law society informs the person of the law society's decision by information notice under section 188;

(b) the end of 56 days after the information notice is given to the person under this section.

(6) If the person makes written representations to the law society about the suspension, the law society must consider the written representations.

(7) The law society may revoke the suspension at any time, whether or not because of written representations made to it by the person.

(8) Also—

(a) the law society may apply to the Supreme Court for an order extending the period of the suspension; and

(b) if the court considers it appropriate and the suspension has not ended under subsection (5), 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's order.

(9) The law society must give the person written notice about its decision to apply under subsection (8) for an order extending the period of the suspension.

198 Surrender of local registration certificate and cancellation of registration

(1) A person registered as a foreign lawyer under this part may surrender the local registration certificate or notice of renewal to the law society.

(2) If a local registration certificate or notice of renewal is surrendered, the law society may cancel the registration.

199 Automatic cancellation of registration on grant of practising certificate

A person's registration under this part is taken to be cancelled if the person becomes an Australian legal practitioner.

200 Suspension or cancellation of registration not to affect disciplinary processes

The suspension or cancellation of a person's registration as a foreign lawyer under this part does not affect any disciplinary processes in relation to matters happening before the suspension or cancellation.

201 Return of local registration certificate on amendment, suspension or cancellation of registration

(1) This section applies if a person's registration as a foreign lawyer under this part is amended, suspended or cancelled.

(2) The law society may—

(a) give the person a notice requiring the person to return the registration certificate or notice of renewal to the law society in the way stated in the notice within a stated period of not less than 14 days; or

(b) include in an information notice, that the law society must give to the person under this part, further notice requiring the person to return the registration certificate or notice of renewal to the law society in the way stated in the notice within a stated period of not less than 14 days.

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

Maximum penalty—50 penalty units.

(4) The law society must return the registration certificate or notice of renewal to the person—

(a) if the certificate or notice is amended—after amending it; or

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(b) if the certificate or notice is suspended and is still current at the end of the suspension period—at the end of the suspension period.

Division 9 Conditions on registration

202 Conditions generally

The registration of a person as a foreign lawyer under this part is subject to the following—

(a) any conditions imposed by the law society;

(b) any statutory conditions imposed under this Act or another Act;

(c) any conditions imposed under the legal profession rules;

(d) any conditions imposed under chapter 4 or under provisions of a corresponding law that correspond to chapter 4.

203 Conditions imposed by law society

(1) The law society may impose conditions on a person's registration as a foreign lawyer—

(a) when it is granted or renewed; or

(b) at any time during its currency.

(2) A condition imposed under this section—

(a) may be about any matter in relation to which a condition could be imposed on a local practising certificate or any other matter agreed to by the foreign lawyer; and

(b) must be reasonable and relevant.

(3) The law society must not impose a condition under subsection (2)(a) that is more onerous than a condition that it would impose on a local practising certificate of a local legal practitioner in the same or similar circumstances.

(4) The law society may vary or revoke a condition imposed by it under this section.

204 Statutory condition regarding notification of offence

(1) It is a statutory condition of a registration as a foreign lawyer that the lawyer must give notice, in a law society approved form, to the law society if the lawyer is—

(a) convicted of an offence that would have to be disclosed in relation to an application for registration as a foreign lawyer; or

(b) charged with a serious offence.

(2) The notice must be given to the law society within 7 days after the conviction or the day the lawyer is charged.

(3) A regulation may state the person to whom, or the address to which, the notice is to be given.

(4) This section does not apply to an offence to which division 7 applies.

205 Conditions imposed by regulation

A regulation may make provision in relation to an Australian-registered foreign lawyer, including, for example—

(a) imposing conditions on the registration of persons as foreign lawyers or any class of foreign lawyers; or

(b) authorising conditions to be imposed on the registration of persons as foreign lawyers or any class of foreign lawyers.

206 Compliance with conditions

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

Maximum penalty—50 penalty units.

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Not authorised—indicative only

Division 10 Interstate-registered foreign lawyers

207 Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction

(1) This part does not authorise an interstate-registered foreign lawyer to practise foreign law in this jurisdiction to a greater extent than a locally registered foreign lawyer could be authorised under a local registration certificate.

(2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction—

(a) is subject to any conditions imposed by the law society under section 208, and any conditions imposed under the legal profession rules as mentioned under that section; and

(b) is to the greatest extent and with all necessary changes—

(i) the same as the interstate-registered foreign lawyer's right to practise foreign law in the lawyer's home jurisdiction; and

(ii) subject to any condition on the interstate-registered foreign lawyer's right to practise foreign law in that jurisdiction.

(3) If there is an inconsistency between conditions mentioned in subsection (2)(a) and conditions mentioned in subsection (2)(b), the conditions that the law society believes are the more onerous prevail to the extent of the inconsistency.

(4) An interstate-registered foreign lawyer must not practise foreign law in this jurisdiction in a way that is not authorised by this Act or in contravention of any condition mentioned in this section.

208 Additional conditions on practice of interstate-registered foreign lawyers

(1) An interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction is subject to any condition imposed under this Act.

(2) Without limiting subsection (1), the law society may impose any condition on the interstate-registered foreign lawyer's practice of foreign law in this jurisdiction that it may impose under this Act in relation to a locally registered foreign lawyer.

(3) Conditions imposed under a regulation, the legal profession rules or subsection (2) must not be more onerous than conditions applying to locally registered foreign lawyers in the same or similar circumstances.

(4) If the law society imposes a condition under subsection (1)—

(a) the law society must give the interstate-registered foreign lawyer an information notice about the law society's decision; and

(b) the person may appeal to the Supreme Court against the decision.

Division 11 Miscellaneous

209 Consideration and investigation of applicants and locally registered foreign lawyers

(1) To help it consider whether or not to grant, renew, amend, suspend or cancel registration under this part, the law society may, by notice to the applicant or a locally registered foreign lawyer, require the applicant or locally registered foreign lawyer—

(a) to give it stated documents or information; or

(b) to cooperate with any inquiries that it considers appropriate.

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(2) A failure to comply with a notice under subsection (1) by the date stated in the notice and in the way required by the notice is a ground for making an adverse decision in relation to the action being considered by the law society.

210 Register of locally registered foreign lawyers

(1) The law society must keep a register of the names of locally registered foreign lawyers.

(2) The register must—

(a) state any conditions imposed by it on a foreign lawyer's registration; and

(b) otherwise include the particulars prescribed under a regulation.

(3) The register may be kept in the way the law society decides.

(4) The law society must ensure that an up-to-date version of the register is available, without charge, for public inspection—

(a) at the law society's principal place of business during normal working hours; or

(b) on the law society's internet site or an internet site identified on the law society's internet site.

211 Publication of information about locally registered foreign lawyers

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

212 Supreme Court orders about conditions

(1) The law society may apply to the Supreme Court for an order that an Australian-registered foreign lawyer not contravene a condition imposed under this part.

(2) The Supreme Court may make any order it considers appropriate relating to the application.

213 Exemption by law society

(1) The law society may exempt an Australian-registered foreign lawyer, or class of Australian-registered foreign lawyers, from compliance with a stated provision under this Act that would otherwise apply to the Australian-registered foreign lawyer or class of Australian-registered foreign lawyers.

(2) An exemption may be granted unconditionally or subject to conditions stated in writing.

(3) The law society may revoke or vary a condition imposed under this section or impose new conditions.

214 Membership of professional association

(1) An Australian-registered foreign lawyer is not required to join any professional association.

(2) However, subsection (1) does not prevent an Australian-registered foreign lawyer joining a professional association if the person is eligible to do so.

215 Refund of fees

(1) A regulation may provide for the refund of a portion of a fee paid in relation to registration as a foreign lawyer if the registration is suspended or cancelled during its currency.

(2) Without limiting subsection (1), a regulation may state—

(a) the circumstances in which a refund is to be made; and

(b) the amount of the refund or the way in which the amount of the refund is to be decided.

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Not authorised—indicative only

Chapter 3 Conduct of legal practice

Part 3.1 Preliminary

216 Simplified outline of ch 3

(1) This chapter contains provisions regulating various aspects of the legal profession with the aim of ensuring that law practices and lawyers operate effectively in the interests of justice, their clients and the public interest.

(2) The following is a general outline of the contents of this chapter—

(a) part 3.2 provides for the making of legal profession rules to regulate persons who may engage in legal practice, or the practice of foreign law, in this jurisdiction and for the regulatory bodies to provide for administrative matters in administration rules (including indemnity rules);

(b) part 3.3 regulates the receipt, handling of and accounting for trust money by law practices;

(c) part 3.4 sets out the requirements for law practices for disclosures to clients regarding legal costs, the making and setting aside of costs agreements in relation to legal services, the billing of costs for legal services and the assessment of legal costs;

(d) part 3.5 requires particular lawyers and foreign lawyers to obtain professional indemnity insurance covering their legal practice in this jurisdiction;

(e) part 3.6 establishes a system for compensation for defaults by law practices arising from acts or omissions of associates.

(3) Subsection (2) is intended only as a guide to readers as to the general scheme of this chapter.

Part 3.2 Manner of legal practice

Division 1 Preliminary

217 Main purposes of pt 3.2

The main purposes of this part are as follows—

(a) to promote the maintenance of high standards of professional conduct by providing for legal profession rules to regulate persons who may engage in legal practice, or the practice of foreign law, in this jurisdiction;

(b) to allow each regulatory authority to provide for administrative matters by providing for administration rules.

218 Definitions for pt 3.2

In this part—

barristers rules means rules made by the bar association under this part.

legal profession rules means solicitors rules or barristers rules.

solicitors rules means rules made by the law society under this part.

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Not authorised—indicative only

Division 2 Rules for Australian legal practitioners and other individuals

219 Rules for Australian legal practitioners engaged in practice as solicitors and others

(1) The law society may make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners as solicitors.

(2) The law society may make rules about engaging in legal practice in this jurisdiction as an Australian-registered foreign lawyer.

220 Rules for Australian legal practitioners engaged in practice in the manner of barristers

(1) The bar association may make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners as barristers.

(2) The barristers rules 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 an entity;

(b) holding office as a legal practitioner director of an incorporated legal practice;

(c) being a legal practitioner partner in a multi-disciplinary partnership.

221 Legal profession rules may provide for application to government legal officers

Legal profession rules may provide that the rules apply to government legal officers.

222 Subject matter of legal profession rules

(1) Legal profession rules may make provision about any aspect of legal practice, including standards of conduct expected of the following persons to whom they apply—

(a) for solicitors rules—Australian legal practitioners, government legal officers and Australian-registered foreign lawyers;

(b) for barristers rules—Australian legal practitioners and government legal officers.

(2) The power to make legal profession rules is not limited to matters for which this Act specifically authorises the making of legal profession rules or administration rules.

223 Public notice of proposed legal profession rules

(1) A regulatory authority that, after the commencement of this section, proposes to make a legal profession rule under this division 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 and the commissioner before the notice is published.

(3) The regulatory authority must—

(a) ensure that any comments and submissions received within the period stated in the notice for making comments and submissions are appropriately considered; and

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(b) give advice to the Minister about the comments and submissions and, if requested, give copies of the submission to the Minister.

(4) After the end of the period stated in the notice for making comments and submissions, the regulatory authority may make legal profession rules.

(5) However, subsections (1) to (4) do not apply if the Minister is consulted about the proposal and decides, by written notice to the regulatory authority, that publication is not warranted because of the urgent nature, or minor or technical nature, of the proposed legal profession rules.

Division 3 Rules for incorporated legal practices and multi-disciplinary partnerships

224 Rules

(1) The law society may make legal profession rules in relation to the following matters—

(a) the provision of legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, and in particular the provision of legal services by—

(i) officers or employees of incorporated legal practices; or

(ii) partners or employees of multi-disciplinary partnerships;

(b) the provision of services that are not legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, but only if the provision of those services by—

(i) officers or employees of incorporated legal practices; or

(ii) partners or employees of multi-disciplinary partnerships;

may give rise to a conflict of interest relating to the provision of legal services.

(2) Without limiting subsection (1), legal profession rules may be made in relation to professional obligations relating to legal services provided by or in connection with incorporated legal practices or multi-disciplinary partnerships.

(3) However, the legal profession rules can not—

(a) regulate any services that an incorporated legal practice may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or

(b) regulate or prohibit the conduct of officers or employees of an incorporated legal practice (other than in connection with the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or

(c) regulate any services that a multi-disciplinary partnership or partners or employees of a multi-disciplinary partnership may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or

(d) regulate or prohibit the conduct of partners or employees of a multi-disciplinary partnership (other than in connection with the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services).

(4) The power to make rules is not limited to matters for which this Act specifically authorises the making of legal profession rules or administration rules.

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Division 4 Notice about making of legal professional rules and role of committee

225 Minister to give notice of solicitors and barristers rules

(1) The following have no effect unless the Minister notifies the making of them—

(a) solicitors rules;

(b) barristers rules.

(2) A notice under subsection (1) is subordinate legislation.

226 Monitoring role of committee

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

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

(a) to monitor the adequacy of legal profession rules; and

(b) to consider any particular matter about which the Minister asks the committee to make a recommendation for legal profession rules.

Division 5 General provisions for legal profession rules

227 Binding nature of legal profession rules

(1) Legal profession rules are binding on Australian legal practitioners, Australian-registered foreign lawyers and government legal officers to whom they apply.

(2) Failure to comply with legal profession rules is capable of constituting unsatisfactory professional conduct or professional misconduct.

228 Legal profession rules may prohibit practices relating to mortgage financing

(1) Legal professional rules may prohibit Australian legal practitioners and Australian-registered foreign lawyers from engaging in mortgage financing and activities and practices relating to mortgage financing.

(2) Subsection (1) applies despite anything to the contrary in this Act, including, for example, section 224.

229 Relationship of legal profession rules to this Act and regulation

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

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

230 Availability of rules

A regulatory authority must ensure that an up-to-date version of the legal profession rules made by it, and about which notice has been given under section 225, is available, without charge, for public inspection—

(a) at the authority's principal place of business during normal working hours; or

(b) on the authority's internet site or on an internet site identified on the authority's internet site.

Division 6 Administration rules

231 Rules other than legal profession rules

(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) or (3) and no provision under another Act

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prevents rules being made about the matter, the regulatory authority may make rules about the matter that apply 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, a multi-disciplinary partnership or Australian-registered foreign lawyers.

(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;

(b) the courses of study that an Australian lawyer is required to complete for different types of practising certificates, including, for example—

(i) a practising certificate by the law society for unsupervised legal practice or for practice as a principal; or

(ii) 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, examinations, assessments and procedures for the review of assessments, and appeals against assessments;

(d) exempting, indefinitely or for a particular period, a person who applies for a type of practising certificate from the requirement to have completed a course of study for the type, as mentioned in paragraph (b), given the length and nature of the person's experience in legal practice;

(e) requiring a local legal practitioner to undertake education or training for the purpose of continuing professional development as a condition for the grant or renewal of a type of practising certificate;

(f) the nature of, and the standards for, education or training required under paragraph (e), and by whom and when it may be provided;

(g) exempting, in whole or part, a local legal practitioner from a requirement to undertake education or training required under paragraph (e);

(h) exempting a person who applies for the grant or renewal of a practising certificate from requirements under section 56 to complete supervised legal practice or reducing the required period of supervised legal practice;

(i) 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;

(j) setting fees, contributions and levies, other than levies imposed by the law society as mentioned in section 369, the payment of the fees, contributions and levies including the levies imposed by the law society under that section, and other matters relating to payments, including the timing and way of making payments;

(k) other matters that may be approved by the regulatory authority under this Act;

(l) matters relating to indemnity against loss arising from claims in relation to every description of civil liability incurred by any of the following—

(i) a local legal practitioner in connection with the practitioner's practice or in connection with any trust of which the practitioner is or was a trustee;

(ii) a former local legal practitioner, including a person who was a solicitor at any time before the commencement of this section, in connection with the practitioner's practice or in connection with any trust of which the practitioner is or was a trustee;

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(iii) an incorporated legal practice in connection with it engaging in legal practice in this jurisdiction or in connection with any trust of which it, or 1 of its associates, is or was a trustee;

(iv) an incorporated legal practice in connection with it formerly engaging in legal practice in this jurisdiction or in connection with any trust of which it, or 1 of its associates, is or was a trustee;

(v) an Australian-registered foreign lawyer in connection with the lawyer's practice of foreign law in this jurisdiction or in connection with any trust of which the lawyer is or was a trustee;

(vi) a former Australian-registered foreign lawyer in connection with the lawyer's practice of foreign law in this jurisdiction or in connection with any trust of which the lawyer is or was a trustee.

(3) Without limiting subsection (2)(j), a regulatory authority may make rules setting fees for assessing an application for an exemption mentioned in subsection (2)(d), (g) or (h).

(4) Rules about a matter mentioned in subsection (2) or (3) are ***administration rules***, whether or not the rules are made—

(a) under this section; or

(b) if the regulatory authority has power under another Act or otherwise to make the rules for the matter—under that other Act or otherwise.

(5) Administration rules about a matter mentioned in subsection (2)(l) are ***indemnity rules***.

(6) This division does not affect a regulatory authority's power under another Act or otherwise to make rules but rules made under another Act or otherwise that are administration rules are taken to be made under this Act.

Example—

If a provision of this Act provides that the right to engage in legal practice is subject to provisions under this Act, the right of practice is subject to relevant administration rules.

(7) To remove any doubt, it is declared that administration rules are statutory instruments under the *Statutory Instruments Act 1992*.

Note—

Under the *Statutory Instruments Act 1992*, sections 24 and 25, administration rules may provide for a fee in relation to specified exceptions and factors or different persons or matters.

(8) Rules made under subsection (2)(b) or (f) must allow for the provision of educational or training programs to be open to all service providers meeting a standard approved by the regulatory authority.

(9) Rules made under subsection (2) about education or training for the purpose of continuing professional development must have—

(a) sufficient regard to opportunities for participation by legal practitioners in rural and regional areas; and

(b) provisions for exemptions having regard to hardship.

232 Indemnity rules

(1) Indemnity rules—

(a) may authorise or require the regulatory authority to establish and keep 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; or

(d) may require any of the following to take out and keep insurance with insurers carrying on insurance business

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and approved by the law society for the purposes of the insurance—

(i) an incorporated legal practice engaged in legal practice in this jurisdiction;

(ii) a legal practitioner director of the incorporated legal practice;

(iii) an Australian legal practitioner who is an officer or employee of the incorporated legal practice; or

(e) may make provision in relation to insurance for Australian-registered foreign lawyers engaged in the practice of foreign law in this jurisdiction.

(2) Indemnity rules—

(a) may state 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 kept under the indemnity rules, 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 regulatory authority, or a class of certificate holders, to make payments (by way of levy) on any insurance policy taken out and kept by the authority under the indemnity rules; and

(d) may require an Australian legal practitioner or incorporated legal practice required to be insured under the rule, or an Australian-registered foreign lawyer with or applying for insurance under the rule, to disclose the following—

(i) information about professional indemnity insurance to clients or prospective clients;

(ii) information to the regulatory authority that is necessary for the regulatory authority to calculate

insurance levies applicable to the practitioner, practice or lawyer; and

(e) may prescribe terms and conditions with which an insurance policy, required by the indemnity rules made for the purposes of subsection (1)(c), must comply; and

(f) may authorise the regulatory authority to decide the amount of a payment required by the indemnity rules, subject to limits under the rules; and

(g) may authorise the regulatory authority or insurer to take a proceeding 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 rules, and may state circumstances in which the proceeding may be taken; and

(h) may empower the regulatory authority to take steps as it considers necessary or expedient to find out whether or not the indemnity rules are being complied with.

(3) Indemnity rules may provide in relation to a law practice for any matter that it may, under subsection (2), provide in relation to a certificate holder.

(4) Insurance levies or other amounts payable under the indemnity rules by a law practice may be decided by reference to the total number of Australian legal practitioners employed by the practice and other relevant matters.

(5) This section does not limit section 231(2)(l).

233 Relationship of administration rules to this Act and regulation

(1) A regulation may be made in relation to any matter mentioned in section 231(2) or (3) for which administration rules may be made.

(2) A provision of a regulatory authority's administration rules does not have effect to the extent that it is inconsistent with

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this Act, a regulation or legal profession rules relevant to the authority.

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

(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, a regulation may apply, adopt or incorporate administration rules.

234 Relationship between legal profession rules and administration rules

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

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

235 Availability of administration rules

A regulatory authority must ensure that an up-to-date version of the administration rules of the regulatory authority is available, without charge, for public inspection—

(a) at the authority's principal place of business during normal working hours; or

(b) on the authority's internet site or an internet site identified on the authority's internet site.

Part 3.3 Trust money and trust accounts

Division 1 Preliminary

236 Main purposes of pt 3.3

The main purposes of this part are as follows—

(a) to ensure trust money is held by law practices in a way that protects the interests of persons for whom money is held, both inside and outside this jurisdiction;

(b) to minimise compliance requirements for law practices that provide legal services within and outside this jurisdiction;

(c) to ensure the law society can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

237 Definitions for pt 3.3

(1) In this part—

approved ADI means an ADI approved under section 280 by the chief executive.

controlled money means money received or held by a law practice for which the practice has a written direction to deposit the money in an account, other than a general trust account, over which the practice has or will have exclusive control.

Note—

Section 251(6) prevents pooling of controlled money.

controlled money account means an account kept by a law practice with an ADI for the holding of controlled money received by the practice.

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deposit record includes a deposit slip or duplicate deposit slip.

general trust account means an account kept by a law practice with an approved ADI for the holding of trust money received by the practice, other than controlled money or transit money.

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

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

trust account means an account kept by a law practice with an approved ADI to hold trust money.

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

(a) money received by the practice on account of legal costs in advance of providing the services; and

(b) controlled money received by the practice; and

(c) transit money received by the practice; and

(d) money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for another person.

trust records includes the following documents—

(a) receipts;

(b) cheque butts or cheque requisitions;

(c) records of authorities to withdraw by electronic funds transfer;

(d) deposit records;

(e) trust account ADI statements;

(f) trust account receipts and payments cash books;

(g) trust ledger accounts;

(h) records of monthly trial balances;

(i) records of monthly reconciliations;

(j) trust transfer journals;

(k) statements of account required to be given under a regulation;

(l) registers required to be kept under a regulation;

(m) monthly statements required to be kept under a regulation;

(n) files relating to trust transactions or bills of costs or both;

(o) written directions, authorities or other documents required to be kept under this Act or a regulation;

(p) supporting information required to be kept under a regulation in relation to powers to deal with trust money.

(2) A reference in this part to a law practice's trust account or trust records includes a reference to an associate's trust account or trust records.

(3) A reference in this part to a power given to a law practice or an associate of the practice to deal with money for another person is a reference to a power given to the practice or associate that is exercisable by—

(a) the practice alone; or

(b) an associate of the practice alone, otherwise than in a private and personal capacity; or

(c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following—

(i) 1 or more associates of the practice;

(ii) the person, or 1 or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

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238 Money involved in financial services or investments

(1) Money that is entrusted to or held by a law practice in connection with either of the following is not trust money under this Act—

(a) a financial service provided by the practice or an associate of the practice in circumstances in which the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not the licence is held at any relevant time);

(b) a financial service provided by the practice or an associate of the practice in circumstances in which the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).

(2) Without limiting subsection (1), money that is entrusted to or held by a law practice for a managed investment scheme, or mortgage financing, undertaken by the practice is not trust money under this Act.

(3) Without limiting subsections (1) and (2), money that is entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money under this Act, unless—

(a) the money was entrusted to or held by the practice—

(i) in the ordinary course of legal practice; and

(ii) primarily in connection with the provision of legal services to or at the direction of the client; and

(b) the investment is or is to be made—

(i) in the ordinary course of legal practice; and

(ii) for the ancillary purpose of keeping or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the

money or property to or at the direction of the client.

239 Decisions about status of money

(1) This section applies to money received by a law practice if the law society considers that there is doubt or a dispute as to whether the money is trust money.

(2) The law society may decide that the money is or is not trust money.

(3) Under the *Acts Interpretation Act 1954*, section 24AA, the law society may amend or repeal a decision under this section.

(4) While a decision under this section is in force that money is trust money, the money is taken to be trust money under this Act.

(5) While a decision under this section is in force that money is not trust money, the money is taken not to be trust money under this Act.

(6) This section has effect subject to a decision of a court made in relation to the money concerned.

240 Application of part to law practices and trust money

(1) This part applies to the following law practices in relation to trust money received by them in this jurisdiction—

(a) a law practice that has an office in this jurisdiction, whether or not the practice has an office in another jurisdiction;

(b) a law practice that does not have an office in any jurisdiction at all.

Note—

It is intended that a law practice that receives trust money in this jurisdiction, that does not have an office in this jurisdiction, but has an office in another jurisdiction, must deal with the money under the corresponding law of the other jurisdiction.

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(2) This part applies to the following law practices in relation to trust money received by them in another jurisdiction—

(a) a law practice that has an office in this jurisdiction and in no other jurisdiction;

(b) a law practice that has an office in this jurisdiction and in one or more other jurisdictions but not in the jurisdiction in which the trust money was received, unless the money is dealt with under the corresponding law of another jurisdiction.

(3) However, this part does not apply to law practices or kinds of trust money prescribed under a regulation.

(4) A reference in this section to having an office in a jurisdiction is a reference to having, or engaging in legal practice from, an office or business address in the jurisdiction.

Note—

Section 174 applies this part to Australian-registered foreign lawyers.

241 Protocols for deciding where trust money is received

(1) The law society may enter into arrangements (***trust money protocols***) with corresponding authorities about any or all of the following—

(a) deciding the jurisdiction where a law practice receives trust money;

(b) sharing information about whether, and if so how, trust money is being dealt with under this Act or a corresponding law.

(2) For this Act, to the extent that a trust money protocol is relevant, the jurisdiction where a law practice receives trust money must be decided under the relevant protocol.

(3) The law society may enter into arrangements that amend, revoke or replace a trust money protocol.

(4) A trust money protocol, or an amendment, revocation or replacement of a trust money protocol, has effect in this

jurisdiction only to the extent it is approved under a regulation.

242 When money is received

(1) For this Act, a law practice receives money when—

(a) the practice obtains possession or control of it directly; or

(b) the practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or

(c) the practice, or an associate of the practice (otherwise than in a private and personal capacity) is given a power to deal with the money on behalf of another person.

(2) For this Act, a law practice or associate is taken to have received money if the money is available to the practice or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

243 Discharge by legal practitioner associate of obligations of law practice

(1) The following actions, if taken by a legal practitioner associate of a law practice on behalf of the practice in relation to trust money received by the practice, discharge the corresponding obligations of the practice in relation to the money—

(a) the establishment of a trust account;

(b) the keeping of a trust account;

(c) the payment of trust money into and out of a trust account and other dealings with trust money;

(d) the keeping of trust records;

(e) engaging an external examiner to examine trust records;

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(f) an action of a kind prescribed under a regulation.

(2) If the legal practitioner associate keeps a trust account in relation to trust money received by the law practice, this part and a regulation made under this part apply to the associate in the same way as they apply to a law practice.

(3) Subsection (1) does not apply to the extent that the associate is prevented under a regulation from taking any action mentioned in that subsection.

244 Liability of principals of law practice

(1) A provision of this part or a regulation made under this part expressed as imposing an obligation on a law practice imposes the same obligation on the principals of the law practice jointly and severally, but discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.

(2) A reference in this part or a regulation made under this part to a law practice includes a reference to the principals of the law practice.

245 Former practices, principals and associates

This part applies in relation to former law practices and former principals and associates of law practices in relation to conduct occurring while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary changes.

246 Barristers not to receive trust money

(1) A barrister is not, in the course of practising as a barrister, to receive trust money.

(2) Subsection (1) does not—

(a) prevent a barrister receiving money in payment of legal services that the barrister has performed; and

(b) limit the bar association's power to make legal profession rules in relation to banking arrangements for fees received in advance by a barrister.

Division 2 Trust accounts and trust money generally

247 Keeping general trust account

(1) A law practice that receives trust money to which this part applies must keep a general trust account in this jurisdiction.

Maximum penalty—100 penalty units.

(2) A law practice that is required to keep a general trust account in this jurisdiction must establish and keep the account in the way prescribed under a regulation.

Maximum penalty—100 penalty units.

(3) Subsection (1) does not apply to a law practice in relation to any period during which the practice receives or holds only either or both of the following—

(a) controlled money;

(b) transit money received in a form other than cash.

(4) Subject to any requirements under a regulation, a requirement of this section for a law practice to keep, or establish and keep, a general trust account in this jurisdiction does not prevent the practice from keeping, or establishing and keeping, more than one general trust account in this jurisdiction, whether during the same period or during different periods.

(5) Without limiting the other provisions of this section, a regulation may provide that a law practice must not close a general trust account except as permitted under the regulation.

Not authorised—indicative only

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248 Certain trust money to be deposited in general trust account

(1) Subject to section 255, as soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice unless—

(a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or

(b) the money is controlled money; or

(c) the money is transit money; or

(d) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

Maximum penalty—100 penalty units.

(2) Subject to section 255, a law practice that has received money that is the subject of a written direction mentioned in subsection (1)(a) must deal with the money in accordance with the direction—

(a) within the period, if any, stated in the direction; or

(b) subject to paragraph (a), as soon as practicable after it is received.

Maximum penalty—100 penalty units.

(3) The law practice must keep a written direction mentioned in subsection (1)(a) for the period prescribed under a regulation.

Maximum penalty—100 penalty units.

(4) A person is an ***appropriate person*** for this section if the person is legally entitled to give the law practice directions in relation to dealings with the trust money.

249 Holding, disbursing and accounting for trust money

(1) A law practice must—

(a) hold trust money deposited in a general trust account of the practice exclusively for the person on whose behalf it is received; and

(b) disburse the trust money only under a direction given by the person.

Maximum penalty—50 penalty units.

(2) Subsection (1) applies subject to an order of a court of competent jurisdiction, division 2A or as otherwise authorised by law.

(3) Subject to division 2A, the law practice must account for the trust money in the way prescribed under a regulation.

Maximum penalty—50 penalty units.

250 Withdrawing trust money from general trust account

(1) A law practice must not withdraw trust money from a general trust account otherwise than by—

(a) cheque; or

(b) if the practice is authorised by the law society to withdraw trust money from a general trust account by electronic funds transfer—electronic funds transfer.

Maximum penalty—50 penalty units.

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

(a) cash withdrawals;

(b) ATM withdrawals or transfers;

(c) telephone banking withdrawals or transfers;

(d) unless the law practice is authorised by the law society to withdraw trust money from a general trust account by electronic funds transfer—withdrawals by electronic funds transfer.

(3) A regulation may make provision in relation to withdrawals by cheque or electronic funds transfer, including, for example,

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Not authorised—indicative only

the matters the law society must have regard to in deciding to authorise a law practice to withdraw trust money from a general trust account by electronic funds transfer.

(4) This section has effect despite anything to the contrary in a direction given to the law practice concerned, even if the direction is given by a person who is otherwise legally entitled to give the law practice directions in relation to dealings with the trust money.

251 Controlled money

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

Maximum penalty—50 penalty units.

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

Maximum penalty—50 penalty units.

(3) The law practice that holds controlled money deposited in a controlled money account under subsection (1) must not disburse the money other than under—

(a) the written direction mentioned in that subsection; or

(b) a later written direction given by or on behalf of the person on whose behalf the money was received.

Maximum penalty—50 penalty units.

(4) The law practice must keep the controlled money account, and account for the controlled money, in the way prescribed under a regulation.

Maximum penalty—50 penalty units.

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

Maximum penalty—50 penalty units.

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

Maximum penalty—50 penalty units.

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

252 Withdrawing controlled money from controlled money account

(1) A law practice must not withdraw controlled money from a controlled money account otherwise than by—

(a) cheque; or

(b) if the practice is authorised by the law society to withdraw controlled money from a controlled money account by electronic funds transfer—electronic funds transfer.

Maximum penalty—50 penalty units.

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

(a) cash withdrawals;

(b) ATM withdrawals or transfers;

(c) telephone banking withdrawals or transfers;

(d) unless the law practice is authorised by the law society to withdraw controlled money from a controlled money account by electronic funds transfer—withdrawals by electronic funds transfer.

(3) A regulation may make provision in relation to withdrawals by cheque or electronic funds transfer, including, for example, the matters the law society must have regard to in deciding to authorise a law practice to withdraw controlled money from a controlled money account by electronic funds transfer.

Not authorised—indicative only

Not authorised—indicative only

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

253 Transit money

(1) Subject to section 255, a law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money—

(a) within the period, if any, stated in the instructions; or

(b) subject to paragraph (a), as soon as practicable after it is received.

Maximum penalty—50 penalty units.

(2) The law practice must account for the money in the way prescribed under a regulation.

Maximum penalty—50 penalty units.

254 Trust money subject to specific powers

(1) Subject to section 255, a law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only under the power relating to the money.

Maximum penalty—50 penalty units.

(2) The law practice must account for the money in the way prescribed under a regulation.

Maximum penalty—50 penalty units.

255 Trust money received in the form of cash

(1) A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.

Maximum penalty—100 penalty units.

(2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice—

(a) the money must nevertheless be deposited in a general trust account of the practice under subsection (1); and

(b) after it is deposited in the general trust account, the money is to be dealt with under the applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).

(3) Controlled money received in the form of cash must be deposited in a controlled money account under section 251.

(4) A law practice must deposit transit money received in the form of cash in a general trust account of the practice before the money is otherwise dealt with under the instructions relating to the money.

Maximum penalty—100 penalty units.

(5) A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account, or a controlled money account in the case of controlled money, of the practice before the money is otherwise dealt with under the power.

Maximum penalty—100 penalty units.

(6) This section has effect despite anything to the contrary in any relevant direction, instruction or power.

(7) In this section—

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

general trust money means trust money, other than—

(a) controlled money; and

(b) transit money; and

(c) money that is the subject of a power.

Not authorised—indicative only

Not authorised—indicative only

256 Protection of trust money

(1) Money standing to the credit of a trust account kept by a law practice is not available for the payment of debts of the practice or any of its associates.

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

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

257 Intermixing money

(1) A law practice must not, otherwise than as permitted under subsection (2), mix trust money with other money.

Maximum penalty—100 penalty units.

(2) A law practice is permitted to mix trust money with other money to the extent only that is authorised by the law society and under any conditions imposed by the law society in relation to the authorisation.

258 Dealing with trust money—legal costs and unclaimed money

(1) A law practice may do any of the following in relation to trust money held in a general trust account or controlled money account of the practice for a person—

(a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;

(b) withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements under this Act or prescribed under a regulation are complied with;

(c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under section 713.

(2) Subsection (1) applies despite any other provision of this part but has effect subject to part 3.4.

259 Deficiency in trust account

(1) An Australian legal practitioner must not, without reasonable excuse, cause—

(a) a deficiency in any trust account or trust ledger account; or

(b) a failure to pay or deliver any trust money.

Maximum penalty—200 penalty units.

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

(3) In this section—

cause includes be responsible for.

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

260 Reporting certain irregularities and suspected irregularities

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

(a) the law society; and

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

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—50 penalty units.

(2) If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to—

(a) the law society; and

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

Maximum penalty—50 penalty units.

(3) An Australian legal practitioner is not liable for any loss or damage suffered by another person as a result of the practitioner's compliance with subsection (1) or (2).

261 Keeping trust records

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

Maximum penalty—100 penalty units.

(2) The law practice must keep the trust records—

(a) in the way prescribed under a regulation; and

(b) in a way that at all times discloses the true position in relation to trust money received for any person; and

(c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and

(d) for the period prescribed under a regulation.

Maximum penalty—100 penalty units.

262 False names

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

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

Division 2A Disputes about trust money for sales of lots and proposed lots

262A Application of div 2A

(1) This division applies if—

(a) a law practice holds an amount for the sale of a lot or proposed lot in the practice's trust account; and

(b) before the amount is paid out under division 2, the law practice becomes aware of a dispute, or considers a dispute may arise, between persons having an interest in the amount about entitlement to the amount.

Example of when a law practice may consider a dispute may arise—

A party to the contract does not take the required action to complete the contract and does not make contact with the other party or law practice to explicitly state a dispute has arisen.

(2) In subsection (1)—

amount includes part of the amount.

lot means land the boundaries of which are shown on a plan of survey—

(a) registered under the *Land Act 1994* or *Land Title Act 1994*; or

Not authorised—indicative only

Not authorised—indicative only

(b) registered by the registrar of titles as provided under the *South Bank Corporation Act 1989*.

person, having an interest in an amount for the sale of a proposed lot, does not include an entity acting for a person in relation to the sale or purchase of the proposed lot.

proposed lot means—

(a) a proposed lot within the meaning of the *Land Sales Act 1984*; or

(b) a proposed lot within the meaning of the *Body Corporate and Community Management Act 1997*; or

(c) land that will be shown as a lot on a building units plan or group titles plan registered under the *Building Units and Group Titles Act 1980*; or

Note—

See the *Building Units and Group Titles Act 1980*, section 5A about the limited operation of that Act.

(d) a proposed lot within the meaning of the *South Bank Corporation Act 1989*, section 97B.

262B When amount held for sale of lot or proposed lot may be paid

(1) This section applies if the law practice considers that a person is entitled to an amount mentioned in section 262A(1)(a).

(2) The law practice may give all persons having an interest in the amount a written notice to the following effect—

(a) the practice considers that a stated person is entitled to the amount;

(b) the practice is authorised, under this Act, to pay the amount to the stated person on or after a stated date (at least 60 days after the notice is given) unless—

(i) a proceeding disputing the stated person's entitlement to the amount is started and the practice is advised of the start of the proceeding; or

(ii) all persons having an interest in the amount authorise payment of the amount to the stated person before the stated date.

(3) The practice may pay the amount to the stated person if—

(a) after the stated date, the law practice is unaware of the start of a proceeding claiming an entitlement to the amount; or

(b) on or before the stated date, the law practice receives written notice under subsection (2)(b)(ii) authorising payment of the amount to the stated person.

(4) The practice does not contravene section 249 by disbursing trust money as provided under this section.

(5) The practice is not liable civilly or under an administrative process in relation to the payment of the amount as provided under this section if it is subsequently found that the stated person was not entitled to the amount.

(6) To remove any doubt, it is declared that this section—

(a) provides a process for the payment of an amount mentioned in section 262A(1)(a); and

(b) does not decide legal entitlement to the amount or prevent a person legally entitled to the amount recovering it from the person to whom it was paid.

(7) Nothing in this section requires the practice to give notice under subsection (2) if the practice decides to retain the amount until payment of the amount is authorised by all persons having an interest in the amount or entitlement to the amount is decided by the court.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Investigations

263 Investigations

(1) The law society may, on its own initiative or if asked by the commissioner, investigate the affairs of a law practice under this division.

(2) The investigation—

(a) may be in relation to a particular allegation or suspicion regarding trust money, trust property, a trust account or another aspect of the affairs of the law practice; or

(b) may be carried out as a routine investigation.

(3) The principal purposes of an investigation are—

(a) to find out whether the law practice has complied with or is complying with this part; and

(b) to detect and prevent defaults in relation to the law practice.

(4) Subsection (3) does not limit the scope of the investigation or the powers of the investigator conducting the investigation.

(5) An investigation of the affairs of a law practice under this division is a ***part 3.3 investigation***.

Note—

Chapter 6 applies to a part 3.3 investigation—see section 540.

264 Investigator's report

(1) As soon as practicable after completing a part 3.3 investigation, the investigator must give a written report of the investigation to the law society.

(2) If the part 3.3 investigation relates to a complaint or investigation matter, or was started at the request of the commissioner, the law society must as soon as practicable give a copy of the report to the commissioner.

265 When costs of investigation are debt

(1) If—

(a) an investigator states in his or her report of a part 3.3 investigation that there is evidence that a breach of this Act has been committed or that a default has happened in relation to the law practice whose affairs are under investigation; and

(b) the law society is satisfied that the breach or default is wilful or of a substantial nature;

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

(2) The amount decided by the law society is a debt payable to the society by the law practice whose affairs are under investigation.

(3) The law society must, before seeking to recover the amount payable, give the law practice an information notice about the decision and the amount payable.

(4) The law practice may appeal, to a court having jurisdiction for the amount payable, against the decision within 28 days after the day the information notice is given to the practice.

266 Law society or commissioner may give information to professional accounting association

(1) This section applies if, on considering a report given under section 264 about a law practice, the law society or the commissioner is satisfied the report discloses conduct that shows an external examiner may have breached the professional accounting or audit standards in relation to an external examination of the practice's trust records.

(2) The law society or commissioner may give to the professional accounting association of which the external examiner is, or was, a member—

(a) a copy of the report or the part of the report relevant to the disclosure of the conduct; or

Not authorised—indicative only

Not authorised—indicative only

(b) another document the law society or commissioner considers relevant to the disclosure of the conduct.

(3) If the professional accounting association investigates the conduct of the external examiner—

(a) the investigator who gave the report may, with the approval of the law society, give information to the association about the part 3.3 investigation to which the report relates; and

(b) an officer or employee of the law society may, with the approval of the law society, give information to the association about the content of the report.

(4) However, a report or a part of a report, or another document or information given under subsection (2) or (3), must not include confidential information about a law practice.

(5) In this section—

confidential information, about a law practice, means information that identifies a client of the practice or a party to a matter in which the practice acts.

professional accounting association means—

(a) CPA Australia ACN 008 392 452; or

(b) The Institute of Chartered Accountants in Australia ARBN 084 642 571; or

(c) another entity prescribed under a regulation.

professional accounting or audit standards means—

(a) the accounting standards issued by the Australian Accounting Standards Board; or

(b) the auditing standards issued by the Auditing and Assurance Standards Board.

Division 4 External examinations

267 Appointment and qualifications of external examiner

(1) A law practice must, within 14 days after becoming a law practice to which this part applies, appoint an individual as the external examiner for the practice.

Maximum penalty—50 penalty units.

(2) If an individual appointed as a law practice's external examiner stops being the practice's external examiner, the law practice must, within 14 days after the individual stops being the external examiner, appoint another individual as the external examiner for the practice.

Maximum penalty—50 penalty units.

(3) A law practice may appoint an individual as an external examiner for the practice under this section only if satisfied the individual—

(a) has the qualifications or experience prescribed under a regulation; and

(b) is not disqualified from being an external examiner under section 278.

268 Law practice must have trust records externally examined

(1) A law practice must, for each financial period for the practice and within 60 days after the end of the period, have its trust records externally examined by the practice's external examiner.

Maximum penalty—100 penalty units.

(2) If the law society is satisfied a law practice has not had its trust records externally examined under this section or that an external examination of the practice's trust records has not been carried out in the way prescribed under a regulation, the law society may appoint an external examiner to examine the practice's trust records.

Not authorised—indicative only

Not authorised—indicative only

(3) Without limiting the generality of section 298, this section has effect subject to any exemptions provided by or given under a regulation from the requirement to have trust records examined as otherwise required by this section.

(4) In this section—

financial period, for an entity that is a law practice, means—

(a) for the first period after the entity becomes a law practice—the period of not more than 12 months starting on the day the entity becomes a law practice and ending on 31 March; or

(b) otherwise—12 months ending on 31 March.

269 Restriction on appointment of associates as external examiner

(1) The law society may appoint an associate of a law practice as an external examiner under this division only if satisfied it is appropriate to do so.

(2) However, an associate of a law practice can not be appointed as an external examiner under this division to examine the practice's trust records.

270 Law practice to give notice of external examiner

(1) A law practice must, within 30 days after becoming a law practice to which this part applies, give the law society notice in the approved form of the practice's external examiner.

Maximum penalty—50 penalty units.

(2) A law practice must, immediately after an individual stops being the practice's external examiner, give the law society written notice of the fact.

Maximum penalty—50 penalty units.

(3) A law practice must, within 30 days after an individual stops being the practice's external examiner, give the law society notice in the approved form of the practice's external

examiner appointed under section 267(2) (the ***replacement external examiner***).

Maximum penalty—50 penalty units.

(4) A notice given under subsection (1) or (3) must be signed by the external examiner or replacement external examiner.

271 Notice if person stops being external examiner

If an individual stops being the external examiner for a law practice, the individual must immediately give the law society notice of the fact in the approved form.

Maximum penalty—50 penalty units.

272 Examination of affairs in examining trust records

(1) An external examiner appointed to examine a law practice's trust records may, in carrying out an examination of the trust records, examine the affairs of the practice.

(2) If the law practice is an incorporated legal practice or multi-disciplinary partnership, the reference in subsection (1) to the affairs of the law practice extends to the affairs of the incorporated legal practice or multi-disciplinary partnership or of an associate, so far as they are relevant to trust money, trust records and associated matters.

(3) A reference in this division to trust records includes a reference to the affairs of a law practice that may be examined under this section in the carrying out of an examination of the practice's trust records.

273 Carrying out external examination

(1) An external examination of a law practice's trust records is to be carried out in the way prescribed under a regulation.

(2) Without limiting subsection (1), a regulation may provide for the following—

Not authorised—indicative only

Not authorised—indicative only

(a) the standards to be adopted and the procedures to be followed by external examiners;

(b) the form and content of an external examiner's report on an external examination.

274 External examiner's report on external examination

(1) If a law practice has its trust records examined by an external examiner under section 268(1), the practice must, within 60 days after the end of the period to which the examination relates, give to the law society a copy of the external examiner's report on the examination, unless the practice has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If an external examiner appointed by the law society carries out an external examination of a law practice's trust records, the external examiner must give to the law society a copy of the external examiner's report on the examination.

Maximum penalty—50 penalty units.

275 External examiner to give other reports

(1) This section applies if, in carrying out an external examination of a law practice's trust records, an external examiner becomes aware of a matter that—

(a) is reasonably likely—

(i) to adversely affect the financial position of the law practice to a material extent; or

(ii) to constitute a breach of this part by the law practice; or

(b) is otherwise an irregularity in relation to the trust records or trust accounts of the law practice of which the law society ought reasonably to be made aware.

(2) The external examiner must, within 7 days after becoming aware of the matter, give the law society a written report on the matter.

Maximum penalty—100 penalty units.

276 Final examination of trust records

(1) This section applies if a law practice—

(a) ceases to be authorised to receive trust money; or

(b) ceases to engage in legal practice in this jurisdiction.

(2) The law practice must appoint an individual as an external examiner to examine the practice's trust records—

(a) in relation to the period since an external examination of the practice's trust records was last conducted; and

(b) in relation to each period after the period mentioned in paragraph (a), comprising a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.

Maximum penalty—50 penalty units.

(3) The law practice must give to the law society—

(a) a report of each examination under subsection (2) within 60 days after the end of the period to which the examination relates; and

(b) a statutory declaration in the law society approved form within 60 days of ceasing to hold trust money.

Maximum penalty—20 penalty units.

(4) If an Australian legal practitioner dies, the practitioner's legal personal representative must comply with this section as if the representative were the practitioner.

(5) Nothing in this section affects any other requirements under this part.

Not authorised—indicative only

Not authorised—indicative only

277 Law practice liable for costs of examination

(1) A law practice whose trust accounts have been externally examined must pay the costs of the examination.

(2) If the law society appointed the external examiner to carry out the examination, the law society may decide the reasonable amount payable as the costs of the examination, and the amount is a debt payable to it by the law practice.

(3) The law society must, before seeking to recover an amount mentioned in subsection (2), give the law practice an information notice about the decision stating the amount payable.

(4) The law practice may appeal, to a court having jurisdiction for the amount payable, against the decision within 28 days after the day the information notice is given to the practice.

278 Disqualification of person as external examiner

(1) This section applies if the law society is satisfied that an individual who is an external examiner—

(a) has not carried out an external examination in an appropriate way; or

(b) does not have the qualifications or experience prescribed under a regulation for section 267(3)(a).

(2) The law society may, by QCAT information notice given to the individual, disqualify the individual from being an external examiner.

(3) The disqualification has effect on the day the individual receives the QCAT information notice.

(4) If the disqualification is for a period, the QCAT information notice must state the period of the disqualification.

(5) If an individual who is disqualified under subsection (2) was appointed as an external examiner by a law practice, the law society must give the practice a notice stating—

(a) the individual has been disqualified from being an external examiner under this section; and

(b) if the disqualification is for a period—the period of the disqualification.

(6) An individual who is disqualified under subsection (2) may apply, as provided under the QCAT Act, to the tribunal for a review of the decision to disqualify the individual.

(7) A defect in the QCAT information notice does not affect the individual's right to apply under subsection (6) for a review of the decision to disqualify the individual.

(8) In this section—

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

279 Offence about carrying on external examination

An individual who is disqualified from being an external examiner under section 278 must not carry out, or help another person to carry out, an external examination.

Maximum penalty—50 penalty units.

Division 5 Provisions relating to ADIs

280 Approval of ADIs

(1) The chief executive may approve ADIs at which trust accounts to hold trust money may be kept.

(2) However, the chief executive may give an ADI an approval under subsection (1) only if the ADI has entered into an arrangement with the chief executive under section 287.

(3) In giving an approval under subsection (1), the chief executive may have regard to, and impose conditions on the approval, about—

(a) the way in which the law society and the chief executive are informed of amounts held in trust accounts; and

(b) the auditing of trust accounts; and

Not authorised—indicative only

Not authorised—indicative only

(c) other matters relating to the law society's supervision of trust accounts under this Act; and

(d) other relevant matters prescribed under a regulation.

(4) The chief executive—

(a) may impose a condition under subsection (3) when the approval is given or during the currency of the approval; and

(b) may amend or revoke any conditions imposed.

281 ADIs not subject to certain obligations and liabilities

(1) An ADI at which a trust account is kept by a law practice—

(a) is not under an obligation to control or supervise transactions in relation to the account or to oversee the application of money disbursed from the account; and

(b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right, whether by way of set-off counterclaim, charge or otherwise, against money in the account.

(2) Subsection (1) does not relieve an ADI from any liability to which it is subject apart from this Act.

282 Reports, records and information

(1) An ADI at which a trust account is kept must, as soon as practicable after becoming aware that the account is overdrawn, report the fact to the law society.

Maximum penalty—50 penalty units.

(2) An ADI at which a trust account is kept must report a suspected offence in relation to the trust account to the law society as soon as practicable after forming the suspicion.

Maximum penalty—50 penalty units.

(3) An ADI must give to the law society reports about trust accounts as required under a regulation.

Maximum penalty—50 penalty units.

(4) An ADI at which a law practice's trust account is kept must, if asked by an investigator or external examiner and on production to the ADI of evidence of the appointment of the investigator or external examiner in relation to the law practice—

(a) produce for inspection or copying by the investigator or external examiner any records relating to the trust account or trust money deposited in the trust account; and

(b) provide the investigator or external examiner with full details of any transactions relating to the trust account or trust money.

Maximum penalty—50 penalty units.

(5) An ADI must produce the records and provide the details under subsection (4) without charge.

(6) Subsections (1) to (4) apply despite any duty of confidence to the contrary.

(7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of—

(a) reporting a matter under subsection (1); or

(b) making or giving a report under subsection (2) or (3); or

(c) producing records or providing details under subsection (4).

287 Arrangement with ADI

The chief executive may enter into an arrangement with an ADI about the ADI paying interest to the department on trust accounts kept by law practices.

Not authorised—indicative only

Not authorised—indicative only

Division 7 Miscellaneous

292 Restrictions on receipt of trust money

(1) A law practice, other than an incorporated legal practice, must not receive trust money unless a principal holds an Australian practising certificate authorising the receipt of trust money.

Maximum penalty—200 penalty units.

(2) An incorporated legal practice must not receive trust money unless—

(a) at least one legal practitioner director of the practice holds an Australian practising certificate authorising the receipt of trust money; or

(b) a person is holding an appointment under section 119 in relation to the practice and the person holds an Australian practising certificate authorising the receipt of trust money; or

(c) if money is received during a period in which the practice does not have a legal practitioner director—

(i) the practice is not in default of director requirements under section 119; and

(ii) there was, immediately before the start of that period, at least one legal practitioner director of the practice who held an Australian practising certificate authorising the receipt of trust money.

Maximum penalty—200 penalty units.

293 Application of Act to incorporated legal practices and multi-disciplinary partnerships

(1) The obligations imposed on a law practice under this Act relating to trust money and trust accounts apply to an incorporated legal practice or multi-disciplinary partnership only in relation to legal services provided by the practice or partnership.

(2) A regulation may provide that a provision of this Act, a regulation or the legal profession rules, relating to trust money and trust accounts, does not apply to incorporated legal practices or multi-disciplinary partnerships or both or applies to them with stated changes.

294 Disclosure to clients—money not received or held as trust money

(1) If money entrusted to a law practice is or becomes non-trust money, the practice must notify the person who entrusted the money to the practice that—

(a) the money is not treated as trust money under this Act and is not subject to any supervision, investigation or audit requirements of this Act; and

(b) a claim against the fidelity fund can not be made in relation to the money.

Maximum penalty—50 penalty units.

(2) The notification must be in writing and given to the person—

(a) if the money is non-trust money when it is entrusted to the law practice—when the money is entrusted to the practice; or

(b) if the money was trust money when it was entrusted to the practice but becomes non-trust money because of a decision under section 239—as soon as practicable after the decision is made.

(3) The notification must be given in the way, and contain the information, prescribed under a regulation, if any, for this section.

(4) In this section—

non-trust money means money that is not trust money under this Act because of section 238 or because of a decision under section 239.

Not authorised—indicative only

Not authorised—indicative only

295 Disclosure of accounts used to hold money entrusted to legal practitioners

(1) A law practice must notify the law society of each account kept at an ADI in which the law practice or a legal practitioner associate of the law practice holds money entrusted to the law practice or legal practitioner associate.

Maximum penalty—50 penalty units.

(2) Subsection (1) applies to a law practice whether or not the money is trust money and whether or not section 238 or 239 applies to the money.

(3) The law society must notify the chief executive about the matters the law society is given notice of by law practices under subsection (1).

(4) A notification under this section must be given in the way, and include the details, prescribed by regulation.

296 Report about law society's functions

(1) The chief executive may, by written notice, ask the law society to give to the chief executive or commissioner a report at any time, for a period stated in the chief executive's request, about the law society's functions under this part.

(2) The report must include the information the chief executive considers appropriate, including, for example, information about a law practice's compliance with section 268.

(3) If the chief executive makes a request under subsection (1), the law society must comply with the request and give the relevant report to the chief executive or commissioner by the day stated in the notice for that purpose.

297 Report about law practice

(1) The commissioner may, by written notice, ask the law society to give to the commissioner a report about a law practice's compliance with this part.

(2) The report must be prepared from relevant information in the law society's possession.

(3) If the commissioner makes a request under subsection (1), the law society must comply with the request and give the report to the commissioner by the day stated in the notice for that purpose.

298 Regulation-making power relating to trust money and trust accounts

(1) The Governor in Council may make regulations about a matter to which this part applies.

(2) A regulation may provide for the following—

(a) the establishment, keeping and closure of general trust accounts and controlled money accounts;

(b) the manner of receiving, depositing, withdrawing, making records about and otherwise dealing with and accounting for trust money;

(c) without limiting paragraph (a) or (b)—

(i) the keeping and reconciliation of trust records; and

(ii) the establishment and keeping of trust ledger accounts; and

(iii) the establishment and keeping of records about controlled money and transit money; and

(iv) the establishment and keeping of registers of powers and estates in relation to trust money; and

(v) the recording of information about the investment of trust money; and

(vi) the giving of statements regarding trust money;

(d) the notification to the law society of information relating directly or indirectly to matters to which this part relates, including information about—

(i) trust accounts, trust money and trust records; and

Not authorised—indicative only

Not authorised—indicative only

(ii) the proposed or actual termination of a law practice that holds trust money; and

(iii) the proposed or actual termination of engaging in legal practice in this jurisdiction by a law practice that holds trust money; and

(iv) the proposed or actual restructuring of the business of a law practice so that it no longer holds or no longer will hold trust money;

(e) the carrying out of unannounced examinations of a law practice's trust records by an external examiner;

(f) the creation and exercise of liens over trust money;

(g) exemptions, or the giving of exemptions, from all or any stated requirements of this part.

Part 3.4 Costs disclosure and assessment

Division 1 Preliminary

299 Main purposes of pt 3.4

The main purposes of this part are as follows—

(a) to provide for law practices to make disclosures to clients regarding legal costs;

(b) to regulate the making of costs agreements relating to legal services, including conditional costs agreements;

(c) to regulate the billing of costs for legal services;

(d) to provide a mechanism for the assessment of legal costs and the setting aside of particular costs agreements;

(e) to provide for the maximum payment for a law practice's conduct of a speculative personal injury

claim, other than practice as or in the manner of a barrister.

300 Definitions for pt 3.4

In this part—

associated third party payer see section 301(2).

conditional costs agreement means a costs agreement that provides that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate, as mentioned in section 323, but does not include a costs agreement to the extent to which section 325(1) applies.

costs agreement means an agreement about the payment of legal costs.

costs application means an application under section 335, 336 or 337 for an assessment of the whole or any part of legal costs.

costs assessment means an assessment of legal costs under division 7.

costs assessor means a person appointed under the Uniform Civil Procedure Rules as a cost assessor.

detailed disclosure threshold amount means—

(a) the amount prescribed by regulation for this definition; or

(b) if no amount is prescribed—$3,000.

disbursements includes outlays.

disclosure threshold amount means—

(a) the amount prescribed by regulation for this definition; or

(b) if no amount is prescribed—$1,500.

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itemised bill means a bill stating, in detail, how the legal costs are made up in a way that would allow the legal costs to be assessed under division 7.

litigious matter means a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal.

Note—

A matter is litigious matter when proceedings are initiated or at any stage when proceedings are reasonably likely.

lump sum bill means a bill that describes the legal services to which it relates and specifies the total amount of the legal costs.

non-associated third party payer see section 301(3).

public authority means an authority or body, whether a body corporate or not, established or incorporated for a public purpose by a law of a jurisdiction or of the Commonwealth, and includes a body corporate incorporated under a law of a jurisdiction or of the Commonwealth in which a jurisdiction or the Commonwealth has a controlling interest.

scale of costs includes the costs for a court prescribed under the *Supreme Court of Queensland Act 1991* in relation to a matter.

sophisticated client means a client to whom, because of section 311(1)(c) or (d), disclosure under section 307B, 308 or 309(1) is not or was not required.

third party payer see section 301(1).

uplift fee means additional legal costs, excluding disbursements, payable under a costs agreement on the successful outcome of the matter to which the agreement relates.

301 Terms relating to third party payers

(1) A person is a ***third party payer***, in relation to a client of a law practice, if the person is not the client and—

(a) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or

(b) being under that obligation, has already paid all or a part of those legal costs.

(2) A third party payer is an ***associated third party payer*** if the legal obligation mentioned in subsection (1)(a) is owed to the law practice, whether or not it is also owed to the client or another person.

(3) A third party payer is a ***non-associated third party payer*** if the legal obligation mentioned in subsection (1)(a) is owed to the client or another person but not the law practice.

(4) A legal obligation mentioned in subsection (1) can arise by or under contract or legislation or otherwise.

(5) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.

Division 2 Application of this part

302 Application of part—first instructions rule

This part applies to a matter if the client first instructs the law practice in relation to the matter in this jurisdiction.

303 Part also applies by agreement or at client's election

(1) This part applies to a matter if—

(a) either—

(i) this part does not currently apply to the matter; or

(ii) it is not possible to decide the jurisdiction in which the client first instructs the law practice in relation to the matter; and

(b) either or both of the following—

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(i) the legal services are or will be provided wholly or primarily in this jurisdiction;

(ii) the matter has a substantial connection with this jurisdiction; and

(c) either—

(i) the client accepts, in writing or by other conduct, a written offer to enter into an agreement under subsection (2)(a) for the matter; or

(ii) the client gives notice under subsection (2)(b) for the matter.

(2) For subsection (1)(c), the client may—

(a) accept, in writing or by other conduct, a written offer that complies with subsection (3) to enter into an agreement with the law practice that this part is to apply to the matter; or

(b) notify the law practice in writing that the client requires this part to apply to the matter.

(3) An offer mentioned in subsection (2)(a) must clearly state—

(a) that it is an offer to enter into an agreement that this part is to apply to the matter; and

(b) that the client may accept it in writing or by other conduct; and

(c) the type of conduct that will constitute acceptance.

(4) A notice has no effect for subsection (2)(b) if it is given after the period of 28 days after the law practice discloses to the client, under a corresponding law, information about the client's right to give notice of that kind, but nothing in this subsection prevents an agreement mentioned in subsection (2)(a) from coming into effect at any time.

304 Displacement of part

(1) This section applies if this part applies to a matter under section 302 or 303.

(2) This part ceases to apply to the matter if—

(a) either or both of the following apply—

(i) the legal services are or will be provided wholly or primarily in another jurisdiction;

(ii) the matter has a substantial connection with another jurisdiction; and

(b) either—

(i) the client, under the corresponding law of the other jurisdiction, enters into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or

(ii) the client notifies, under the corresponding law of the other jurisdiction and within the time allowed by the corresponding law, the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

(3) Nothing in this section prevents the application of this part to the matter by means of a later agreement or notice under section 303.

305 How and where does a client first instruct a law practice

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the law practice first receives instructions from or on behalf of the client in relation to the matter in that jurisdiction, whether in person or by post, telephone, fax, email or other form of communication.

306 When does a matter have a substantial connection with this jurisdiction

A regulation may prescribe the circumstances in which, or the rules to be used to decide whether, a matter has or does not have a substantial connection with this jurisdiction for the purposes of this part.

Not authorised—indicative only

Not authorised—indicative only

307 What happens when different laws apply to a matter

(1) This section applies if this part applies to a matter for a period and a corresponding law applies for another period.

(2) If this part applied to a matter for a period and a corresponding law applies to the matter afterwards, this part continues to apply in relation to legal costs, if any, incurred while this part applied to the matter.

(3) If a corresponding law applied to a matter for a period and this part applies to the matter afterwards, this part does not apply in relation to legal costs, if any, incurred while the corresponding law applied to the matter, so long as the corresponding law continues to apply in relation to those costs.

(4) However—

(a) the client may enter into a written agreement with the law practice that the cost assessment provisions of this part are to apply in relation to all legal costs incurred in relation to the matter, and division 7 accordingly applies in relation to those legal costs; or

(b) if the client enters into a written agreement with the law practice that the cost assessment provisions of a corresponding law are to apply in relation to all legal costs incurred in relation to the matter, division 7 accordingly does not apply in relation to those legal costs.

(5) A written agreement mentioned in subsection (4) need not be signed by the client but in that case the client's acceptance must be communicated to the law practice by fax, email or some other written form.

(6) If a corresponding law applied to a matter for a period and this part applies to the matter afterwards, this part does not require disclosure of any matters to the extent that they have already been disclosed under a corresponding law.

(7) This section has effect despite any other provisions of this part.

Division 3 Costs disclosure

307A When disclosure is not required

A law practice is not required to make a disclosure under this division for a matter if the total amount of the legal costs in the matter, excluding disbursements and exclusive of GST, is not likely to exceed the disclosure threshold amount.

307B Abbreviated disclosure of costs to clients

(1) A law practice may make a disclosure under this section for a matter if the total amount of the legal costs in the matter, excluding disbursements and exclusive of GST, is not likely to exceed the detailed disclosure threshold amount.

(2) The law practice must disclose to the client under this division—

(a) in general terms, the legal services that will be provided to the client; and

(b) the basis on which legal costs will be calculated, including whether a scale of costs applies to any of the legal costs; and

(c) an estimate of the total amount of the legal costs; and

(d) an estimate of the total amount of disbursements; and

(e) the client's right to—

(i) negotiate a costs agreement with the law practice; and

(ii) receive a bill from the law practice; and

(iii) request an itemised bill after receipt of a lump sum bill; and

(iv) be notified under section 315 of any substantial change to the matters disclosed under this section.

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308 Detailed disclosure of costs to clients

(1) This section applies in relation to a matter if the total amount of the legal costs in the matter, excluding disbursements and exclusive of GST, is likely to exceed the detailed disclosure threshold amount.

(2) This section also applies in relation to a matter if—

(a) the total amount of the legal costs in the matter, excluding disbursements and exclusive of GST, is likely to exceed the disclosure threshold amount; and

(b) the law practice does not make a disclosure to the client about the matter under section 307B.

(3) This section may apply to a matter under subsection (1) even if the law practice has previously made a disclosure to the client about the matter under section 307B.

(4) The law practice must disclose to the client under this division—

(a) the basis on which legal costs will be calculated, including whether a scale of costs applies to any of the legal costs; and

(b) the client's right to—

(i) negotiate a costs agreement with the law practice; and

(ii) receive a bill from the law practice; and

(iii) request an itemised bill after receipt of a lump sum bill; and

(iv) be notified under section 315 of any substantial change to the matters disclosed under this section; and

(c) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs; and

(d) details of the intervals, if any, at which the client will be billed; and

(e) the rate of interest, if any, that the law practice charges on overdue legal costs, whether that rate is a stated rate of interest or is a benchmark rate of interest as mentioned in subsection (5); and

(f) if the matter is a litigious matter, an estimate of—

(i) the range of costs that may be recovered if the client is successful in the litigation; and

(ii) the range of costs the client may be ordered to pay if the client is unsuccessful; and

(g) the client's right to progress reports under section 317; and

(h) details of the person whom the client may contact to discuss the legal costs; and

(i) the following avenues that are open under this Act to the client in the event of a dispute in relation to legal costs—

(i) costs assessment under division 7;

(ii) the setting aside of a costs agreement under section 328; and

(j) any time limits that apply to the taking of any action mentioned in paragraph (i); and

(k) that the law of this jurisdiction applies to legal costs in relation to the matter; and

(l) information about the client's right—

(i) to accept under a corresponding law a written offer to enter into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or

(ii) to notify under a corresponding law, and within the time allowed by the corresponding law, the law practice in writing that the client requires the

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corresponding provisions of the corresponding law to apply to the matter.

Note for paragraph (l)—

The client's right to enter into an agreement or give a notification as mentioned in paragraph (l) will be under provisions of the law of the other jurisdiction that correspond to section 303.

(5) For subsection (4)(e), a benchmark rate of interest is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is stated or decided from time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.

(6) A regulation may make provision for the use of benchmark rates of interest, and in particular in relation to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.

(7) For subsection (4)(f), the disclosure must include—

(a) a statement that an order by a court for the payment of costs in favour of the client will not necessarily cover the whole of the client's legal costs; and

(b) if applicable, a statement that disbursements may be payable by the client even if the client enters a conditional costs agreement.

(8) A law practice may disclose any or all of the details mentioned in subsection (4)(b)(i), (ii) and (iii), (g), (i), (j) and (l) in or to the effect of a form approved by the chief executive for this subsection, and if it does so the practice is taken to have complied with this section in relation to the details so disclosed.

309 Disclosure if another law practice is to be retained

(1) If a law practice intends to retain another law practice on behalf of a client, the first law practice must disclose to the client—

(a) if the law practice makes a disclosure to the client under section 307B—the details mentioned in

section 307B(2)(b), (c) and (d) in relation to the other law practice; or

(b) if the law practice makes a disclosure to the client under section 308—the details mentioned in section 308(4)(a), (c) and (d) in relation to the other law practice.

(1A) The disclosure required under subsection (1) is in addition to the disclosure required under section 307B or 308.

(2) A law practice retained or to be retained on behalf of a client by another law practice is not required to make disclosure to the client under section 307B or 308, but must disclose to the other law practice the information necessary for the other law practice to comply with subsection (1).

(3) This section does not apply if the first law practice ceases to act for the client in the matter when the other law practice is retained.

Example—

If a barrister is retained by a firm of solicitors on behalf of a client of the firm, the barrister must disclose to the firm details of the barrister's legal costs and billing arrangements, and the firm must disclose those details to the client. The barrister is not required to make a disclosure directly to the client.

310 When disclosure must be made

(1) Disclosure under section 307B or 308 must be made before, or as soon as practicable after, a law practice is retained in a matter.

(2) However—

(a) if, under section 307A, no disclosure is made at the time a law practice is retained in a matter, disclosure under section 307B or 308 must be made as soon as practicable after section 307A ceases to apply; and

(b) if disclosure is made under section 307B in relation to a matter, disclosure under section 308 must be made as soon as practicable after section 308 starts to apply.

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(3) Disclosure under section 309(1) must be made before, or as soon as practicable after, the other law practice is retained.

310A How disclosure must be made

(1) Disclosure under section 307B—

(a) may be made orally or in writing; but

(b) if made orally, must be confirmed in writing as soon as practicable after the time that disclosure must be made under section 310.

(2) Subsection (1)(b) does not apply if the law practice's provision of legal services for the matter is completed before the confirmation in writing is required.

(3) Disclosure under section 308 must be made in writing.

(4) Disclosure under section 309(1) must be made—

(a) if disclosure to the client has been made under section 307B—orally or in writing; or

(b) if disclosure to the client has been made under section 308—in writing.

(5) Disclosure under section 307B, 308 or 309(1) may be made in a costs agreement or an offer to enter into a costs agreement but, in that case, the disclosure must be in a prominent position at the beginning of the agreement or offer.

311 Exceptions to requirement for disclosure

(1) Disclosure under section 307B, 308 or 309(1) is not required to be made in any of the following circumstances—

(b) if—

(i) the client has received 1 or more disclosures under section 307B, 308 or 309(1) from the law practice in the previous 12 months; and

(ii) the client has agreed in writing to waive the right to disclosure; and

(iii) a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous disclosures and the relevant circumstances, the further disclosure is not warranted;

(c) if the client is—

(i) a law practice or an Australian legal practitioner; or

(ii) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body, each within the meaning of the Corporations Act; or

(iii) a financial services licensee within the meaning of the Corporations Act; or

(iv) a liquidator, administrator or receiver, as mentioned in the Corporations Act; or

(v) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company, within the meaning of the Corporations Act, if it were a company; or

(vi) a proprietary company, within the meaning of the Corporations Act, formed for the purpose of carrying out a joint venture, if any shareholder of the company is a person to whom disclosure of costs is not required; or

(vii) an unincorporated group of participants in a joint venture, if—

(A) 1 or more members of the group are persons to whom disclosure of costs is not required; and

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(B) 1 or more members of the group (the ***relevant members***) are persons to whom disclosure is required; and

(C) all relevant members have indicated that they waive their right to disclosure; or

(viii) a Minister of the Crown in right of a jurisdiction or the Commonwealth acting in his or her capacity as a Minister, or a government department or public authority of a jurisdiction or the Commonwealth; or

(ix) a trustee within the meaning of the *Bankruptcy Act 1966* (Cwlth), section 5(1), definition *the trustee*, paragraphs (a) to (c);

(d) if the legal costs or the basis on which they will be calculated have or has been agreed as a result of a tender process;

(e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice;

Example of paragraph (e)—

if the law practice acts in the matter on a pro bono basis

(f) in any circumstances prescribed under a regulation.

(3) A law practice must ensure that a written record of a principal's decision that further disclosure is not warranted as mentioned in subsection (1)(b) is made and kept with the files relating to the matter concerned.

(4) The reaching of a decision mentioned in subsection (3) otherwise than on reasonable grounds is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of the principal.

(5) Nothing in this section affects or takes away from any client's right—

(a) to progress reports under section 317, unless section 317(5) applies; or

(b) to obtain reasonable information from the law practice in relation to any of the matters stated in section 307B or 308; or

(c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

312 Additional disclosure—settlement of litigious matters

(1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, before the settlement is executed, the law practice must disclose the following to the client—

(a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled, including any legal costs of another party that the client is to pay;

(b) a reasonable estimate of any contributions towards those costs likely to be received from another party.

(2) However, a regulation may provide for matters relevant to subsection (1) when there is more than 1 law practice acting on behalf of a client.

313 Additional disclosure—uplift fees

(1) If a costs agreement involves an uplift fee, the law practice must, before entering into the agreement, disclose to the client in writing—

(a) the law practice's legal costs; and

(b) the uplift fee, or the basis of calculation of the uplift fee; and

(c) the reasons why the uplift fee is warranted.

(2) A law practice is not required to make a disclosure under subsection (1) to a sophisticated client.

314 Form of disclosure

(1) Written disclosures to a client under this division—

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(a) must be expressed in clear plain language; and

(b) may be in a language other than English if the client is more familiar with that language.

(2) If the law practice is aware that the client is unable to read, the law practice must arrange for the information required to be given to a client under this division to be conveyed orally to the client in addition to providing the written disclosure.

315 Ongoing obligation to disclose

A law practice must, in writing, disclose to a client any substantial change to anything included in a disclosure already made under this division as soon as is reasonably practicable after the law practice becomes aware of that change.

316 Effect of failure to disclose

(1) If a law practice does not disclose to a client or an associated third party payer anything required by this division to be disclosed, the client or associated third party payer, as the case may be, need not pay the legal costs unless they have been assessed under division 7.

Note—

Under section 341, the costs of an assessment in these circumstances are generally payable by the law practice.

(2) A law practice that does not disclose to a client or an associated third party payer anything required by this division to be disclosed may not maintain proceedings against the client or associated third party payer, as the case may be, for the recovery of legal costs unless the costs have been assessed under division 7.

(3) If a law practice does not disclose to a client or an associated third party payer anything required by this division to be disclosed and the client or associated third party payer has entered into a costs agreement with the law practice, the client

or associated third party payer may also apply under section 328 for the costs agreement to be set aside.

(4) If a law practice does not disclose to a client or an associated third party payer anything required by this division to be disclosed, then, on an assessment of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the costs assessor to be proportionate to the seriousness of the failure to disclose.

(5) If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to the client solely because the retained law practice failed to disclose relevant information to the first law practice as required by section 309(2), then subsections (1) to (4)—

(a) do not apply to the legal costs owing to the first law practice on account of legal services provided by it, to the extent that the non-disclosure by the first law practice was caused by the failure of the retained law practice to disclose the relevant information; and

(b) do apply to the legal costs owing to the retained law practice.

(6) In a matter involving both a client and an associated third party payer if disclosure has been made to 1 of them but not the other—

(a) subsection (1) does not affect the liability of the 1 to whom disclosure was made to pay the legal costs; and

(b) subsection (2) does not prevent proceedings being maintained against the 1 to whom the disclosure was made for the recovery of those legal costs.

(7) Failure by a law practice to comply with this division is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any Australian legal practitioner, or Australian-registered foreign lawyer, involved in the failure.

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317 Progress reports

(1) A law practice must give a client, on reasonable request—

(a) a written report of the progress of the matter in which the law practice is retained; and

(b) a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.

(2) A law practice may charge a client a reasonable amount for a report under subsection (1)(a) but must not charge a client for a report under subsection (1)(b).

(3) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subsection.

(4) Subsection (3) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

(5) A law practice is not required to give a report under subsection (1) to a sophisticated client.

318 Disclosure to associated third party payers

(1) If a law practice is required to make a disclosure to a client of the practice under this division, the law practice must, under subsections (2) and (3), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in relation to legal services provided to the client.

(2) A disclosure under subsection (1) must be made in writing—

(a) at the time the disclosure to the client is required under this division; or

(b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to

pay legal costs of the client—as soon as practicable after the law practice became aware of the obligation.

(3) Section 314 applies to a disclosure to an associated third party payer under subsection (1) in the same way as it applies to a client.

(4) An associated third party payer for a client of a law practice has the same right to obtain reports under section 317(1)(b) of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in relation to legal services provided to the client, and the law practice must comply with that section accordingly.

Division 4 Legal costs generally

319 On what basis are legal costs recoverable

(1) Subject to division 2, legal costs are recoverable—

(a) under a costs agreement made under division 5 or the corresponding provisions of a corresponding law; or

(b) if paragraph (a) does not apply—under the applicable scale of costs; or

(c) if neither paragraph (a) nor (b) applies—according to the fair and reasonable value of the legal services provided.

Note for paragraph (c)—

See section 341(2) for the criteria that are to be applied on a costs assessment to decide whether legal costs are fair and reasonable.

(2) Subsection (1) does not apply in relation to the recovery of legal costs for work by a barrister retained, before the relevant day, to perform that work.

(3) In this section—

relevant day means the day that is 6 months after the day of commencement of this section.

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Not authorised—indicative only

320 Security for legal costs

A law practice may—

(a) take reasonable security from a client for legal costs, including security for the payment of interest on unpaid legal costs; and

(b) refuse to act, or stop acting, for a client who does not provide reasonable security.

321 Interest on unpaid legal costs

(1) A law practice may charge interest on unpaid legal costs—

(a) if a costs agreement provides for charging interest on unpaid legal costs—under the costs agreement; or

(b) otherwise—if the costs are unpaid 30 days or more after the law practice has given a bill for the costs under this part.

(2) However, a law practice must not charge interest under subsection (1) on unpaid legal costs unless the bill for the costs contains a statement that interest is payable and of the rate of interest.

(3) A law practice may not charge interest under this section, including under a costs agreement, at a rate that is more than the rate prescribed under a regulation.

Division 5 Costs agreements

322 Making costs agreements

(1) A costs agreement may be made between—

(a) a client and a law practice retained by the client; or

(b) a client and a law practice retained on behalf of the client by another law practice; or

(c) a law practice and another law practice that retained that law practice on behalf of a client; or

(d) a law practice and an associated third party payer.

(2) The costs agreement must be written or evidenced in writing.

(3) The costs agreement may consist of a written offer under subsection (4) that is accepted in writing or by other conduct.

Note—

Acceptance by other conduct is not permitted for conditional costs agreements—see section 323(3)(c)(i).

(4) The offer must clearly state—

(a) that it is an offer to enter into a costs agreement; and

(b) that the offer can be accepted in writing or by other conduct; and

(c) the type of conduct that will constitute acceptance.

(5) Except as provided by section 344, a costs agreement can not provide that the legal costs to which it relates are not subject to costs assessment under division 7.

Note—

Under section 327(1), if a costs agreement attempts to provide that the legal costs are not subject to a costs assessment, the costs agreement will be void.

(6) A reference in section 328, or in a provision of this part prescribed under a regulation, to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as mentioned in subsection (1)(d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

323 Conditional costs agreements

(1) A costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.

(2) A conditional costs agreement may relate to any matter, except a matter that involves criminal proceedings or proceedings under the *Family Law Act 1975* (Cwlth).

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Not authorised—indicative only

(3) A conditional costs agreement—

(a) must set out the circumstances that constitute the successful outcome of the matter to which it relates; and

(b) may provide for disbursements to be paid irrespective of the outcome of the matter; and

(c) must be—

(i) in writing; and

(ii) in clear plain language; and

(iii) signed by the client; and

(d) must contain a statement that the client has been informed of the client's right to seek independent legal advice before entering into the agreement; and

(e) must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement.

(4) Subsection (3)(c)(iii), (d) and (e) do not apply to either of the following—

(a) a conditional costs agreement as mentioned in section 322(1)(c);

(b) a conditional costs agreement made with a sophisticated client.

(5) If a client terminates an agreement within the period mentioned in subsection (3)(e), the law practice—

(a) may recover only those legal costs for legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and

(b) without affecting the generality of paragraph (a), may not recover the uplift fee (if any).

324 Conditional costs agreements involving uplift fees

(1) A conditional costs agreement may provide for the payment of an uplift fee.

(2) The basis of calculation of the uplift fee must be separately identified in the agreement.

(3) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable, both of the following—

(a) a range of estimates of the uplift fee;

(b) an explanation of the major variables that will affect the calculation of the uplift fee.

(4) If a conditional costs agreement relates to a litigious matter, the uplift fee must not exceed 25% of the legal costs, excluding disbursements, otherwise payable.

(5) However, this Act does not affect the right of a law practice to discount its fees and, if a law practice does discount its fees, the reference in subsection (4) to legal costs is the fees the law practice would have charged if the law practice's fees had not been discounted.

(6) A law practice must not enter into a costs agreement in contravention of this section.

Maximum penalty—100 penalty units.

325 Contingency fees are prohibited

(1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable scale of costs.

(3) A law practice must not enter into a costs agreement under which all or part of the client's interest in any proceedings to

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which the agreement relates is transferred to the law practice instead of the client being required to pay an amount payable to the law practice.

Maximum penalty—100 penalty units.

326 Effect of costs agreement

Subject to this division and division 7, a costs agreement may be enforced in the same way as any other contract.

327 Particular costs agreements are void

(1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this division is void.

(2) Subject to this section and division 7, legal costs under a void costs agreement are recoverable as set out in section 319(1)(b) or (c).

(3) However, a law practice is not entitled to recover, as set out in section 319(1)(b) or (c), any amount in excess of the amount the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.

(4) A law practice that has entered into a costs agreement in contravention of section 324 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in relation to the uplift fee to the person from whom it was received.

(5) A law practice that has entered into a costs agreement in contravention of section 325 is not entitled to recover any amount relating to the provision of legal services in the matter to which the costs agreement related and must repay any amount received relating to those services to the person from whom it was received.

(6) If a law practice does not repay an amount required by subsection (3), (4) or (5) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

328 Setting aside costs agreements

(1) On application by a client, the Supreme Court or the tribunal may order that a costs agreement be set aside if satisfied the agreement is not fair or reasonable.

(1A) An application under subsection (1) to the tribunal must be made as provided under the QCAT Act.

(1B) For a proceeding on an application to the tribunal, the tribunal is to be constituted by a legally qualified member under the QCAT Act.

(2) In deciding whether or not a costs agreement is fair or reasonable, and without limiting the matters to which the Supreme Court or tribunal can have regard, the Supreme Court or tribunal may have regard to any or all of the following matters—

(a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the law practice;

(b) whether any Australian legal practitioner or Australian-registered foreign lawyer acting on behalf of the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the provision of legal services to which the agreement relates;

(c) whether the law practice failed to make any of the disclosures required under division 3;

(d) the circumstances and conduct of the parties before and when the agreement was made;

(e) the circumstances and the conduct of the parties in the matters after the agreement was made;

(f) whether and how the agreement addresses the effect on costs of matters and changed circumstances that might foreseeably arise and affect the extent and nature of legal services provided under the agreement;

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(g) whether and how billing under the agreement addresses changed circumstances affecting the extent and nature of legal services provided under the agreement.

(3) The Supreme Court or tribunal may adjourn the hearing of an application under this section pending the completion of any investigation or decision concerning a complaint or investigation matter about the conduct of any Australian legal practitioner or Australian-registered foreign lawyer.

(4) If the Supreme Court or tribunal orders a costs agreement be set aside, it may make an order as it considers appropriate in relation to the payment of legal costs the subject of the agreement.

(5) Without limiting subsection (4), in making an order under that subsection, the Supreme Court or tribunal may—

(a) apply the applicable scale of costs, if any; or

(b) decide the fair and reasonable legal costs in relation to the work to which the agreement related, taking into account—

(i) the seriousness of the conduct of the law practice or any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf; and

(ii) whether or not it was reasonable to carry out the work; and

(iii) whether or not the work was carried out in a reasonable manner.

(6) However, in making an order under subsection (4), the Supreme Court or tribunal may not order the payment of an amount in excess of the amount the law practice would have been entitled to recover if the costs agreement had not been set aside.

(7) For subsection (5)(b), the Supreme Court or tribunal may have regard to any or all of the following matters—

(a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act;

(b) any disclosures made by the law practice under division 3, or the failure to make a disclosure required under that division;

(c) any relevant advertisement as to—

(i) the law practice's costs; or

(ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;

(d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;

(e) the retainer and whether the work done was within the scope of the retainer;

(f) the complexity, novelty or difficulty of the matter;

(g) the quality of the work done;

(h) the place where, and circumstances in which, the work was done;

(i) the time within which the work was required to be done;

(j) any other relevant matter.

(8) The Supreme Court or tribunal may decide whether or not a costs agreement exists.

(9) The Supreme Court may order the payment of the costs of and incidental to a hearing under this section.

(9A) The tribunal may make a costs order under the QCAT Act in relation to a hearing under this section.

(10) In this section—

client means a person to whom or for whom legal services are or have been provided.

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Note—

See also section 322(6) which extends the application of this section to associated third parties.

Division 6 Billing

329 Legal costs can not be recovered unless bill has been served

(1) A law practice must not start legal proceedings to recover legal costs from a person until at least 30 days after the law practice has given a bill to the person under sections 330 and 331 or under provisions of a corresponding law that correspond to sections 330 and 331.

(2) A court of competent jurisdiction may make an order authorising a law practice to start legal proceedings against a person sooner if satisfied the person is about to leave this jurisdiction.

(3) A court of competent jurisdiction before which any proceedings are brought in contravention of subsection (1) must stay those proceedings on the application of a party or on its own initiative.

(4) This section applies whether or not the legal costs are the subject of a costs agreement.

330 Bills

(1) A bill may be in the form of a lump sum bill or an itemised bill.

(2) A bill must be signed on behalf of a law practice by an Australian legal practitioner or an employee of the law practice.

(3) It is sufficient compliance with subsection (2) if a letter signed on behalf of a law practice by an Australian legal practitioner or an employee of the law practice is attached to, or enclosed with, the bill.

(4) A bill or letter is taken to have been signed by a law practice that is an incorporated legal practice if it—

(a) has the practice's seal affixed to it; or

(b) is signed by a legal practitioner director of the practice or an officer or employee of the practice who is an Australian legal practitioner.

(5) A bill is to be given to a person—

(a) by delivering it personally to the person or to an agent of the person; or

(b) by sending it by post to the person or agent at—

(i) the usual or last known business or residential address of the person or agent; or

(ii) an address nominated for the purpose by the person or agent; or

(c) by leaving it for the person or agent at—

(i) the usual or last known business or residential address of the person or agent; or

(ii) an address nominated for the purpose by the person or agent;

with a person on the premises who is apparently at least 16 years old and apparently employed or residing there; or

(d) if the legal costs or the basis on which they have been calculated have or has been agreed as a result of a tender process—in a way provided as part of the tender process or by later agreement between the client and the law practice.

(6) A reference in subsection (5) to a way of giving a bill to a person includes a reference to arranging for the bill to be given to that person by that way, including, for example, by delivery by courier.

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(7) Despite anything in subsections (2) to (6), a bill may be given to a client electronically if the client consents to the bill being given electronically.

(8) In this section—

agent, of a person, means an agent, law practice or Australian legal practitioner who has authority to accept service of legal process on behalf of the person.

331 Notification of client's rights

(1) A bill must include or be accompanied by a written statement setting out—

(a) the following avenues that are open under this Act to the client in the event of a dispute in relation to legal costs—

(i) costs assessment under division 7;

(ii) the setting aside of a costs agreement under section 328; and

(b) any time limits that apply to the taking of any action mentioned in paragraph (a).

(2) Subsection (1) does not apply in relation to a sophisticated client.

(3) A law practice may provide the written statement mentioned in subsection (1) in or to the effect of a form approved by the chief executive for this subsection, and if it does so the practice is taken to have complied with this section in relation to the statement.

332 Request for itemised bill

(1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.

Note—

A bill in the form of a lump sum bill includes a bill other than an itemised bill.

(2) The law practice must comply with the request within 28 days after the date on which the request is made.

(3) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.

(4) Subject to subsection (5), a law practice must not commence legal proceedings to recover legal costs from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill.

(5) If the person makes a request for an itemised bill within 30 days after receiving the lump sum bill, the law practice must not commence proceedings to recover the legal costs from the person until 30 days after complying with the request.

(6) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this section.

(7) Section 330(2) to (8) apply to the giving of an itemised bill under this section.

333 Interim bills

(1) A law practice may give a person an interim bill covering part only of the legal services the law practice was retained to provide.

(2) Legal costs that are the subject of an interim bill may be assessed under division 7, either at the time of the interim bill or at the time of the final bill, whether or not the interim bill has previously been assessed or paid.

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Division 7 Costs assessment

334 Definition for div 7

In this division—

client means a person to whom or for whom legal services are or have been provided.

335 Application by clients or third party payers for costs assessment

(1) A client may apply for an assessment of the whole or any part of legal costs.

(2) A third party payer may apply for an assessment of the whole or any part of legal costs payable by the third party payer.

(3) The costs application may be made even if the legal costs have been wholly or partly paid.

(4) If any legal costs have been paid without a bill, the client or third party payer may nevertheless make the costs application.

(5) A costs application by a client or a third party payer must be made within 12 months after—

(a) the bill was given, or the request for payment was made, to the client or third party payer; or

(b) the costs were paid if neither a bill was given nor a request was made.

(6) However, a costs application made out of time, otherwise than by any of the following, may be dealt with by a costs assessor or a court if, under the Uniform Civil Procedure Rules, the assessor or the court decides to deal with it after considering the reasons for delay—

(a) a sophisticated client;

(b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned.

(7) If the third party payer is a non-associated third party payer, the law practice must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, a costs application.

(8) If there is an associated third party payer for a client of a law practice—

(a) nothing in this section prevents—

(i) the client from making 1 or more costs applications in relation to costs for which the client is solely liable; and

(ii) the associated third party payer from making 1 or more costs applications in relation to costs for which the associated third party payer is solely liable;

and those costs applications may be made by them at the same time or at different times and may be dealt with jointly or separately; and

(b) the client or the associated third party payer—

(i) may participate in the costs assessment process where the other of them makes a costs application in relation to costs for which they are both liable; and

(ii) is taken to be a party to the assessment and is bound by the assessment; and

(c) the law practice—

(i) must participate in the costs assessment process if a costs application is made under subsection (2) by the associated third party payer in the same way as the law practice must participate in the process if an application is made under subsection (1) by a client; and

(ii) is taken to be a party to the assessment and is bound by the costs assessment.

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(9) If there is a non-associated third party payer for a client of a law practice—

(a) nothing in this section prevents—

(i) the client from making 1 or more costs applications in relation to costs for which the client is liable; and

(ii) the non-associated third party payer from making 1 or more costs applications in relation to costs for which the non-associated third party payer is liable;

and those applications may be made by them at the same time or at different times but must be dealt with separately; and

(b) the client—

(i) may participate in the costs assessment process if the non-associated third party payer makes a costs application under subsection (2) in relation to the legal costs for which the non-associated third party is liable; and

(ii) is taken to be a party to the assessment and is bound by the assessment; and

(c) the law practice—

(i) must participate in the costs assessment process; and

(ii) is taken to be a party to the assessment; and

(d) despite any other provision of this division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.

(10) Subject to this section, a costs application under subsection (1) or (2) must be made in the way provided under the Uniform Civil Procedure Rules.

(11) In this section—

client includes the following—

(a) an executor or administrator of a client;

(b) a trustee of the estate of a client.

third party payer includes the following—

(a) an executor or administrator of a third party payer;

(b) a trustee of the estate of a third party payer.

336 Application for costs assessment by law practice retaining another law practice

(1) A law practice that retains another law practice to act on behalf of a client may apply for an assessment of the whole or any part of the legal costs.

(2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for the costs assessment.

(3) The costs application may be made even if the legal costs have been wholly or partly paid.

(4) The costs application must be made within 60 days after—

(a) the bill was given or the request for payment was made; or

(b) the costs were paid if neither a bill was given nor a request was made.

(5) A costs application can not be made if there is a costs agreement between the client and the other law practice.

(6) Subject to this section, the costs application under subsection (1) must be made in the way provided under the Uniform Civil Procedure Rules.

337 Application for costs assessment by law practice giving bill

(1) A law practice that has given a bill under division 6 may apply for an assessment of the whole or any part of the legal costs to which the bill relates.

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(2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.

(3) The costs application may be made even if any of the legal costs have been paid without a bill.

(4) A costs application may not be made unless at least 30 days have passed since—

(a) the bill was given or the request for payment was made; or

(b) the costs were paid if neither a bill was given nor a request was made; or

(c) a costs application has been made under this division by another person relating to the legal costs.

(5) Subject to this section, a costs application under subsection (1) must be made in the way provided for under the Uniform Civil Procedure Rules.

338 Consequences of application

If a costs application is made—

(a) a person liable for the legal costs concerned can not be required to pay money into court on account of the legal costs; and

(b) subject to the leave of the court, the law practice must not start any proceedings to recover the legal costs until the costs assessment has been completed.

339 Persons to be notified of application

(1) The applicant for a costs assessment must, under the Uniform Civil Procedure Rules, give notice of the costs application to any other person the applicant knows is 1 of the following—

(a) a law practice to whom the legal costs have been paid or are payable;

(b) the law practice that retained a law practice to whom the legal costs have been paid or are payable;

(c) the client;

(d) a third party payer.

(2) A person given notice of the costs application under subsection (1)—

(a) is entitled to participate in the costs assessment process; and

(b) is taken to be a party to the assessment; and

(c) if the costs assessor so decides, is bound by the assessment.

340 Assessment of complying costs agreements

(1) A costs assessor for a costs application must assess any disputed costs that are subject to a costs agreement by reference to the provisions of the costs agreement if—

(a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs; and

(b) the agreement has not been set aside under section 328;

unless the costs assessor is satisfied that—

(c) the costs agreement does not comply in a material respect with any disclosure requirements of division 3; or

(d) division 5 precludes the law practice concerned from recovering the amount of the costs; or

(e) the parties otherwise agree.

(2) The costs assessor is not required to initiate an examination of the matters mentioned in subsection (1)(c) and (d).

341 Criteria for assessment

(1) In conducting a costs assessment, the costs assessor must consider—

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(a) whether or not it was reasonable to carry out the work to which the legal costs relate; and

(b) whether or not the work was carried out in a reasonable way; and

(c) the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that section 340 applies to any disputed costs.

(2) In considering what is a fair and reasonable amount of legal costs, the costs assessor may have regard to any or all of the following matters—

(a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act;

(b) any disclosures made by the law practice under division 3;

(c) any relevant advertisement as to—

(i) the law practice's costs; or

(ii) the skills of the law practice, or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;

(d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;

(e) the retainer and whether the work done was within the scope of the retainer;

(f) the complexity, novelty or difficulty of the matter;

(g) the quality of the work done;

(h) the place where, and circumstances in which, the legal services were provided;

(i) the time within which the work was required to be done;

(j) any other relevant matter.

(3) In conducting an assessment of legal costs payable by a non-associated third party payer, the costs assessor must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

342 Costs of assessment

(1) A costs assessor must decide the costs of a costs assessment.

(2) Unless the costs assessor otherwise orders, the law practice to which the legal costs are payable or were paid must pay the costs of the costs assessment if—

(a) on the assessment, the legal costs are reduced by 15% or more; or

(b) the costs assessor is satisfied the law practice failed to comply with division 3.

(3) Unless the costs assessor otherwise orders if, under subsection (2), the law practice is not liable to pay the costs of the costs assessment, the costs of the assessment must be paid by the party ordered by the costs assessor to pay those costs.

343 Referral for disciplinary action

(1) This section applies to—

(a) a costs assessor deciding a costs assessment under the Uniform Civil Procedure Rules; or

(b) a court reviewing a costs assessment under the rules.

(2) If the costs assessor or court reduces the legal costs payable by 15% or more, the costs assessor may, or the court may direct the registrar for the court to, refer the matter to the commissioner to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer involved in the matter.

(3) Also, if the costs assessor or a court considers—

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(a) the legal costs charged by a law practice are grossly excessive; or

(b) the costs assessment raises another matter that may amount to professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer involved in the matter;

the costs assessor must, or the court may direct the registrar for the court to, refer the matter to the commissioner to consider whether disciplinary action should be taken against the practitioner or foreign lawyer.

344 Contracting out of div 7 by sophisticated clients etc.

A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, may contract out of this division.

Division 8 Speculative personal injury claims

345 Main purpose of div 8

The main purpose of this division is to provide for the maximum payment for a law practice's conduct of a speculative personal injury claim.

346 Definition for div 8

In this division—

speculative personal injury claim means a claim for, or substantially for, damages for personal injury if the right of a law practice to charge and recover legal costs from a client for work done is dependent on the client's success in pursuing the claim.

347 Maximum amount law practice may charge and recover for conduct of speculative personal injury claim

(1) The maximum amount of claim-related costs (inclusive of GST) that a law practice may charge and recover from a client for work done in relation to a speculative personal injury claim, as worked out under the costs agreement with the client or this Act, must not be more than the amount worked out using the formula—

$$[\mathbf{E} - (\mathbf{R} + \mathbf{D})] \times \mathbf{0.5}$$

where—

E means the amount to which the client is entitled under a judgment or settlement, including an amount the client is entitled to receive for costs under the judgment or settlement.

R means the total amount the client must, under an Act, a law of the Commonwealth or another jurisdiction, or otherwise, refund on receipt of the amount to which the client is entitled under the judgment or settlement.

D means the total amount of disbursements or expenses for which the client is liable if that liability is incurred by or on behalf of the client either by the law practice or on the advice or recommendation of the law practice, in obtaining goods or services (other than legal services from that law practice) for the purpose of investigating or progressing the client's claim, regardless of how or by whom those disbursements or expenses are paid, but does not include additional amounts for the claim or interest on the disbursements or expenses.

Examples for D—

1 The disbursements or expenses may be paid by the client direct or through a law practice or by a person funding the client for those disbursements or expenses.

2 If a client obtains a loan to fund the payment of disbursements and expenses on the firm's recommendation and pays for medical and expert reports direct to the provider, the expenses fall within D (but the interest payable by the client on those expenses do not).

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Note—

See also the *Motor Accident Insurance Act 1994*, section 79 and the *Personal Injuries Proceedings Act 2002*, section 71E.

(2) If—

(a) the amount of legal costs that a law practice may charge and recover from a client is more than the amount calculated under subsection (1); and

(b) the law practice wishes to charge and recover the amount (the ***greater amount***) from the client;

the law practice may apply under subsection (3) for approval to charge and recover the greater amount.

(3) The application must be made in writing to—

(a) if the law practice is a barrister—the bar association; or

(b) otherwise—the law society.

(4) A relevant regulatory authority may, in writing, approve an application made to it for an amount up to the greater amount.

(5) This section applies to a barrister only if the barrister has not been retained by another law practice.

(6) This section applies despite section 319 and division 5.

(7) Also, this section applies to any request for payment made on or after the day this section commences, whether or not a client agreement was entered into before that date.

(8) In this section—

additional amounts, in relation to a law practice's conduct of a client's speculative personal injury claim—

(a) means—

(i) an amount paid or payable to an entity other than the law practice for obtaining instructions or preparing statements in relation to the claim; and

(ii) interest or fees paid or payable by the client for a loan or credit facility obtained on the advice or recommendation of, or facilitated by, the law

practice, to fund the payment of disbursements or expenses relating to the claim; and

(iii) interest or fees paid or payable by the client to the law practice for the use of an overdraft facility or other credit facility held by the law practice to fund the payment of disbursements or expenses relating to the claim; and

(iv) other disbursements or expenses prescribed by regulation; but

(b) does not include an amount mentioned in subparagraph (a)(i) paid or payable to a barrister engaged by the law practice for services provided—

(i) after notice of the claim is given under the *Motor Accident Insurance Act 1994*, section 37; or

(ii) after notice of the claim is given under the *Personal Injuries Proceedings Act 2002*, section 9 or 9A; or

(iii) after a notice of claim is given for the claim under the *Workers' Compensation and Rehabilitation Act 2003*, section 275; or

(iv) before a notice mentioned in subparagraph (ii) or (iii) is given, if an urgent proceeding is started for the claim under—

(A) the *Personal Injuries Proceedings Act 2002*, chapter 2, part 1, division 5; or

(B) the *Workers' Compensation and Rehabilitation Act 2003*, section 276 or chapter 5, part 7, division 1.

claim-related costs, that a law practice may charge and recover from a client for work done in relation to a speculative personal injury claim, means the total of—

(a) the legal costs for the claim; and

(b) the additional amounts for the claim.

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legal costs means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services including interest on the amounts, but excluding disbursements and interest on disbursements.

Division 9 Miscellaneous

348 Application of part to incorporated legal practices and multi-disciplinary partnerships

A regulation may provide that stated provisions of this part—

(a) do not apply to incorporated legal practices or multi-disciplinary partnerships; or

(b) apply, with stated changes, to incorporated legal practices or multi-disciplinary partnerships.

349 Imputed acts, omission or knowledge

For this part—

(a) anything done or omitted by, to or in relation to—

(i) an Australian legal practitioner; or

(ii) an Australian-registered foreign lawyer, except for the purposes of section 324(4) or for the purposes of any provision of this part prescribed under a regulation;

in the course of acting on behalf of a law practice is taken to have been done or omitted by, to or in relation to the law practice; and

(b) without limiting paragraph (a), the law practice is taken to become or be aware of, or to have a belief as to, any matter if—

(i) an Australian legal practitioner; or

(ii) an Australian-registered foreign lawyer (except for the purposes of section 324(4) or for the purposes of any provision of this part prescribed under a regulation);

becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the law practice.

Part 3.5 Professional indemnity insurance

353 Professional indemnity insurance

(1) This section applies to each of the following persons who makes an application for the grant or renewal of a local practising certificate—

(a) an Australian lawyer who is a government legal officer and who, in the lawyer's application for the grant or renewal of the certificate, stated the lawyer did not intend to engage in legal practice other than engaging in government work;

(b) an Australian lawyer who is employed by a corporation, that is not an incorporated legal practice, and who provides only in-house legal services to the corporation or a related body corporate;

(c) another Australian lawyer, other than an Australian lawyer to whom this section applies under paragraph (a) or (b).

(2) A relevant regulatory authority must not grant or renew a local practising certificate unless the authority—

(a) for an application by an Australian lawyer mentioned in subsection (1)(a)—imposes a condition on the certificate that the lawyer is not to engage in legal practice other than as a government legal officer engaged in government work; or

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(b) for an application by an Australian lawyer mentioned in subsection (1)(b)—imposes a condition on the certificate that the lawyer is not to engage in legal practice other than for providing in-house legal services; or

(c) for an application by an Australian lawyer mentioned in subsection (1)(c)—is satisfied the lawyer will, during the currency of the practising certificate, be covered by professional indemnity insurance that complies with this Act.

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

(4) A regulation may, for example, require professional indemnity insurance in relation to a practising certificate 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.

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

354 Continuing obligation for professional indemnity insurance

(1) 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—

(a) if conditions are imposed under section 353 on the practitioner's practising certificate—the practitioner complies with the conditions; and

(b) if the practitioner must, under that section, have professional indemnity insurance—the practitioner complies with the requirements prescribed under a regulation mentioned in section 353(3) for professional indemnity insurance.

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) If a person must, under section 353, have professional indemnity insurance and the person becomes aware that the person will not be covered by professional indemnity insurance that complies with the requirements prescribed under a regulation mentioned in section 353(3), the person must notify the regulatory authority of that fact, in the approved form.

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

Part 3.6 Fidelity cover

Division 1 Preliminary

355 Main purpose of pt 3.6

The main purpose of this part is to establish and keep a fund to provide a source of compensation for defaults by law practices arising from, or constituted by, acts or omissions of associates.

356 Definitions for pt 3.6

In this part—

capping and sufficiency provisions means—

(a) for this jurisdiction—sections 396 and 397; or

(b) for another jurisdiction—the provisions of the corresponding law of that jurisdiction that correspond to those sections.

claim means a claim under this part.

claimant means a person who makes a claim.

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concerted interstate default means a default of a law practice arising from or constituted by an act or omission—

(a) that was committed jointly by 2 or more associates of the practice; or

(b) parts of which were committed by different associates of the practice or different combinations of associates of the practice;

if this jurisdiction is the relevant jurisdiction for at least 1 of the associates and another jurisdiction is the relevant jurisdiction for at least 1 of the associates.

default, in relation to a law practice, means—

(a) a failure of the practice to pay or deliver trust money or trust property that was received by the practice in the course of legal practice by the practice, if the failure arises from an act or omission of an associate that involves dishonesty; or

(b) a fraudulent dealing with trust property that was received by the law practice in the course of legal practice by the practice, if the fraudulent dealing arises from or is constituted by an act or omission of an associate that involves dishonesty.

pecuniary loss, in relation to a default, means—

(a) the amount of trust money, or the value of trust property, that is not paid or delivered; or

(b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing.

relevant jurisdiction, for division 3, see section 371.

357 Application of pt 3.6

(1) This part does not apply to a default of a law practice consisting of a barrister.

(2) A regulation may provide that this part applies to a community legal service as if it were a law practice and how the part applies.

358 Time of default

(1) This section applies for the purpose of deciding which jurisdiction's law applies in relation to a default.

(2) A default of a law practice is taken to have happened when the act or omission giving rise to, or constituting, the default happened.

(3) An omission is taken to have happened on—

(a) the date on or by which the act not performed ought reasonably to have been performed; or

(b) if a date can not be decided under paragraph (a)—on another date decided under a regulation.

Division 2 Fidelity fund

359 Establishment of fidelity fund

(1) The Legal Practitioners' Fidelity Guarantee Fund established under the *Queensland Law Society Act 1952*, section 12, and continued in existence under the *Legal Profession Act 2004*, section 147, is continued in existence under this Act.

(2) The fund continued in existence under subsection (1) (the ***fidelity fund***) continues to be vested in the law society.

(3) Subject to section 366, the law society must manage and administer the fidelity fund.

360 Insurance

(1) The law society may arrange with an insurer for insurance in relation to claims, and liabilities arising out of claims, against the fidelity fund.

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(2) Without limiting subsection (1), the law society may arrange for insurance relating to particular claims or particular classes of claims.

(3) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the fidelity fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of the proceeds.

(4) No liability, including liability in defamation, is incurred by a protected person in relation to anything done or omitted to be done in good faith for the purpose of arranging for insurance of the fidelity fund.

(5) In this section—

protected person means—

(a) the law society or a council member; or

(b) a person acting at the direction of the law society or a council member.

361 Limitation on borrowing powers of law society for fidelity fund

(1) Despite the *Statutory Bodies Financial Arrangements Act 1982*, the law society can not borrow money for the purposes of the fidelity fund.

(2) Subsection (1) does not apply to an advance to the fund by the law society under section 370.

362 Fund to be kept in separate account

All moneys constituting the fund, pending the investment or application of that money under this Act or another Act, must continue to be kept in, or paid or transferred into, an ADI to the credit of a separate account to be called 'The Legal Practitioners' Fidelity Guarantee Fund Account'.

363 Moneys payable into fidelity fund

The fidelity fund consists of the following—

(a) all amounts paid to or on account of the fund by Australian legal practitioners under this Act as contributions or levies;

(b) the interest accruing from the investment of the amount of all or part of the fund under the *Statutory Bodies Financial Arrangements Act 1982*;

(c) all amounts given or advanced to the fund by the law society under section 370;

(d) all amounts properly payable to the fund and recovered for the law society in the exercise of any right of action conferred under this Act;

(e) all other amounts that may be lawfully paid into the fund.

364 Expenditure from fund

(1) Subject to this Act, the following may be paid out of the fund as required—

(a) the amount of all claims, including costs and interest allowed or established against the fund under a relevant law;

(b) all legal expenses and costs incurred in defending claims made against the fund or otherwise incurred in relation to the fund;

(c) all premiums payable in relation to contracts of insurance entered into by the law society under section 360;

(d) the expenses incurred in the administration of the fund;

(e) the amount of repayments for amounts given or advanced to the fund by the law society under section 370;

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(f) all unpaid charges on the fund, and liabilities of the fund, as mentioned in section 397;

(g) an amount for—

(i) a program or tool to assist the law society or law practices in identifying defaults; or

Example—

a program of regular auditing for new law practices

(ii) an educational program for law practices aimed at improving compliance with part 3.3;

Example—

an educational program delivered to law practices about trust accounting obligations

(h) all other moneys payable out of the fund under this Act.

(2) A regulation may prescribe the maximum amount that may be paid out of the fund under subsection (1)(g) for a financial year.

365 Audit of accounts

(1) This section applies in addition to the *Auditor-General Act 2009*.

(2) At least once a year, the auditor-general must audit the accounts of the fidelity fund separately to the audit of the law society.

(3) However, the auditor-general may audit the accounts more often than required under subsection (2).

(4) For an audit of the accounts of the fidelity fund, the auditor-general may perform the functions and exercise the powers of the auditor-general under the *Auditor-General Act 2009*.

366 Law society may delegate its powers in relation to the fidelity fund to a committee of management

(1) This section applies if the law society establishes a committee of management for the fidelity fund and delegates any or all of its powers in relation to the fidelity fund to the committee of management.

(2) The committee must consist of not less than 3 nor more than 5 council members.

(3) The majority of members of the committee must be council members.

367 Reporting requirements

(1) The law society must give the Minister a report about the fidelity fund on or before 30 September of each year.

(2) The report must—

(a) relate to the most recent financial year to end before the report is given; and

(b) include the following—

(i) details of each amount paid out of the fund under section 364(1)(a);

(ii) details of each amount paid out of the fund under section 364(1)(g), including details about how the amount was spent;

(iii) the balance of the fund at the end of the financial year;

(iv) a matter prescribed by regulation for this subsection.

(3) Subsection (4) applies if, at any time, the Minister believes the fidelity fund is not sufficient to satisfy the liabilities of the fund at or about that time.

(4) The Minister may, by written notice to the council, require the law society to give the Minister a written report about the fund on the matters stated in the notice.

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(5) The law society must comply with the requirement within 14 days after receiving the notice or within the further time allowed by the Minister.

368 Contribution to fidelity fund

(1) A person who applies to the law society for the grant or renewal of a local practising certificate in relation to a financial year must pay a contribution for the financial year to the fidelity fund under the administration rules of the law society.

(2) A payment of a contribution under this section is in addition to all other fees payable in relation to the application.

(3) Without limiting section 231, the administration rules of the law society may provide for different contributions to be payable by different classes of local legal practitioners or law practices.

(4) This section does not apply to—

(a) a government legal officer whose local practising certificate is subject to a condition that the officer is not to engage in legal practice other than as a government legal officer engaged in government work; or

(b) local legal practitioners of a particular class prescribed under a regulation.

369 Levy for benefit of fidelity fund

(1) This section applies if, at a particular time, the law society believes that the fidelity fund is not sufficient to satisfy the liabilities of the fidelity fund at or about that time.

(2) The law society may, by resolution, impose on each local legal practitioner who must pay a contribution under section 368 for the relevant financial year, or local legal practitioners of a particular class, a levy of an amount that the law society considers reasonable.

(3) Without limiting section 231, the administration rules of the law society may provide for different levies to be payable by different classes of local legal practitioners or law practices.

(4) The amount of the levy is payable into the fidelity fund by a date and in a way stated in the resolution.

370 Law society may advance moneys from its general funds to fidelity fund

The law society may, from its general funds, give or advance on terms as the law society considers reasonable an amount for the fidelity fund.

Division 3 Defaults to which this part applies

371 Meaning of *relevant jurisdiction*

(1) The ***relevant jurisdiction***, for an associate of a law practice whose act or omission, whether alone or with 1 or more other associates of the practice, gives rise to or constitutes a default of the practice, is the relevant jurisdiction decided under this section.

(2) For a default involving trust money received in Australia, whether or not it was paid into an Australian trust account, the relevant jurisdiction for the associate is—

(a) if the trust money was paid into an Australian trust account and the associate, whether alone or with a cosignatory, was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default—the jurisdiction under whose law that trust account was kept; or

(b) otherwise—the associate's home jurisdiction.

(3) For a default involving trust money received outside Australia and paid into an Australian trust account, the relevant jurisdiction for the associate is—

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(a) if the associate, whether alone or with a cosignatory, was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default—the jurisdiction under whose law that trust account was kept; or

(b) otherwise—the associate's home jurisdiction.

(4) For a default involving trust property received in Australia, or received outside Australia and brought into Australia, the relevant jurisdiction for the associate is the associate's home jurisdiction.

Note—

Section 401 provides that the law society may treat the default as consisting of 2 or more defaults for the purpose of deciding the liability of the fidelity fund.

372 Defaults to which this part applies

(1) This part applies to a default of a law practice arising from or constituted by an act or omission of 1 or more associates of the practice, if this jurisdiction is the relevant jurisdiction for the only associate or 1 or more of the associates involved.

(2) Each of the following is immaterial—

(a) the jurisdiction where the default happened;

(b) that the act or omission giving rise to or constituting a default does not constitute a crime or other offence under the law of this jurisdiction, the Commonwealth or another jurisdiction;

(c) that a proceeding has not been started, or if started has not ended, in relation to a crime or other offence of that kind.

373 Defaults relating to financial services or investments

(1) This part does not apply to a default of a law practice to the extent that the default happens in relation to money or

property that is entrusted to or held by the practice for or in connection with—

(a) a financial service provided by the practice, or an associate of the practice, in circumstances where the practice or associate—

(i) is required to hold an Australian financial services licence covering the provision of the service, whether or not an Australian financial services licence is held at any relevant time; or

(ii) provides the service as a representative of another person who carries on a financial services business, whether or not the practice or associate is an authorised representative at any relevant time; or

(b) a managed investment scheme, or mortgage financing, undertaken by the practice.

(2) Without limiting subsection (1), this part does not apply to a default of a law practice if the default happens in relation to money or property that was entrusted to or held by the practice for an investment purpose, whether or not on its own account or as agent, unless—

(a) the money or property was entrusted to or held by the practice—

(i) in the ordinary course of legal practice; and

(ii) primarily in connection with the provision of legal services to or at the direction of the client; and

(b) the investment is or is to be made—

(i) in the ordinary course of legal practice; and

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

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Division 4 Claims about defaults

374 Claims about defaults

(1) A person who suffers pecuniary loss because of a default to which this part applies may make a claim against the fidelity fund to the law society about the default.

(2) The claim must be made in the law society approved form.

(3) The law society may require the person who makes a claim to do either or both of the following—

(a) to give further information about the claim or any dispute to which the claim relates;

(b) to verify the claim, or any further information, by statutory declaration.

375 Time limit for making claims

(1) Subject to section 377, a claim does not lie against the fidelity fund unless the prospective claimant notifies the law society of the default concerned—

(a) within 6 months after the prospective claimant becomes aware of the default; or

(b) within a further period, if any, allowed by the law society under subsection (2); or

(c) within a further period, if any, allowed by the Supreme Court under subsection (4).

(2) The law society may allow a further period for making a claim on its own initiative or if asked by the prospective claimant.

(3) If, on request by the prospective claimant, the law society decides to refuse to allow a further period for making a claim—

(a) the law society must give the prospective claimant an information notice about the decision; and

(b) the prospective claimant may appeal to the Supreme Court against the decision.

(4) The Supreme Court may, on an appeal mentioned in subsection (3)(b), allow a further period for making the claim.

(5) The law society or the Supreme Court may allow a further period mentioned in subsection (2) or (4) only if satisfied that—

(a) it would be reasonable to do so after taking into account all ascertained and contingent liabilities of the fidelity fund; and

(b) it would be appropriate to do so in the particular case having regard to matters the law society or the court considers relevant.

376 Advertisements

(1) If the law society considers that there has been, or may have been, a default by a law practice, it may publish either or both of the following—

(a) a notice that seeks information about the default;

(b) a notice that invites claims relating to the default and fixes a final date after which claims relating to the default can not be made.

(2) The final date fixed by the notice must be a date that is—

(a) at least 3 months after the date of the first or only publication of the notice; and

(b) not more than 1 year after the date of that first or only publication.

(3) The notice must be published—

(a) in a newspaper circulating generally throughout Australia; and

(b) in a newspaper circulating generally in each jurisdiction where the law society believes the law practice has an office or, at any relevant time, had an office; and

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(c) on the law society internet site.

(4) The law society may provide information to persons making inquiries in response to the notice published under this section.

(5) Apart from extending the period during which claims can be made under this part, if relevant, publication of the notice under this section does not confer any entitlements in relation to any claim, or the default to which it relates, or provide any grounds affecting the decision of any claim.

(6) Neither the publication in good faith of the notice under this section, nor the provision of information in good faith under this section, subjects a protected person to any liability including liability in defamation.

(7) In this section—

protected person means—

(a) the law society or a council member; or

(b) the proprietor, editor or publisher of a newspaper; or

(c) an internet service provider or internet content host; or

(d) a person acting at the direction of a person or entity mentioned in paragraph (a), (b) or (c).

377 Time limit for making claims following advertisement

(1) This section applies if the law society publishes a notice under section 376 fixing a final date after which claims relating to a default of a law practice can not be made.

(2) A claim may be made—

(a) up to and including the final date fixed under the notice; or

(b) within a further period, if any, allowed by the law society under subsection (4); or

(c) within a further period, if any, allowed by the Supreme Court under subsection (6).

(3) A claim may be made under subsection (2) even though it would have been barred under section 375 had the notice not been published.

(4) The law society may allow a further period for making a claim on its own initiative or if asked by a prospective claimant.

(5) If, on request by a prospective claimant, the law society decides to refuse to allow a further period for making a claim—

(a) the law society must give the prospective claimant an information notice about the decision; and

(b) the prospective claimant may appeal to the Supreme Court against the decision.

(6) The Supreme Court may, on an appeal mentioned in subsection (5)(b), allow a further period for making the claim.

(7) The law society or the Supreme Court may allow a further period mentioned in subsection (4) or (6) only if satisfied that—

(a) it would be reasonable to do so after taking into account all ascertained and contingent liabilities of the fidelity fund; and

(b) it would be appropriate to do so in the particular case having regard to matters the law society or the court considers relevant.

378 Claims not affected by certain matters

(1) A claim may be made about a law practice's default despite a change in the status of the practice or the associate concerned after the happening of the act or omission giving rise to or constituting the default.

(2) A claim that has been made is not affected by a later change in the status of the practice or associate.

(3) In this section—

change in status includes—

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(a) for a partnership—a change in the membership or staffing of, or the dissolution of, the partnership; and

(b) for an incorporated legal practice—a change in the directorship or staffing of, or the winding-up or dissolution of, the practice; and

(c) for an associate who was an Australian legal practitioner—the fact that the associate has ceased to practise or to hold an Australian practising certificate; and

(d) for an associate who was an individual—the associate's death.

379 Investigation of claims

The law society may investigate a claim made to it in the same way it may investigate a complaint referred to it by the commissioner.

Note—

Complaints may be referred by the commissioner to the law society under section 435.

380 Advance payments

(1) The law society may, at its absolute discretion, make payments to a claimant in advance of the decision of a claim if satisfied that—

(a) the claim is likely to be allowed; and

(b) payment is warranted to alleviate hardship.

(2) Any payments made in advance are to be taken into account when the claim is decided.

(3) Payments under this section are to be made from the fidelity fund.

(4) If the claim is disallowed, the amounts paid under this section are recoverable by the law society as a debt due to the fidelity fund.

(5) If the claim is allowed but the amount payable is less than the amount paid under this section, the excess paid under this section is recoverable by the law society as a debt due to the fidelity fund.

Division 5 Deciding claims

381 Law society to decide claim

(1) The law society may decide a claim by wholly or partly allowing or disallowing it.

(2) The law society may disallow a claim to the extent that the claim does not relate to a default of a law practice for which the fidelity fund is liable.

(3) The law society may wholly or partly disallow a claim, or reduce a claim, to the extent that—

(a) the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or

(b) for a claim mentioned in section 398(2)—the negligence of the claimant contributed to the loss; or

(c) the conduct of the transaction with the law practice in relation to which the claim is made was illegal, and the claimant knew or ought reasonably to have known of that illegality; or

(d) proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or

(e) the claimant has unreasonably refused to disclose information or documents to or cooperate with—

(i) the law society in the investigation of the claim; or

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(ii) another entity in the investigation of the claim, including, for example, an investigator or a police officer.

(4) Subsections (2) and (3) do not limit the law society's power to disallow a claim on another ground.

(5) Without limiting subsection (2) or (3), the law society may reduce the amount otherwise payable on a claim to the extent the law society considers appropriate if satisfied that the claimant—

(a) assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or

(b) unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or

(c) has unreasonably hindered the investigation of the claim.

(6) The law society must, in allowing a claim, state the amount payable.

382 Maximum amount allowable

(1) The amount payable in relation to a default of a law practice must not be more than the pecuniary loss resulting from the default.

(2) This section does not apply to costs payable under section 383 or to interest payable under section 384.

383 Costs

(1) If the law society wholly or partly allows a claim, it must pay the claimant's reasonable legal costs involved in making and proving the claim, unless the law society considers that special circumstances exist warranting—

(a) a reduction in the amount of costs; or

(b) a decision that no amount should be paid for costs.

(2) If the law society wholly disallows a claim, the law society may pay the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim, if the law society considers it is appropriate to make the payment.

(3) The amount of a payment under subsection (1) or (2) is payable from the fidelity fund.

384 Interest

(1) In deciding the amount of pecuniary loss resulting from a default of a law practice, the law society is to add interest on the amount payable (excluding interest), unless it considers that special circumstances exist warranting—

(a) a reduction in the amount of interest; or

(b) a decision that no amount should be paid by way of interest.

(2) The interest is to be calculated from the date on which the claim was made to the date the law society notifies the claimant that the claim has been allowed at the rate stated in or prescribed under a regulation.

(3) To the extent a regulation does not provide for a rate for subsection (2), interest is to be calculated at the rate of 5% per year.

(4) The interest is payable from the fidelity fund.

385 Reduction of claim because of other benefits

(1) A person is not entitled to recover from the fidelity fund any amount equal to amounts, or to the value of other benefits, from other sources relating to the pecuniary loss to which a claim relates—

(a) that have already been paid to or received by the person, whether before or after the commencement of this section; or

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(b) that have already been decided and are payable to or receivable by the person; or

(c) that the law society believes are likely to be paid to or received by the person; or

(d) that the law society believes might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person.

(2) The law society may, at its absolute discretion, pay to a person the whole or part of an amount mentioned in subsection (1)(c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 388.

386 Subrogation

(1) On payment of a claim from the fidelity fund, the law society is subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates.

(2) Without limiting subsection (1), that subsection extends to a right or remedy against—

(a) the associate about whom the claim is made; or

(b) the person authorised to administer the estate of the associate about whom the claim is made and who is deceased or an insolvent under administration.

(3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in relation to the default, the claim would not be disallowed on any of the grounds set out in section 381(3).

(4) The law society may exercise its rights and remedies under this section in its own name or in the name of the claimant.

(5) If the law society brings a proceeding under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceeding.

(6) The law society may exercise its rights and remedies under this section even though any limitation periods under this part have expired.

(7) The law society must pay into the fidelity fund any money recovered in exercising its rights and remedies under this section.

387 Proceedings brought under right of subrogation

In any proceeding brought in a court under section 386—

(a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or other person in relation to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the practitioner or other person is not a defendant in, or a party to, the proceeding; and

(b) any defence that would have been available to the practitioner or other person is available to the law society.

388 Repayment of surplus amount

(1) This section applies if a claimant—

(a) receives a payment from the fidelity fund relating to a claim; and

(b) receives or recovers from another source or sources a payment on account of the pecuniary loss; and

(c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant from both or all sources.

(2) The amount of the surplus is a debt payable by the claimant to the fidelity fund.

(3) However, the amount payable by the claimant can not be more than the amount the claimant received from the fidelity fund in relation to the claim.

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(4) This section applies whether or not—

(a) the claim was made before or after the commencement of this section; and

(b) a payment mentioned in subsection (1)(a) or (b) was received before or after the commencement of this section.

389 Notification of delay in making decision

(1) If the law society considers that a claim is not likely to be decided within 1 year after the claim was made, the law society must give written notice to the claimant that the claim is not likely to be decided within that period.

(2) The notice must contain a brief statement of reasons for the delay.

390 Notification of decision

After the law society makes a decision mentioned in this division about a claim, the law society must give the claimant an information notice about the decision.

Division 6 Right of action against external examiner

391 External examiner guilty of neglect

(1) This section applies if—

(a) an external examiner is guilty of neglect in relation to an external examination of the trust records of a law practice and there has been a default in relation to the law practice; and

(b) the law society pays an amount from the fidelity fund to reimburse persons who suffered loss because of the default.

(2) The law society has an action for damages against the external examiner in relation to the external examination.

(3) The right of action is similar to the action for damages that the law practice, or any legal practitioner associate of the practice, would have had against the external examiner.

(4) If the default arises from or is constituted by an act or omission of the law practice, or 1 or more legal practitioner associates of the law practice, subsection (2) applies as if the default arises from or is constituted by an act or omission of a lay associate of the law practice.

(5) The amount of damages the law society may claim under this section must not be more than the total amount paid from the fidelity fund to reimburse all persons who suffered loss because of the default.

Division 7 Appeals

392 Appeal against decision on claim

(1) A claimant may appeal to the Supreme Court against either of the following decisions of the law society but not a decision to limit the amount payable, or to decline to pay an amount, made under the capping and sufficiency provisions of this jurisdiction—

(a) a decision to wholly or partly disallow a claim;

(b) a decision to reduce the amount allowed in relation to a claim.

(2) On an appeal under this section—

(a) the appellant must establish that all or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the law society waives that requirement; and

(b) the Supreme Court may, on application by the law society, stay the appeal pending further action being

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Not authorised—indicative only

taken to seek recovery of that amount from other sources.

393 Application for direction and order for failure to decide claim

(1) This section applies if the law society fails to decide a claim within 1 year after the claim was made.

(2) While the failure continues, the claimant may apply to the Supreme Court for a direction and an order under this section (a ***relevant application***).

(3) If a relevant application is made—

(a) the applicant must establish that the whole or part of the amount sought to be recovered from the fidelity fund is not reasonably available from other sources, unless the law society waives that requirement; and

(b) the Supreme Court may, on application by the law society, stay the relevant application pending further action being taken to seek recovery of that amount from other sources.

(4) The Supreme Court may decide the relevant application—

(a) by giving directions to the law society to decide the claim expeditiously and—

(i) if the court is satisfied that there has been unreasonable delay—ordering that interest be paid at a stated rate that is higher than the rate applicable under section 384, until further order or the decision for the claim; or

(ii) otherwise—ordering that, if delay continues in circumstances of a stated kind, interest be paid for a stated period at a stated rate that is higher than the rate applicable under section 384, until further order or the decision for the claim; or

(b) by deciding not to give a direction or make an order under paragraph (a).

394 Proceedings on appeal

In any proceeding brought before the Supreme Court under section 392—

(a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or other person in relation to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the practitioner or other person is not a defendant in, or a party to, the proceeding; and

(b) any defence that would have been available to the practitioner or other person is available to the law society.

Division 8 Payments from fidelity fund for defaults

395 Payments for defaults

(1) The fidelity fund is to be applied by the law society for compensating claimants in relation to claims allowed under this part for defaults to which this part applies.

(2) An amount payable from the fidelity fund in relation to a claim is payable to—

(a) the claimant; or

(b) another person at the claimant's direction.

396 Limiting payments from fidelity fund to capped amount

(1) This section applies in relation to a claim if, despite measures the law society may take under section 368 or 369, the law society believes the fidelity fund is likely to become insufficient as mentioned in section 397(1) if the allowed amount for the claim were to be paid in full.

Not authorised—indicative only

Not authorised—indicative only

(2) The law society may limit the payment from the fidelity fund to the capped amount for the claim.

(3) If the law society limits the payment from the fidelity fund for the claim under subsection (2)—

(a) the payment is made in full and final settlement of the claim; and

(b) no proceeding can be brought, by way of appeal, application for review or otherwise, to require the payment of a larger amount, or to require the law society to consider payment of a larger amount, for the claim.

(4) As soon as practicable after limiting the payment under subsection (2), the law society must give written notice to the Minister about the limitation.

(5) In this section—

allowed amount, for a claim, means the amount payable in relation to the claim as decided by the law society under division 5 or, if the law society's decision is appealed to the Supreme Court, the amount payable in relation to the claim as decided by the court.

capped amount, for a claim, means the amount prescribed by regulation as the capped amount for the claim.

397 Sufficiency of fidelity fund

(1) If the law society believes that the fidelity fund is likely to be insufficient to meet the fund's ascertained and contingent liabilities, it may do any or all of the following—

(a) postpone all payments relating to all or any class of claims out of the fund;

(b) impose a levy under section 369;

(c) make partial payments of the amounts of 1 or more allowed claims out of the fund with payment of the balance being a charge on the fund;

(d) make partial payments of the amounts of 2 or more allowed claims out of the fund on a pro rata basis, with payment of the balance ceasing to be a liability of the fund.

(2) In deciding whether to do any or all of the things mentioned in subsection (1), the law society—

(a) must have regard to cases of hardship if it knows relevant information; and

(b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.

(3) If the law society declares that a decision is made under subsection (1)(d)—

(a) the balance stated in the declaration ceases to be a liability of the fidelity fund; and

(b) the law society may, but need not, revoke the declaration in relation to either all or a stated part of the balance, and the balance or that part of the balance again becomes a liability of the fund.

(4) A decision of the law society made under this section is final and not subject to appeal or review.

Division 9 Claims by law practices or associates

398 Claims by law practices or associates about defaults

(1) This section applies to a default of a law practice arising from or constituted by an act or omission of an associate of the practice.

(2) A claim may be made under section 374 by—

(a) the law practice, if the practice is an incorporated legal practice and it suffers pecuniary loss because of the default; or

Not authorised—indicative only

Not authorised—indicative only

(b) another associate of the law practice, if the other associate suffers pecuniary loss because of the default.

399 Claims by law practices or associates about notional defaults

(1) This section applies if a default of a law practice arising from or constituted by an act or omission of an associate of the practice was avoided, remedied or reduced by a financial contribution made by the practice or by 1 or more other associates.

(2) The default, to the extent that it was avoided, remedied or reduced, is a ***notional default***.

(3) This part applies to a notional default in the same way as it applies to other defaults of law practices, but only the law practice or the other associate or associates concerned are eligible to make claims about the notional default.

Division 10 Defaults involving interstate elements

400 Concerted interstate defaults

(1) The law society may treat a concerted interstate default as if the default consisted of 2 or more separate defaults—

(a) 1 of which is a default to which this part applies, if this jurisdiction is the relevant jurisdiction for 1 or more of the associates involved; and

(b) the other or others of which are defaults to which this part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions for 1 or more of the associates involved.

(2) The law society may treat a claim about a concerted interstate default as if the claim consisted of—

(a) 1 or more claims made under this part; and

(b) 1 or more claims made under a corresponding law or laws.

(3) A claim about a concerted interstate default is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—

(a) in equal shares in relation to the default, regardless of the number of associates involved in each of those jurisdictions, and disregarding the capping and sufficiency provisions of those jurisdictions; or

(b) in other shares as agreed by the law society and the corresponding authority or authorities involved.

(4) Subsection (3) does not affect the application of the capping and sufficiency requirements of this jurisdiction in relation to the amount payable from the fidelity fund after the claim has been assessed.

401 Defaults involving interstate elements if committed by 1 associate only

(1) This section applies to a default of a law practice arising from or constituted by an act or omission that was committed by only 1 associate of the practice, if the default involves more than 1 of the cases mentioned in section 371(2) to (4).

(2) The law society may treat the default to which this section applies as if the default consisted of 2 or more separate defaults—

(a) 1 of which is a default to which this part applies, if this jurisdiction is the relevant jurisdiction; and

(b) the other or others of which are defaults to which this part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions.

(3) The law society may treat a claim about the default to which this section applies as if the claim consisted of—

(a) 1 or more claims made under this part; and

Not authorised—indicative only

Not authorised—indicative only

(b) 1 or more claims made under a corresponding law or laws.

(4) A claim about a default to which this section applies is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—

(a) in equal shares in relation to the default, and disregarding the capping and sufficiency provisions of those jurisdictions; or

(b) in other shares as agreed by the law society and the corresponding authority or authorities involved.

(5) Subsection (4) does not affect the application of the capping and sufficiency requirements of this jurisdiction in relation to the amount payable from the fidelity fund after the claim has been assessed.

Division 11 Inter-jurisdictional provisions

402 Protocols

(1) A regulation may authorise the law society to enter into arrangements (***fidelity protocols***) with corresponding authorities in relation to matters to which this part relates.

(2) Without limiting subsection (1), a regulation may authorise the making of a fidelity protocol that provides that the law society is taken to have—

(a) requested a corresponding authority to act as agent of the law society in stated classes of cases; or

(b) agreed to act as agent of a corresponding authority in stated classes of cases.

(3) A regulation may provide for the amendment, revocation or replacement of a fidelity protocol.

(4) A fidelity protocol, or an amendment, revocation or replacement of a fidelity protocol, has effect in this

jurisdiction only to the extent it is approved under a regulation.

403 Forwarding claims to corresponding authority in another jurisdiction

(1) If a claim is made to the law society about a default of a law practice that appears to be a default to which a corresponding law applies, the law society must give the claim or a copy of it to a corresponding authority of the jurisdiction concerned.

(2) If a claim is made to a corresponding authority about a default that appears to be a default to which this part applies and the claim or a copy of it is given under a corresponding law to the law society by the corresponding authority, the claim is taken—

(a) to have been made under this part; and

(b) to have been so made when the claim was received by the corresponding authority.

404 Investigation of defaults to which this part applies

(1) This section applies if a default of a law practice appears to be a default to which this part applies and to have happened—

(a) solely in another jurisdiction; or

(b) in more than 1 jurisdiction; or

(c) in circumstances in which it can not be decided precisely in which jurisdiction the default happened.

(2) The law society may request a corresponding authority of another jurisdiction, or corresponding authorities of other jurisdictions, to act as agent or agents for the law society, for processing or investigating a claim about the default or aspects of the claim.

Not authorised—indicative only

Not authorised—indicative only

405 Investigation of defaults to which a corresponding law applies

(1) This section applies if a default of a law practice appears to be a default to which a corresponding law applies and to have—

(a) happened solely in this jurisdiction; or

(b) happened in more than 1 jurisdiction including this jurisdiction; or

(c) happened in circumstances in which it can not be decided precisely in which jurisdiction the default happened.

(2) The law society may act as agent of a corresponding authority of another jurisdiction, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.

(3) If the law society agrees to act as agent of a corresponding authority under subsection (2), the law society may exercise any of its functions or powers in relation to processing or investigating the claim or aspects of the claim as if the claim had been made under this part.

406 Investigation of concerted interstate defaults and other defaults involving interstate elements

(1) This section applies if either of the following appears to have happened—

(a) a concerted interstate default;

(b) a default to which section 401 applies.

(2) The law society may request a corresponding authority or corresponding authorities to act as agent or agents for the law society, for processing or investigating a claim about the default or aspects of the claim.

(3) The law society may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for processing or investigating a claim about the default or aspects of the claim.

(4) If the law society agrees to act as agent of a corresponding authority under subsection (3), the law society may perform and exercise any of its functions and powers in relation to processing or investigating the claim or aspects of the claim as if the claim had been made wholly under this part.

407 Recommendations by law society to corresponding authority

If the law society is acting as agent of a corresponding authority in relation to a claim made under a corresponding law, the law society may make recommendations about the decision that the corresponding authority might make about the claim.

408 Recommendations to and decisions by law society after receiving recommendations from corresponding authority

(1) If a corresponding authority makes recommendations about the decision the law society might make about a claim in relation to which the corresponding authority was acting as agent of the law society, the law society may—

(a) make its decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or

(b) disregard the recommendations.

(2) A corresponding authority can not, as agent of the law society, make a decision about the claim under division 5.

409 Request to another jurisdiction to investigate aspects of claim

(1) The law society may request a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with by the law society and to provide a report on the result of the investigation.

Not authorised—indicative only

Not authorised—indicative only

(2) A report on the result of the investigation received from either of the following may be used and taken into consideration by the law society in the course of dealing with the claim under this part—

(a) the corresponding authority;

(b) a person or entity authorised by the corresponding authority to conduct the investigation.

410 Request from another jurisdiction to investigate aspects of claim

(1) If a request, made under a corresponding law, is received by the law society from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with under a corresponding law, the law society may conduct the investigation.

(2) The provisions of this part relating to the investigation of a claim apply, with any necessary changes, in relation to the investigation of the relevant aspect of the claim that is the subject of the request.

(3) The law society must provide a report on the result of the investigation to the corresponding authority.

411 Cooperation with other authorities

(1) When dealing with a claim under this part involving a law practice or an Australian legal practitioner, the law society may consult and cooperate with an entity that has functions or powers under the corresponding law of another jurisdiction in relation to the law practice or the practitioner.

(2) For subsection (1), the law society and the entity may exchange information concerning the claim.

Division 12 Miscellaneous

412 Interstate legal practitioner becoming authorised to withdraw from local trust account

(1) This section applies to an interstate legal practitioner who, whether alone or with a cosignatory, becomes authorised to withdraw money from a local trust account.

(2) A regulation may do either or both of the following—

(a) require the practitioner to notify the law society of the authorisation;

(b) require the practitioner to make contributions and pay levies to the fidelity fund as if the practitioner were a local legal practitioner.

(3) Without limiting subsection (2), a regulation may provide for—

(a) the way in which the notice is to be given and the information or material that is to be included in or to accompany the notice; and

(b) the amount of the contributions, their frequency and the way in which they are to be made.

413 Application of part to incorporated legal practices

(1) A regulation may provide that stated provisions of this part, and other provisions of this Act relating to the fidelity fund, do not apply to incorporated legal practices or apply with stated changes.

(2) For the application to an incorporated legal practice of the provisions of this part and other provisions of this Act relating to the fidelity fund, a reference in those provisions to a default of a law practice extends to a default of an incorporated legal practice, but only if it happens in connection with the provision of legal services.

(3) Nothing in this section affects any obligation of an Australian legal practitioner who is an officer or employee of an

Not authorised—indicative only

Not authorised—indicative only

incorporated legal practice to comply with the provisions of this Act relating to the fidelity fund.

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

(5) The incorporated legal practice must not engage in legal practice in this jurisdiction if any payment is not made by the due date and while the practice remains in default of subsection (4).

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

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

414 Application of part to multi-disciplinary partnerships

(1) A regulation may provide that stated provisions of this part, and other provisions of this Act relating to the fidelity fund, do not apply to multi-disciplinary partnerships or apply with stated changes.

(2) For the application to a multi-disciplinary partnership of the provisions of this part and other provisions of this Act relating to the fidelity fund, a reference in those provisions to a default of a law practice extends to a default of a multi-disciplinary partnership, or a partner or employee of a multi-disciplinary partnership, whether or not any person involved is an Australian legal practitioner, but only if it happens in connection with the provision of legal services.

(3) Nothing in this section affects any obligation of an Australian legal practitioner who is a partner or employee of a multi-disciplinary partnership to comply with the provisions of this Act relating to the fidelity fund.

(4) The amounts payable to the fidelity fund by the legal practitioner partners of a multi-disciplinary partnership may be decided by reference to the total number of Australian legal practitioners employed by the partnership and other relevant matters.

415 Application of part to Australian lawyers whose practising certificates have lapsed

(1) This section applies if an Australian lawyer is not an Australian legal practitioner because his or her Australian practising certificate has lapsed and the lawyer was a sole practitioner immediately before the certificate lapsed, but does not apply where—

(a) the certificate has been suspended or cancelled under this Act or a corresponding law; or

(b) the lawyer's application for the grant or renewal of an Australian practising certificate has been refused under this Act or a corresponding law and the lawyer would be an Australian legal practitioner had it been granted.

(2) For other provisions of this part, the practising certificate is taken not to have lapsed, and accordingly the lawyer is taken to continue to be an Australian legal practitioner.

(3) Subsection (2) ceases to apply whenever the first of the following happens—

(a) a manager or receiver is appointed under this Act or a corresponding law for the law practice;

(b) the end of 6 months after the practising certificate actually lapses;

(c) the lawyer's application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law.

Not authorised—indicative only

Not authorised—indicative only

Chapter 4 Complaints and discipline

Part 4.1 Preliminary

416 Main purposes of ch 4

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 about lawyers;

(d) to otherwise protect members of the public from unlawful operators.

417 Application of chapter to lawyers, former lawyers and former practitioners

(1) This chapter applies to Australian lawyers and former Australian lawyers in relation to conduct happening while they were Australian lawyers (but not Australian legal practitioners) in the same way as it applies to Australian legal practitioners and former Australian legal practitioners, and so applies with any necessary changes.

(2) This chapter applies to former Australian legal practitioners in relation to conduct happening while they were Australian legal practitioners in the same way as it applies to persons who are Australian legal practitioners, and so applies with any necessary changes.

(3) In this section—

former Australian legal practitioner includes a person who was a solicitor or barrister in this jurisdiction before 1 July 2004.

Part 4.2 Key concepts

418 Meaning of *unsatisfactory professional conduct*

Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

419 Meaning of *professional misconduct*

(1) ***Professional misconduct*** includes—

(a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and

(b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

(2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

420 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

(1) The following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

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Not authorised—indicative only

(a) conduct consisting of a contravention of a relevant law, whether the conduct happened before or after the commencement of this section;

Note—

Under the *Acts Interpretation Act 1954*, section 7, and the *Statutory Instruments Act 1992*, section 7, a contravention in relation to this Act would include a contravention of a regulation or legal profession rules and a contravention in relation to a previous Act would include a contravention of a legal profession rule under the *Legal Profession Act 2004*.

(b) charging of excessive legal costs in connection with the practice of law;

(c) conduct for which there is a conviction for—

(i) a serious offence; or

(ii) a tax offence; or

(iii) an offence involving dishonesty;

(d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;

(e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;

(f) conduct of an Australian legal practitioner in failing to comply with an order of a disciplinary body or the former disciplinary body made under this Act or an order of a corresponding disciplinary body made under a corresponding law, including a failure to pay wholly or partly a fine imposed under this Act or a corresponding law;

(g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.

(2) Also, conduct that happened before the commencement of this subsection that, at the time it happened, consisted of a contravention of a relevant law or a corresponding law is

capable of constituting unsatisfactory professional conduct or professional misconduct.

(3) This section does not limit section 418 or 419.

421 Meaning of *respondent*

A ***respondent*** is any of the following—

(a) if a complaint is made about an Australian legal practitioner to whom this chapter applies—the practitioner;

(b) if a complaint is made about a law practice employee in relation to conduct to which this chapter applies—the law practice concerned and the law practice employee;

(c) if a complaint is made about an unlawful operator—the unlawful operator.

Part 4.3 Application of this chapter

422 Practitioners to whom this chapter applies

This chapter applies to an Australian legal practitioner for conduct to which this chapter applies, whether or not—

(a) the practitioner is a local lawyer; or

(b) the practitioner holds a local practising certificate; or

(c) the practitioner holds an interstate practising certificate; or

(d) the practitioner resides or has an office in this jurisdiction; or

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

Not authorised—indicative only

Not authorised—indicative only

423 Conduct to which this chapter applies—generally

(1) Subject to subsection (3), this chapter applies to conduct of an Australian legal practitioner happening in this jurisdiction whether before or after the commencement of this section.

(2) Also, this chapter applies to an Australian legal practitioner's conduct happening outside this jurisdiction, whether or not the conduct was engaged in before or after the commencement of this section, but only—

(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 practitioner and, if a complaint is made by a person about the practitioner, the complainant consent to it being dealt with under this Act; or

(b) if the conduct happened in Australia but entirely outside this jurisdiction and the practitioner 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 practitioner and, if a complaint is made by a person about the practitioner, the complainant consent to it being dealt with under this Act; or

(c) if the conduct happened entirely or partly outside Australia and the practitioner is a local lawyer or a local legal practitioner.

(3) This chapter does not apply to conduct happening in this jurisdiction if—

(a) the commissioner consents to the conduct being dealt with under a corresponding law; or

(b) the Australian legal practitioner and, if a complaint is made by a person about the practitioner, the complainant consent to the conduct being dealt with under a corresponding law.

(4) Subsection (3) does not apply if the conduct is not capable of being dealt with under a corresponding law.

(5) The commissioner may give consent for subsection (3)(a), and may do so conditionally or unconditionally.

Note—

Conduct before the commencement of this provision, that contravened the *Personal Injuries Proceedings Act 2002*, chapter 3, part 1, and had not been dealt with, or finally dealt with, under that Act, may be dealt with under this Act. See the *Personal Injuries Proceedings Act 2002*, section 85 (Provision for advertising of personal injury services and touting).

424 Conduct to which this chapter applies—insolvency, serious offences and tax offences

(1) This chapter applies to the following conduct of a local legal practitioner whether happening in Australia or elsewhere or whether engaged in before or after the commencement of this section—

(a) conduct of the practitioner in relation to which there is a conviction for—

(i) a serious offence; or

(ii) a tax offence; or

(iii) an offence involving dishonesty;

(b) conduct of the practitioner as or in becoming an insolvent under administration;

(c) conduct of the practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act.

(2) This section has effect despite anything in section 423.

Not authorised—indicative only

Not authorised—indicative only

425 Chapter also applies to law practice employees

(1) This chapter applies to the conduct of a law practice 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.

(2) Also, this chapter applies to former law practice employees in relation to conduct happening while they were law practice employees in the same way as it applies to persons who are law practice employees, and so applies with necessary changes.

(3) In this section—

former law practice employee includes a person who was a law practice employee in this jurisdiction before the commencement of this section but is not a law practice employee on the commencement.

427 Chapter also applies to unlawful operators

This chapter applies to the conduct of an unlawful operator, constituting a contravention of section 24 or 25, whether the conduct was engaged in before or after the commencement of this section.

Part 4.4 Complaints about Australian legal practitioners

428 Conduct about which complaint may be made

(1) A complaint may be made under this chapter about—

(a) an Australian legal practitioner's conduct to which this chapter applies; or

(b) the conduct of a law practice employee to which this chapter applies; or

(c) the conduct of an unlawful operator in relation to conduct that constitutes a contravention of section 24 or 25.

(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.

429 Making a complaint

(1) Subject to subsection (5), an entity may make a complaint in the approved form to the commissioner about the conduct of an Australian legal practitioner, law practice employee or unlawful operator, including, for example, an entity that—

(a) is or was a client of the law practice; or

(b) is 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 legal practitioner;

(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 person about whom the complaint is made; and

(c) describe the alleged conduct the subject of the complaint.

Not authorised—indicative only

Not authorised—indicative only

(4) The approved form for a complaint may only be approved by the commissioner.

(5) The commissioner may accept a complaint made in writing other than in the approved form.

430 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 of, 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 legal practitioner that the commissioner considers may be professional misconduct;

(B) conduct of a law practice employee that the commissioner considers may be misconduct of the employee in relation to the relevant practice.

(3) If the commissioner dismisses the complaint, the commissioner must give an information notice to the complainant about the decision.

(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 432.

(6) In this section—

complaint does not include a complaint about the conduct of an unlawful operator.

431 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) give further information about the complaint;

(b) verify the complaint, or any further information, by statutory declaration;

(c) sign an approved form that acknowledges the waiver of legal professional privilege, or the benefit of a duty of confidentiality, as mentioned in section 492.

(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 whether before or after the date stated in the notice.

432 Summary dismissal of complaints

(1) The commissioner may dismiss a complaint for 1 or more of the following reasons—

(a) the commissioner has given the complainant a notice under section 431 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; or

Not authorised—indicative only

Not authorised—indicative only

(ii) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner or misconduct of a law practice employee in relation to the relevant practice;

(c) the commissioner considers the complaint is vexatious, misconceived, frivolous or lacking in substance;

(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) it is not in the public interest to deal with the complaint having regard to the fact that the name of the Australian legal practitioner to whom the complaint relates has already been removed from any Australian roll in which he or she was enrolled.

(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 429.

(4) In this section—

complaint does not include a complaint about the conduct of an unlawful operator.

previous complaint includes—

(a) a complaint under the *Queensland Law Society Act 1952* or the *Legal Profession Act 2004*, if the complaint was made under that Act before the commencement of this section; and

(b) a complaint made to the bar association if the complaint was made before 1 July 2004.

433 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.

(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—

complaint does not include a complaint about the conduct of an unlawful operator.

withdrawal, of a complaint, includes withdrawal of some only or part only of the matters that form the subject of the complaint.

434 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 legal practitioner—the practitioner is under investigation in this jurisdiction or another jurisdiction and, under this Act or a corresponding law of that other jurisdiction, the practitioner's name may be removed from the local roll or interstate roll;

(c) the matter that is the subject of the complaint is being or about to be dealt with in another way;

Not authorised—indicative only

Not authorised—indicative only

(d) if the complaint relates to a requirement under a claim farming provision—the person who is the subject of the complaint is also the subject of an investigation or proceeding under a claim farming scheme under another Act;

(e) the commissioner considers that it is in the public interest to delay dealing with the complaint.

(2) Subsection (1) applies despite sections 18 and 450.

(3) In this section—

claim farming scheme means—

(a) the following provisions of the *Motor Accident Insurance Act 1994*—

(i) part 4, division 2A;

(ii) section 37AA, 37AB, 39A or 41A;

(iii) part 5AA;

(b) the *Workers' Compensation and Rehabilitation Act 2003*, chapter 6B.

435 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 430(2)(b) or 432 or withdrawn under section 433; or

(b) a complaint is withdrawn under section 433 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 legal practitioner, law practice employee or unlawful operator.

(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.

436 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 435(2).

(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 435(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.

Not authorised—indicative only

Not authorised—indicative only

437 Respondent to be notified of complaint or investigation matter

(1) The entity carrying out an investigation as mentioned in section 435 or 436 must ensure that written notice of the following is given to the respondent—

(a) the making of the complaint or the investigation into an investigation matter;

(b) the nature of the complaint or investigation matter;

(c) for a complaint, the identity of the complainant;

(d) action taken by the entity in relation to the complaint or investigation matter before giving the notice.

(2) Also, the notice must advise the respondent that he or she may make submissions to the entity by a stated date that is reasonable.

(3) However, subsection (1) does not apply if the entity believes giving the notice will or is likely to—

(a) prejudice the investigation of the complaint or investigation matter; or

(b) prejudice an investigation by the police, or another investigatory or law enforcement body, of a matter with which the complaint or investigation matter is concerned; or

(c) place the complainant or another person at risk of intimidation or harassment; or

(d) prejudice pending court proceedings.

(4) If the entity has a belief mentioned in subsection (3), the entity—

(a) may postpone giving the respondent the written notice mentioned in subsection (1) until the entity believes it is appropriate to do so; or

(b) may give the respondent a written notice that states—

(i) the general nature of the complaint or investigation matter; and

(ii) if the entity believes the respondent has sufficient information to make submissions about the complaint or investigation matter—the respondent's right to make submissions within a stated period.

(5) Nothing in this section requires the entity to give written notice to the respondent until the entity has had time to do the following to its satisfaction—

(a) consider the complaint or investigation matter;

(b) seek further information about the complaint from the complainant or otherwise seek further information about the investigation matter;

(c) otherwise undertake preliminary inquiries into the complaint or investigation matter;

(d) properly prepare the notice.

438 Submissions by respondent

(1) A respondent given a notice under section 437 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 respondent or the regulatory authority, the commissioner may substitute a later date by which submissions may be made.

(3) The commissioner or regulatory 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.

439 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

Not authorised—indicative only

Not authorised—indicative only

complaint or matter by the stated date or a later date stated in an extension by the commissioner.

(2) For subsection (1), the regulatory 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) The report to the commissioner by the regulatory authority must—

(a) be in an approved form approved by the commissioner; and

(b) include a recommendation about whether a proceeding before a disciplinary body in relation to the complaint or investigation matter should be started.

(4) Without limiting the matters to which the regulatory authority may have regard when making a recommendation as mentioned in subsection (3)(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;

(b) the likelihood of a finding of—

(i) unsatisfactory professional conduct or professional misconduct against an Australian legal practitioner; or

(ii) misconduct of a law practice employee in relation to a relevant practice;

(c) any other action or proceeding that may have started or finished in relation to the conduct the subject of the complaint or investigation matter or to the same practitioner or law practice employee.

(5) If the regulatory authority recommends making a discipline application, the report must also include a draft of the application and the evidence to support the application.

Part 4.5 Mediation for complaints involving consumer dispute

440 Definition for pt 4.5

In this part—

consumer dispute means a dispute between a person and a law practice about conduct of—

(a) an Australian legal practitioner 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 of a relevant practice to the extent the commissioner considers that the dispute does not involve an issue of misconduct in relation to the relevant practice.

441 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 respondent 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.

442 Mediation of hybrid complaint

(1) This section applies to a complaint that involves both of the following—

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Not authorised—indicative only

(a) a consumer dispute;

(b) an issue of unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner 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 respondent 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 4.6 Investigations

443 Powers for investigations

(1) The entity carrying out an investigation as mentioned in section 435 or 436 may, for the investigation—

(a) require an Australian legal practitioner 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 practitioner's custody, possession or control that the practitioner is entitled at law to produce; or

(b) engage a person, whom the entity considers is qualified because the person has the necessary expertise or

experience, to report on the reasonableness of an Australian legal practitioner's bill of costs.

(2) Subject to subsection (6), the Australian legal practitioner must comply with a requirement under subsection (1)(a).

Maximum penalty—50 penalty units.

(3) If the practitioner fails to comply with the requirement, the entity may give the practitioner written notice that, if the failure continues for a further 14 days after the notice is given, the practitioner may be dealt with for professional misconduct.

(4) If notice under subsection (3) is given and the failure continues for the 14 day period—

(a) the Australian legal practitioner is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying with the requirement within the period; and

(b) the commissioner may apply to the Supreme Court for an order in relation to the charge that the practitioner has committed professional misconduct as stated in paragraph (a) as if the application were an application in relation to a complaint against the practitioner.

(5) In a hearing before the Supreme Court 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) An Australian legal practitioner may refuse to give the entity an explanation of a matter being investigated if—

(a) the practitioner satisfies the entity that to give the explanation would contravene, or invalidate, a policy for professional indemnity insurance held by the practitioner; or

(b) the explanation would tend to incriminate the practitioner.

(7) A regulation may provide for how part 4.9 applies to an application to the Supreme Court for an order in relation to a

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Not authorised—indicative only

charge that a legal practitioner has committed professional misconduct as stated in subsection (4)(a) and may be dealt with under that part as an application in relation to a complaint against the practitioner.

444 Referral of costs for assessment

For the purpose of investigating a complaint, the entity carrying out an investigation as mentioned in section 435 or 436 may refer a matter to a person, whom the entity considers is qualified because the person has the necessary expertise or experience, to assess costs charged or claimed by a law practice.

445 Regulation may provide for covering cost of assessment under s 443 or 444

A regulation may provide for the way in which the cost of an assessment under section 443 or 444 is to be met, including requiring an amount to be paid before the assessment or recovering the amount of the assessment as a debt.

446 Powers of commissioner relating to complaint or investigation matter relating to unlawful operator

(1) This section applies after a complaint or investigation matter about an unlawful operator has been investigated.

(2) As the commissioner considers it appropriate, the commissioner may—

(a) start proceedings to prosecute the unlawful operator under this Act; or

(b) give to the commissioner of police the results of the investigation; or

(c) refer the complaint or investigation matter to the law society for further investigation; or

(d) decide to no longer deal with the matter the subject of the complaint or investigation matter.

(3) Subsection (2)(a) does not limit the *Acts Interpretation Act 1954*, section 42.

(4) For subsection (2)(b), the commissioner may enter into arrangements with the commissioner of police.

Part 4.7 Decision of commissioner

447 Decision of commissioner to start proceeding under ch 4

As the commissioner considers appropriate in relation to a complaint or investigation matter that has been or continues to be investigated, other than a complaint or investigation matter about the conduct of an unlawful operator, the commissioner may start a proceeding under this chapter before a disciplinary body.

448 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 legal practitioner—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 respondent and any complainant written notice about the commissioner's decision to dismiss the complaint or investigation matter.

Not authorised—indicative only

Not authorised—indicative only

449 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 part.

Part 4.8 General procedural matters

450 Duty to deal with complaints efficiently and expeditiously

The commissioner must, under this Act, deal with complaints as efficiently and expeditiously as is practicable.

Note—

See section 434 (Commissioner may delay dealing with complaint).

451 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 the date set down for starting the hearing for the discipline application; and

(d) written notice of a decision of a disciplinary body relating to the complaint.

(3) This section is subject to sections 581PB and 581QK.

Part 4.9 Proceedings in disciplinary body

452 Starting proceeding before a disciplinary body

(1) The commissioner may apply—

(a) to the Supreme Court for an order against an Australian legal practitioner in relation to a complaint against the legal practitioner or an investigation matter; or

(b) to the committee for an order—

(i) against an Australian legal practitioner in relation to a complaint against the legal practitioner 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***.

Notes—

1 For other provisions relating to proceedings for discipline applications before the Supreme Court, see parts 6B.1 and 6B.2.

2 For other provisions relating to proceedings for discipline applications before the committee, see chapter 6C.

453 Hearings

The disciplinary body must hear and decide each allegation stated in the discipline application.

454 Joinder by committee

The committee may order the joinder of more than 1 discipline application involving the same Australian legal practitioner or law practice employee or different Australian legal practitioners or law practice employees.

Not authorised—indicative only

Not authorised—indicative only

455 Variation of discipline application

(1) The disciplinary body may 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 proceeding.

(3) The inclusion of an additional allegation is not precluded on any or all of the following grounds—

(a) the additional allegation has not been the subject of a complaint;

(b) the additional allegation has not been the subject of an investigation;

(c) the alleged conduct happened more than 3 years ago, including conduct that happened before the commencement of section 430.

456 Decisions of Supreme Court about an Australian legal practitioner

(1) If, after the Supreme Court has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian legal practitioner, the court is satisfied that the practitioner has engaged in unsatisfactory professional conduct or professional misconduct, the court may make any order as it thinks fit, including any 1 or more of the orders stated in this section.

(2) The Supreme Court 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 legal practitioner be removed from the local roll;

(b) an order that the practitioner's local practising certificate be suspended for a stated period or cancelled;

(c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;

(d) an order that—

(i) imposes stated conditions on the practitioner's practising certificate granted 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 practitioner may apply to the court for the conditions to be amended or removed;

(e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;

(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 practitioner in a law practice in this jurisdiction; or

(ii) employ or continue to employ the practitioner in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.

(3) The Supreme Court may, under this subsection, make 1 or more of the following—

(a) an order recommending that the name of the Australian legal practitioner be removed under a corresponding law from an interstate roll;

(b) an order recommending that the practitioner's interstate practising certificate be suspended for a stated period or cancelled under a corresponding law;

(c) an order recommending that an interstate practising certificate not be, under a corresponding law, granted to the practitioner until the end of a stated period;

(d) an order recommending—

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Not authorised—indicative only

(i) that stated conditions be imposed on the practitioner's interstate practising certificate; and

(ii) that the conditions be imposed for a stated period; and

(iii) a stated time, if any, after which the practitioner may apply to the court for the conditions to be amended or removed.

(4) The Supreme Court may, under this subsection, make 1 or more of the following—

(a) an order that the Australian legal practitioner pay a penalty of a stated amount, not more than $100,000;

(b) a compensation order;

(c) an order that the practitioner undertake and complete a stated course of further legal education;

(d) an order that, for a stated period, the practitioner engage in legal practice under supervision as stated in the order;

(e) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;

(f) an order that the practitioner stop accepting instructions as a public notary in relation to notarial services;

(g) an order that engaging in legal practice by the practitioner 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 practitioner 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 practitioner seek advice from a stated person in relation to the practitioner's management of engaging in legal practice;

(j) an order that the practitioner must not apply for a local practising certificate for a stated period.

(5) To remove any doubt, it is declared that the Supreme Court may make any number of orders mentioned in any or all of subsections (2), (3) and (4).

(6) Also, the Supreme Court may make ancillary orders, including an order for payment by the Australian legal practitioner of expenses associated with orders under subsection (4), as assessed in or under the order or as agreed.

(7) The Supreme Court may find a person has engaged in unsatisfactory professional conduct even though the discipline application alleged professional misconduct.

457 Notification of Supreme Court orders

(1) This section applies if the Supreme Court—

(a) makes an order under section 456 or 462 or part 4.10 in relation to a discipline application; or

(b) makes an order in relation to a discipline application on an appeal under section 469 against a decision of the committee.

(2) The registrar must give the Minister a copy of the order and the reasons for the order.

458 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 legal practitioner or law practice employee, the committee is satisfied—

(a) for the practitioner—that the practitioner has engaged in unsatisfactory professional conduct; or

(b) for the employee—that the employee has engaged in misconduct in relation to the relevant practice.

(2) The committee may make 1 or more of the following in relation to an Australian legal practitioner—

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Not authorised—indicative only

(a) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;

(b) an order that the practitioner pay a penalty of a stated amount, not more than $10,000;

(c) a compensation order;

(d) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;

(e) an order that engaging in legal practice by the practitioner 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 practitioner 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 practitioner seek advice from a person nominated by the relevant regulatory authority in relation to the practitioner's management of engaging in legal practice.

(3) Also, the committee may make ancillary orders, including an order for payment by the Australian legal practitioner 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 the law practice concerned and all other law practices in this jurisdiction must not, for a period stated in the order of not more than 5 years—

(a) continue to employ or employ the employee in a law 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 includes a person who was a law practice employee.

459 Notification and filing of committee orders

(1) This section applies if the committee makes an order under section 458 or 462 or part 4.10 in relation to a discipline application.

(2) The commissioner must—

(a) give the other party or 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

(b) give the Minister a copy of the order.

(3) If an appeal to the Supreme Court against the decision is not started within the time allowed for making 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.

(5) Subsection (4) is subject to section 463.

460 Interlocutory and interim orders

(1) A disciplinary body may make an interlocutory or interim order as it considers appropriate before making its final decision about a discipline application.

(2) Without limiting subsection (1), an order under section 456 or 474 may be made as an interlocutory or interim order.

461 Compliance with decisions and orders

(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 456(2), 458(2) or 460; and

Not authorised—indicative only

Not authorised—indicative only

(b) enforce an order made under section 456(4) or (6), 458(2), (3) or (4) or 460 so far as the order relates to the legal practice of, or other matters affecting, the Australian legal practitioner 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 Supreme Court made under section 456(3) or 460 in relation to that corresponding law; and

(b) an order of the body made under section 456(4) or (6), 458(2), (3) or (4) or 460 so far as the order relates to the legal practice of, or other matters affecting, the Australian legal practitioner concerned in that other jurisdiction.

(3) If the Supreme Court makes an order recommending that the name of an Australian legal practitioner 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.

462 Costs

(1) A disciplinary body must make an order requiring a person whom it has found to have engaged in prescribed conduct to pay costs, including costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist.

(2) Nothing in subsection (1) requires the disciplinary body to make an order requiring the person to pay costs relating to conduct in which the person has engaged that is not prescribed conduct.

(3) A disciplinary body may make an order requiring a person whom it has found not to have engaged in prescribed conduct to pay costs, including costs of the commissioner and the complainant, if the disciplinary body is satisfied that—

(a) the sole or principal reason why the proceeding was started in the disciplinary body was the person'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.

(4) Without limiting subsection (3), a disciplinary body that makes an order under section 460 may make a further order requiring an Australian legal practitioner, in relation to whom the order under section 460 relates, to pay costs in relation to the order.

(5) 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 legal practitioner or law practice employee has not engaged in prescribed conduct; and

(b) the body considers that special circumstances warrant the making of the order.

(6) An order for costs—

(a) may be for a stated amount; or

(b) may be for an unstated amount but must state the basis on which the amount must be decided.

(7) An order for costs may state the terms on which costs must be paid.

Note—

The Supreme Court may also make orders for costs under sections 581PW and 581PX.

(8) In this section—

prescribed conduct means unsatisfactory professional conduct, professional misconduct or misconduct in relation to a relevant practice, as mentioned in section 456(1) or 458(1).

Not authorised—indicative only

Not authorised—indicative only

462A Institution of proceedings by the commissioner

The commissioner may bring a proceeding under this part for the imposition or enforcement of a penalty.

463 Other remedies not affected

This part does not affect any other remedy available to a complainant.

Part 4.10 Appeals from committee decisions relating to discipline applications

464 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 that the law practice charged a complainant 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 suffered because of conduct that has been found to be—

(i) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner involved in the relevant practice; or

(ii) misconduct of a law practice employee in relation to the relevant practice.

465 Compensation order relating to pecuniary loss

(1) Unless the parties agree, a compensation order that is the type of order mentioned in section 464(d) must not be made unless the disciplinary body making the order is satisfied—

(a) if there is a complainant in relation to the discipline application—that the complainant has suffered pecuniary loss because of the conduct concerned; and

(b) that it is in the interests of justice that an order of that type be made.

(2) Also, a compensation order of the type mentioned in section 464(d) for a pecuniary loss for which the relevant complainant has received or is entitled to receive either of the following must not be made—

(a) compensation under an order that has been made by a court;

(b) compensation from the fidelity fund, or a fund of another jurisdiction under a corresponding law of that jurisdiction, if a claim for payment from the fidelity fund or other fund has been made or decided.

466 Effect of compensation order

(1) A compensation order preventing recovery of an amount of the type mentioned in section 464(a) is effective even if a proceeding to recover the amount, or any part of it, has been started by or for the law practice.

(2) A compensation order requiring repayment of an amount of the type mentioned in section 464(a) is effective even if a court has ordered payment of the amount, or an amount of which it is part, in a proceeding brought by or for the law practice.

(3) A compensation order requiring payment of an amount of more than $7,500 by way of monetary compensation of the type mentioned in section 464(d) must not be made unless the complainant and the law practice both consent to the order.

Not authorised—indicative only

Not authorised—indicative only

467 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 another proceeding by or for the complainant in relation to the same loss.

Part 4.10A Appeals from committee decisions relating to discipline applications

469 Appeal to Supreme Court against committee's decision

(1) A party dissatisfied with a final decision of the committee about a discipline application may appeal to the Supreme Court against the decision.

(2) In the proceeding before the Supreme Court for the appeal—

(a) the committee is not a party; and

(b) the commissioner is a party.

Note—

For other provisions relating to proceedings for the appeal, see parts 6B.1 and 6B.3.

Part 4.11 Publicising disciplinary action

471 Definition for pt 4.11

In this part—

disciplinary action means—

(a) the making of an order by a court or the former disciplinary body that finds an Australian legal practitioner has engaged in professional misconduct

under this Act, a previous 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 former disciplinary body of unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner—

(i) the removal of the practitioner's name from an Australian roll;

(ii) the suspension or cancellation of an Australian practising certificate of the practitioner;

(iii) the refusal to grant or renew an Australian practising certificate to the practitioner;

(iv) the appointment of a receiver of all or any of the practitioner's property or the appointment of a manager for the practitioner's law practice; or

(c) the making of an order by the committee under section 458(4).

472 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 legal practitioner or in relation to a law practice employee;

(b) disciplinary action taken under a corresponding law against an Australian legal practitioner who is or was admitted to the legal profession under this Act or a previous Act or practising in this jurisdiction, when the conduct that is the subject of the disciplinary action happened.

(2) The discipline register must include—

Not authorised—indicative only

Not authorised—indicative only

(a) the full name of the person against whom the disciplinary action was taken and the law practice who employs or employed the person; and

(b) the person's business address or former business address; and

(c) for an Australian legal practitioner—the practitioner's home jurisdiction; and

(d) particulars of the disciplinary action taken; and

(e) other particulars prescribed under a regulation.

(3) The discipline register may be kept in a form decided by the commissioner, including forming part of other registers.

(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.

473 Other means of publicising disciplinary action

(1) The commissioner may publicise disciplinary action taken against a person in any way the commissioner considers appropriate.

(2) Nothing in this section affects the provisions of this part relating to the discipline register.

474 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 473, the result of the appeal or review must be publicised in the same way by the commissioner.

475 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 a person or relating to a law practice; or

(b) performing the functions or exercising the powers of the commissioner under this chapter; 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 protected 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

(b) matter containing that information, or matter purporting to contain that information where the matter is incorrect; or

(c) a fair report or summary of that information.

(3) In this section—

protected person means—

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(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).

476 Disciplinary action taken because of infirmity, injury or illness

(1) Disciplinary action taken against a person 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 suspension or cancellation of the person's practising certificate; or

(b) a refusal to grant or renew an Australian practising certificate applied for by the person; or

(c) a regulation of the person's right to engage in legal practice;

but in that case the reason for the disciplinary action, and other information relating to the infirmity, injury or mental or physical illness, must not be recorded in the register or otherwise publicised under this part without the person's consent.

477 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 or the former disciplinary body in relation to disciplinary action taken under this chapter;

(b) a corresponding disciplinary body in relation to disciplinary action taken under a corresponding law;

(c) a court or tribunal of this or another jurisdiction.

(2) However, despite the order mentioned in subsection (1), the name and other identifying particulars of the person against whom the disciplinary action was taken and the law practice who employs or employed the person, 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 705 is subject to this part.

Part 4.12 Inter-jurisdictional provisions

478 Protocols

(1) The commissioner may enter into arrangements (***cross-border protocols***) with corresponding authorities about investigating and dealing with conduct that appears to have happened in more than 1 jurisdiction.

(2) In particular, a cross-border protocol may provide for—

(a) 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

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(c) procedures to be adopted for requesting and conducting the investigation of an aspect of complaints or investigation matters under this part.

479 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 a discipline application under this chapter.

480 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 under a corresponding law being dealt with under that law.

(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 must give a report on the result of the investigation to the corresponding authority.

481 Sharing of information with corresponding authorities

(1) This section applies to each of the following entities—

(a) the commissioner;

(b) the law society;

(c) the bar association.

(2) Each entity may, either separately or jointly with another entity or entities, enter into arrangements with a corresponding authority for providing information to the corresponding authority about—

(a) complaints and investigations under this chapter; and

(b) any action taken in relation to complaints made or investigations conducted under this chapter, including decisions of a disciplinary body under this chapter.

(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 the information.

482 Cooperation with other authorities

(1) This section applies when a prescribed entity is dealing with a complaint or investigating an investigation matter.

(2) The prescribed entity may, either separately or jointly with another prescribed entity or prescribed entities, consult and cooperate with another person or body, whether in Australia or a foreign county, who or that has or may have relevant information or powers in relation to the person against whom the complaint was made or the person under investigation.

(3) For subsection (2), the prescribed entity and the other person or body may exchange information concerning the complaint or investigation.

(4) In this section—

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prescribed entity means an entity to which section 481 applies.

483 Request for information relevant to a complaint or investigation matter

(1) The commissioner may ask a person or body in Australia or elsewhere that may have information relevant to a complaint or investigation matter for information.

(2) Before asking for the information, the commissioner must decide the way in which the request is to be phrased having regard to the respondent's right to privacy in relation to the matter the subject of the complaint or investigation matter.

(3) For the purpose of asking for information, the commissioner may give information to a foreign registration authority if the commissioner considers it necessary to do so to establish the matters relevant to the investigation of the complaint or investigation matter.

484 Compliance with recommendations or orders made under corresponding laws

(1) Entities having relevant functions or powers under this Act must—

(a) give effect to or enforce any recommendation or order of a corresponding disciplinary body, or other corresponding authority, made under a corresponding law in relation to functions or powers exercisable under this Act; and

(b) give effect to or enforce any recommendation or order of a corresponding disciplinary body, or other corresponding authority, made under a corresponding law so far as the recommendation or order relates to the practice of law by the Australian legal practitioner or law practice concerned in this jurisdiction.

(2) If a corresponding disciplinary body makes a recommendation or order that a person's name be removed

from the local roll of this jurisdiction, the Brisbane registrar must remove, or arrange with another registrar for the removal of, the name from the local roll.

(3) If a corresponding disciplinary body makes an order that a local Australian legal practitioner pay a fine, 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.

485 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 4.13 Miscellaneous

486 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.

487 Protection from liability for notification of conduct or making a complaint

(1) This section applies if a person makes a complaint or otherwise gives information to the commissioner, the law society or the bar association about conduct that is—

(a) conduct of an Australian lawyer or a law practice employee; or

(b) a possible contravention of section 24 or 25.

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(2) The person is not liable, civilly (including in an action for defamation), criminally or under an administrative process for making the complaint, giving the notice or otherwise giving information to the commissioner, the law society or the bar association relating to the complaint or notice, including, for example, giving further information under section 431.

(3) Also, merely because the person makes the complaint, gives the notice or otherwise gives information as mentioned in subsection (2), the person can not be held to have—

(a) breached any code of professional etiquette or ethics; or

(b) departed from accepted standards of professional conduct.

487A 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.

487B 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 the document 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.

488 Failure to comply with order of a disciplinary body

A failure by a person to comply with an order of a disciplinary body under this Act, or an order of a corresponding disciplinary body under a corresponding law, is capable of being unsatisfactory professional conduct or professional misconduct.

489 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.

490 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 or a previous 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.

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(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.

491 Confidentiality of client communications

(1) An Australian legal practitioner must comply with a requirement under this chapter or a requirement or order of the Supreme Court to answer a question or to produce information or a document, despite any duty of confidentiality about a communication between the legal practitioner 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 or a document for an investigation of the complaint, whether or not the complaint has been withdrawn, or an investigation matter.

(3) It is a reasonable excuse for the Australian legal practitioner not to comply with a requirement mentioned in subsection (1) if complying with the requirement might tend to incriminate the practitioner.

(4) For this section, the commissioner may give an undertaking to a person regarding non-disclosure of information or a document given under subsection (3).

492 Waiver of legal professional privilege or benefit of duty of confidentiality

(1) This section applies if a person signs a document waiving the person's legal professional privilege, or the benefit of a duty of confidentiality, about a matter (the ***waived matter***) relating to the subject of a complaint or an investigation matter.

(2) An Australian legal practitioner can not refuse to disclose to the commissioner or relevant regulatory authority any

information about the waived matter on the grounds of legal professional privilege or the duty of confidentiality.

(3) However, subject to section 581G, the Australian legal practitioner may refuse to disclose the information on the grounds that it might tend to incriminate the practitioner.

Chapter 5 External intervention

Part 5.1 Preliminary

493 Main purpose of ch 5

(1) The main purpose of this chapter is to ensure that an appropriate range of options is available for intervention in the business and professional affairs of law practices and Australian-registered foreign lawyers for the purpose of protecting the interests of—

(a) the general public; and

(b) clients; and

(c) lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with the interests of the general public and clients.

(2) It is intended that interventions happen consistently with—

(a) similar interventions in other jurisdictions, especially if a law practice operates in this jurisdiction and 1 or more other jurisdictions; and

(b) other provisions of this Act.

Note—

This chapter—

(a) applies to all law practices, regardless of whether they are incorporated under the Corporations Act; and

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(b) is intended to apply so that it, rather than the Corporations Act or the *Bankruptcy Act 1966* (Cwlth), applies in relation to the winding-up of trust property and the carrying on of a law practice by an external intervener.

494 Definitions for ch 5

(1) In this chapter—

external intervener means a supervisor, manager or receiver under this chapter.

external intervention means the appointment of, and the exercise of the functions and powers of, a supervisor, manager or receiver under this chapter.

regulated property, of a law practice, means the following—

(a) trust money or trust property received, receivable or held by the law practice;

(b) interest, dividends or other income or anything else derived from or acquired with money or property mentioned in paragraph (a);

(c) documents or records of any description relating to anything mentioned in paragraph (a) or (b);

(d) any computer hardware or software, or other devices, in the custody or control of the law practice by which any records mentioned in paragraph (c) may be produced or reproduced in visible form.

(2) Other expressions used in this chapter have the same meanings as in part 3.3.

495 Application of ch 5

(1) This chapter does not apply to the holder of a current local practising certificate granted or renewed by the bar association.

(2) A regulation may provide whether or not, and if so to what extent, this chapter applies to an interstate legal practitioner.

(3) Also this chapter applies, with any necessary changes, to an Australian-registered foreign lawyer and a former Australian-registered foreign lawyer in the same way as it applies to a law practice.

496 Application of chapter to other persons

(1) This chapter applies, with any necessary changes, to each of the following in the same way as it applies to a law practice—

(a) a former law practice or former Australian legal practitioner;

(b) the executor (original or by representation) or administrator for the time being of a deceased Australian legal practitioner or of his or her estate;

(c) the administrator or receiver, or receiver and manager, of the property of an incorporated legal practice;

(d) the liquidator of an incorporated legal practice that is being or has been wound up.

(2) In this section—

former Australian legal practitioner includes a person who was a solicitor or barrister in this jurisdiction before 1 July 2004.

Part 5.2 Starting external interventions

497 Circumstances warranting external intervention

External intervention in relation to a law practice may take place in any of the following circumstances—

(a) if a legal practitioner associate involved in the practice has died, ceases to be an Australian legal practitioner, has become an insolvent under administration or is in prison;

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(b) if a firm—the partnership has been wound up or dissolved;

(c) if an incorporated legal practice—

(i) ceases to be an incorporated legal practice; or

(ii) is being or has been wound up; or

(iii) has been deregistered or dissolved;

(d) if the law society believes that the law practice or an associate of the law practice—

(i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the practice; or

(ii) has committed a serious irregularity, or a serious irregularity has happened, in relation to trust money or trust property or the affairs of the practice; or

(iii) has failed properly to account in a timely way to any person for trust money or trust property received by the practice for that person; or

(iv) has failed properly to make a payment of trust money, or a transfer of trust property, when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or

(v) is in breach of a regulation, or the legal profession rules, with the result that the record-keeping for the practice's trust account is inadequate; or

(vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or

(vii) is the subject of a complaint relating to trust money or trust property received by the practice; or

(viii) has failed to comply with any requirement of an investigator, an ILP investigator or an external examiner, under this Act; or

(ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the practice or for properly winding up the affairs of the practice;

(e) if the law society believes proper cause exists in relation to the practice.

498 Decision regarding external intervention

(1) This section applies if the law society becomes aware that 1 or more of the circumstances mentioned in section 497 exist in relation to a law practice and decides that, having regard to the interests of the clients of the practice and to other matters that it considers appropriate, external intervention is warranted.

(2) The law society may—

(a) appoint a supervisor of trust money of the law practice, if the law society considers—

(i) that external intervention is required because of issues relating to the practice's trust accounts; and

(ii) that it is not appropriate that the provision of legal services by the practice be wound up and terminated because of those issues; or

(b) appoint a manager for the law practice, if the law society believes that—

(i) external intervention is required because of issues relating to the practice's trust records; or

(ii) the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or

(iii) there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or

(c) appoint a receiver for the law practice, if the law society considers—

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(i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or

(ii) that it may be appropriate that the provision of legal services by the practice be wound up and terminated.

(3) The law society may make further appointments under subsection (2) in relation to the law practice and for that purpose may revoke a previous appointment with effect from a date or event stated by it in an instrument of revocation or instrument of further appointment.

(4) A further appointment may be made under subsection (3) whether or not there has been any change in the circumstances in consequence of which the original appointment was made and whether or not any further circumstances have come into existence in relation to the law practice after the original appointment was made.

(5) An appointment of an external intervener for a law practice may be made in relation to the practice generally or may be limited in any way the law society considers appropriate, including, for example, to matters connected with a particular legal practitioner associate, legal office or subject-matter.

Part 5.3 Supervisors of trust money

499 Appointment of supervisor of trust money

(1) This section applies if the law society decides to appoint a supervisor of trust money of a law practice.

(2) The law society may, in the law society approved form, appoint a person as supervisor of trust money.

(3) The appointee must be—

(a) an Australian legal practitioner who holds an unrestricted practising certificate; or

(b) a qualified accountant with experience in law practices' trust accounts;

and may, but need not, be an employee of the law society.

(4) The instrument of appointment must—

(a) identify the law practice and the supervisor; and

(b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and

(c) state the term of the appointment; and

(d) state any conditions imposed by the law society when the appointment is made; and

(e) state any fees payable by way of remuneration to the supervisor specifically for carrying out his or her duties in relation to the external intervention; and

(f) provide for legal costs and the expenses that may be incurred by the supervisor in relation to the external intervention.

(5) The instrument of appointment may state reporting requirements to be observed by the supervisor.

500 Notice of appointment

(1) After appointment of a supervisor of trust money of a law practice is made, the law society must give a notice of appointment to each of the following—

(a) the practice;

(b) any other persons authorised to operate a trust account of the practice;

(c) any external examiner appointed to examine the practice's trust records;

(d) the ADI with which any trust account of the practice is kept;

(e) any person whom the law society believes should be given a notice.

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(2) The notice must—

(a) identify the law practice and the supervisor; and

(b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and

(c) state the term of the appointment; and

(d) state any reporting requirements to be observed by the supervisor; and

(e) state any conditions imposed by the law society when the appointment is made; and

(f) include a statement that the law practice may appeal against the appointment of the supervisor under section 531; and

(g) contain or be accompanied by other information or material prescribed under a regulation.

501 Effect of service of notice of appointment

(1) After an ADI is given a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless—

(a) the withdrawal or transfer is made by cheque or other instrument drawn on that account and signed by the supervisor or a nominee of the supervisor; or

(b) the withdrawal or transfer is made by the supervisor or a nominee of the supervisor by means of electronic or internet banking facilities; or

(c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the supervisor or a nominee of the supervisor.

(2) After a person, other than the supervisor or an ADI, is given a notice of the appointment of a supervisor of trust money of a

law practice and until the appointment is terminated, the person must not—

(a) deal with any of the practice's trust money; or

(b) sign any cheque or other instrument drawn on a trust account of the practice; or

(c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty—100 penalty units.

(3) If approved by the law society, the supervisor of trust money may, for subsection (1)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.

(4) Any money that is withdrawn or transferred in contravention of subsection (1) may be recovered from the ADI concerned by the supervisor as a debt and any amount recovered is to be paid into a trust account of the law practice.

502 Role of supervisor of trust money

(1) The supervisor of trust money of a law practice has the powers and duties of the practice in relation to the trust money of the law practice, including powers—

(a) to receive trust money entrusted to the practice; and

(b) to open and close trust accounts.

(2) For performing the functions of a supervisor of trust money of a law practice, the supervisor may do any or all of the following—

(a) enter and remain on premises used by the law practice in connection with its engaging in legal practice;

(b) require the law practice or an associate or former associate of the law practice, or another person who has or had control of files or documents relating to trust

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Not authorised—indicative only

money received by the practice, to give the supervisor either or both of the following—

(i) access to the files or documents that the supervisor reasonably requires;

(ii) information relating to the trust money that the supervisor reasonably requires;

(c) operate equipment or facilities on the premises, or require a person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the supervisor's appointment;

(d) take possession of any relevant material and retain it for as long as may be necessary;

(e) secure any relevant material found on the premises against interference, if the material can not be conveniently removed;

(f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the supervisor's appointment.

(3) If the supervisor takes anything from the premises, the supervisor must issue a receipt, in a law society approved form, and—

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises—give the receipt to the occupier or person; or

(b) otherwise—leave the receipt at the premises in an envelope addressed to the occupier.

(4) This section applies to trust money held by the practice before the supervisor is appointed, as well as to trust money received afterwards.

(5) The supervisor does not have a role in the management of the affairs of the law practice except in so far as the affairs relate to a trust account of the practice.

(6) If the supervisor is refused access to the premises or the premises are unoccupied, the supervisor must advise the law society about the refusal.

(7) For this section, the supervisor is declared to be a public official for the *Police Powers and Responsibilities Act 2000*, chapter 1, part 3, division 2.

503 Records of law practice under supervision

(1) The supervisor of trust money of a law practice must keep records of the supervisor's dealings with the trust money—

(a) separately from records relating to dealings with trust money before the supervisor's appointment; and

(b) separately from the affairs of another law practice in relation to which the supervisor is also a supervisor of trust money; and

(c) in the way prescribed under a regulation.

(2) Subject to subsection (1), a supervisor of trust money of a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

504 Termination of supervisor's appointment

(1) The appointment of a supervisor of trust money of a law practice terminates in the following circumstances—

(a) the term of the appointment comes to an end;

(b) the appointment is declared invalid or terminated under section 531;

(c) the appointment of a manager for the practice takes effect;

(d) the appointment of a receiver for the practice takes effect;

(e) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;

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Not authorised—indicative only

(f) a termination of the appointment by the law society takes effect.

(2) The law society may, by written notice to the supervisor, terminate the supervisor's appointment on or after a day stated in the notice.

(3) The law society must give a copy of the notice under subsection (2) to the persons originally given a notice of appointment.

Part 5.4 Managers

505 Appointment of manager

(1) This section applies if the law society decides to appoint a manager for a law practice.

(2) The law society must, in a law society approved form, appoint a person as the manager who is an Australian legal practitioner holding an unrestricted practising certificate.

(3) The manager may, but need not, be an employee of the law society.

(4) The instrument of appointment must—

(a) identify the law practice and the manager; and

(b) indicate that the external intervention is by way of appointment of a manager; and

(c) state the term of the appointment; and

(d) state any conditions imposed by the law society when the appointment is made; and

(e) state the fees payable by way of remuneration to the manager for carrying out his or her duties for the external intervention; and

(f) provide for the legal costs and expenses that may be incurred by the manager for the external intervention; and

(g) include any other information required under a regulation to be included in the instrument of appointment.

(5) The instrument of appointment may state any reporting requirements to be observed by the manager.

506 Notice of appointment

(1) After an appointment of a manager for a law practice is made, the law society must give a notice of the appointment to—

(a) the practice; and

(b) any other person authorised to operate any trust account of the practice; and

(c) any external examiner appointed to examine the practice's trust records; and

(d) the ADI with which any trust account of the practice is kept; and

(e) any person whom the law society believes should be given the notice.

(2) The notice must—

(a) identify the law practice and the manager; and

(b) indicate that the external intervention is by way of appointment of a manager; and

(c) state the term of the appointment; and

(d) state any reporting requirements to be observed by the manager; and

(e) state any conditions imposed by the law society when the appointment is made; and

(f) include a statement that the law practice may appeal against the appointment of the manager under section 531; and

(g) contain or be accompanied by other information or material prescribed under a regulation.

Not authorised—indicative only

Not authorised—indicative only

507 Effect of service of notice of appointment

(1) After a law practice is given a notice of appointment of the manager for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is stated or mentioned in the notice must not participate in the affairs of the practice except under the direct supervision of the manager.

Maximum penalty—100 penalty units.

(2) After an ADI is given a notice of appointment of the manager for the law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless the withdrawal or transfer is made—

(a) by cheque or other instrument drawn on that account and signed by—

(i) the manager; or

(ii) a receiver for the practice; or

(iii) a nominee of the manager or receiver; or

(b) by means of electronic or internet banking facilities by—

(i) the manager; or

(ii) a receiver for the practice; or

(iii) a nominee of the manager or receiver; or

(c) under an authority to withdraw or transfer funds from the account signed by—

(i) the manager; or

(ii) a receiver for the practice; or

(iii) a nominee of the manager or receiver.

(3) After a person is given a notice of appointment of the manager for the law practice and until the appointment is terminated, the person must not—

(a) deal with any of the practice's trust money; or

(b) sign any cheque or other instrument drawn on a trust account of the practice; or

(c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty—100 penalty units.

(4) Subsection (3) does not apply to a legal practitioner associate mentioned in subsection (1), an ADI or the manager or receiver for the practice.

(5) If approved by the law society, the manager may, for subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice by means of electronic or internet banking facilities.

(6) If an amount is withdrawn or transferred in contravention of subsection (2), that amount may be recovered from the ADI concerned by the manager, or a receiver for the law practice, as a debt and, if recovered, must be paid into a trust account of the law practice or another trust account nominated by the manager or receiver.

508 Role of manager

(1) The manager for a law practice may carry on the practice and may do all things that the practice, or a legal practitioner associate of the practice, might lawfully have done, including but not limited to the following—

(a) transacting any urgent business of the practice;

(b) transacting, with the approval of any or all of the existing clients of the practice, any business on their behalf, including—

(i) starting, continuing, defending or settling any proceeding; and

(ii) receiving, retaining and disposing of property;

(c) accepting instructions from new clients and transacting any business on their behalf, including—

Not authorised—indicative only

Not authorised—indicative only

(i) starting, continuing, defending or settling any proceeding; and

(ii) receiving, retaining and disposing of regulated property of the law practice;

(d) charging and recovering legal costs, including legal costs for work in progress at the time of the appointment of the manager;

(e) entering into, executing or performing any agreement;

(f) dealing with trust money under this Act;

(g) winding up the affairs of the practice.

(2) For performing the functions of the manager for the law practice, the manager may do any or all of the following—

(a) enter and remain on premises used by the law practice in connection with its engaging in legal practice;

(b) require the law practice or an associate or former associate of the law practice, or another person who has or had control of files (including documents relating to trust money received by the practice) to give the supervisor either or both of the following—

(i) access to the files or documents that the supervisor reasonably requires;

(ii) information relating to client matters the manager reasonably requires;

(c) operate equipment or facilities on the premises, or require a person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the manager's appointment;

(d) take possession of any relevant material and retain it for as long as may be necessary;

(e) secure any relevant material found on the premises against interference, if the material can not be conveniently removed;

(f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the manager's appointment.

(3) If the manager takes something from the premises, the manager must issue a receipt, in a law society approved form, and—

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises—give the receipt to the occupier or person; or

(b) otherwise—leave the receipt at the premises in an envelope addressed to the occupier.

(4) If the manager is refused access to the premises or the premises are unoccupied, the manager must advise the law society about the refusal.

(5) For this section, the manager is declared to be a public official for the *Police Powers and Responsibilities Act 2000*, chapter 1, part 3, division 2.

509 Records and accounts of law practice under management

(1) The manager for a law practice must keep records and accounts relating to the management of the practice—

(a) separately from the management of the affairs of the law practice before the manager's appointment; and

(b) separately from the affairs of another law practice that the manager is managing; and

(c) in the way prescribed under a regulation.

(2) Subject to subsection (1), the manager for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

Not authorised—indicative only

Not authorised—indicative only

510 Deceased estates

(1) It is the duty of the manager for a law practice to cooperate with the legal personal representative relating to a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.

(2) The manager is not, in the performance of functions or the exercise of powers as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from performing functions or exercising powers as a legal personal representative if otherwise appointed as representative.

(3) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment, functions and powers are not affected by the death.

511 Termination of manager's appointment

(1) The appointment of a manager for a law practice terminates in the following circumstances—

(a) the term of the appointment comes to an end;

(b) the appointment is declared invalid or terminated under section 531;

(c) the appointment of a receiver for the practice takes effect, if the terms of the receiver's appointment indicate that the receiver is authorised to exercise the functions and powers of a manager;

(d) the manager has wound up the affairs of the practice;

(e) a termination of the appointment by the law society takes effect.

(2) The law society may, by written notice to the manager, terminate the manager's appointment on or after a day stated in the notice.

(3) If the appointment terminates in the circumstances mentioned in subsection (1)(a), (b), (c) or (e), the former manager must, after the termination, transfer and deliver the regulated property and client files of the law practice to—

(a) if there is another external intervener for the law practice—the other external intervener; or

(b) otherwise—the practice.

(4) However, the former manager need not transfer the regulated property and client files of the law practice under subsection (3) unless the manager's expenses for the external intervention have been paid.

(5) The law society must give a copy of the notice under subsection (2) to the persons originally given a notice of appointment.

Part 5.5 Receivers

512 Appointment of receiver

(1) This section applies if the law society decides to appoint a receiver for a law practice.

(2) The law society may, in the law society approved form, appoint a person as receiver.

(3) The appointee must be—

(a) an Australian legal practitioner who holds an unrestricted practising certificate; or

(b) a qualified accountant with experience in law practices' trust accounts;

and may, but need not, be an employee of the law society.

(4) The instrument of appointment must—

(a) identify the law practice and the receiver; and

(b) indicate that the external intervention is by way of appointment of a receiver; and

Not authorised—indicative only

Not authorised—indicative only

(c) state any conditions imposed by the law society when the appointment is made; and

(d) state any fees payable by way of remuneration to the receiver for carrying out his or her duties for the external intervention; and

(e) provide for any legal costs and expenses that may be incurred by the receiver for the external intervention.

(5) The instrument of appointment may state—

(a) the term, if any, of the appointment; and

(b) any reporting requirements to be observed by the receiver.

513 Notice of appointment

(1) After an appointment of a receiver for a law practice is made, the law society must give a notice of the appointment to—

(a) the practice; and

(b) any other person authorised to operate any trust account of the practice; and

(c) any external examiner appointed to examine the practice's trust records; and

(d) the ADI with which any trust account of the practice is kept; and

(e) any person whom the law society believes should be given the notice.

(2) The notice must—

(a) identify the law practice and the receiver; and

(b) indicate that the external intervention is by way of appointment of a receiver; and

(c) state the term of the appointment; and

(d) state any reporting requirements to be observed by the receiver; and

(e) state any conditions imposed by the law society when the appointment is made; and

(f) include a statement that the law practice may appeal against the appointment of the receiver under section 520; and

(g) contain or be accompanied by other information or material prescribed under a regulation.

514 Effect of service of notice of appointment

(1) After a law practice is given a notice of appointment of a receiver for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is stated or mentioned in the notice must not participate in the affairs of the practice.

Maximum penalty—100 penalty units.

(2) After an ADI is given a notice of appointment of the receiver for the law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless the withdrawal or transfer is made—

(a) by cheque or other instrument drawn on that account and signed by—

(i) the receiver; or

(ii) a manager for the practice; or

(iii) a nominee of the receiver or manager; or

(b) by means of electronic or internet banking facilities by—

(i) the receiver; or

(ii) a manager for the practice; or

(iii) a nominee of the receiver or manager; or

(c) under an authority to withdraw or transfer funds from the account signed by—

Not authorised—indicative only

Not authorised—indicative only

(i) the receiver; or

(ii) a manager for the practice; or

(iii) a nominee of the receiver or manager.

(3) After a person, other than an ADI or a receiver or manager for the practice, is given a notice of appointment of the receiver for the law practice and until the appointment is terminated, the person must not—

(a) deal with any of the practice's trust money; or

(b) sign any cheque or other instrument drawn on a trust account of the practice; or

(c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Maximum penalty—100 penalty units.

(4) If approved by the law society, the receiver may, for subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice by means of electronic or internet banking facilities.

(5) If an amount is withdrawn or transferred in contravention of subsection (2), that amount may be recovered from the ADI concerned by the receiver, or a manager for the practice, as a debt and, if recovered, is to be paid into a trust account of the law practice or another trust account nominated by the receiver or manager.

515 Role of receiver

(1) The role of a receiver for a law practice is—

(a) to be the receiver of regulated property of the law practice; and

(b) to wind up and terminate the affairs of the practice.

(2) For the purpose of winding up the affairs of the law practice and in the interests of the practice's clients, the law society may, in a law society approved form, authorise—

(a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds an unrestricted practising certificate; or

(b) an Australian legal practitioner who holds an unrestricted practising certificate, or a law practice whose principals are or include 1 or more Australian legal practitioners who hold unrestricted practising certificates, as stated in the approved form, to carry on the legal practice on behalf of the receiver.

(3) Subject to a direction given by the law society and stated in the approved form, the person authorised to carry on a legal practice has all the powers of a manager under this chapter and is taken to have been appointed as the manager for the law practice.

(4) The law society may, by written notice to the receiver, terminate an authorisation to carry on a legal practice granted under this section.

(5) For the purpose of exercising a power mentioned in this section, the receiver may do 1, more than 1 or all of the following—

(a) enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;

(b) require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the receiver—

(i) access to the files and documents the receiver reasonably requires; and

(ii) information relating to client matters the receiver reasonably requires;

(c) operate equipment or facilities on the premises, or require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to the appointment as receiver;

Not authorised—indicative only

Not authorised—indicative only

(d) take possession of relevant material and retain it for as long as the receiver considers is necessary;

(e) secure relevant material found on the premises against interference, if the material can not be conveniently removed;

(f) take possession of any computer equipment or computer program reasonably required for a purpose relevant to the appointment as receiver.

(6) If the receiver takes a thing from the premises, the receiver must issue a receipt in the law society approved form and—

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give the receipt to the occupier or person; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

(7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is necessary to enter the premises.

516 Records and accounts of law practice under receivership

(1) The receiver for a law practice must keep records and accounts relating to the management of the practice—

(a) separately from the management of the affairs of the practice before the appointment of the receiver; and

(b) separately from the affairs of another law practice that the receiver is managing; and

(c) in a way prescribed under a regulation.

(2) Subject to subsection (1), the receiver for a law practice must deal with trust money of the practice in the same way as the law practice must deal with the trust money.

517 Power of receiver to take possession of regulated property

(1) The receiver for a law practice may take possession of regulated property of the law practice.

(2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.

(3) If a person contravenes subsection (2), the Supreme Court may, on application by the receiver, order the person to deliver the regulated property to the receiver.

(4) If, on application made by the receiver, the Supreme Court is satisfied that an order made under subsection (3) has not been complied with, the court may order the seizure of any regulated property of the law practice that is located on the premises stated in the order and make any further orders it considers appropriate.

(5) An order under subsection (4) operates to authorise the receiver, or a person authorised by the receiver, to enter the premises stated in the order and search for, seize and remove anything that appears to be regulated property of the law practice.

(6) The receiver must return anything seized under this section if it transpires that it is not regulated property of the law practice.

(7) For an order under subsection (4), the receiver is declared to be a public official for the *Police Powers and Responsibilities Act 2000*, chapter 1, part 3, division 2.

518 Power of receiver to take delivery of regulated property

(1) If the receiver for a law practice believes that another person is under an obligation, or will later be under an obligation, to deliver regulated property of the law practice to the practice, the receiver may, by written notice, require that other person to deliver the property to the receiver.

Not authorised—indicative only

Not authorised—indicative only

(2) If a person has notice that a receiver has been appointed for a law practice and the person is under an obligation to deliver regulated property of the law practice to the practice, the person must deliver the property to the receiver.

Maximum penalty—100 penalty units.

(3) A document signed by the receiver acknowledging the receipt of regulated property of the law practice delivered to the receiver is as valid and effectual as if it had been given by the law practice.

519 Power of receiver to deal with regulated property

(1) This section applies if the receiver for a law practice acquires or takes possession of regulated property of the law practice.

(2) The receiver may deal with the regulated property in a way in which the law practice might lawfully have dealt with the property.

520 Power of receiver to require documents or information

(1) A receiver for a law practice may require—

(a) a person who is an associate or former associate of the practice; or

(b) a person who has or has had control of documents relating to the affairs of the practice; or

(c) a person who has information relating to regulated property of the practice or property that the receiver believes to be regulated property of the practice;

to give the receiver either or both of the following—

(d) access to documents relating to the affairs of the practice that the receiver reasonably requires;

(e) information relating to the affairs of the practice that the receiver reasonably requires and, if stated in the requirement, verified by statutory declaration.

(2) A person who is subject to a requirement under subsection (1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(3) When making the requirement, the receiver must warn the person it is an offence to fail to give the information unless the person has a reasonable excuse.

(4) It is, for example, a reasonable excuse for an individual to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

521 Examinations

(1) The Supreme Court may, on application of the receiver for a law practice or on its own initiative, make an order directing that an associate or former associate of the practice, or another person, appear before the court for examination on oath or affirmation in relation to the regulated property of the law practice.

(2) On an examination of a person under this section, the person must answer all questions that the court allows to be put to the person.

Maximum penalty—200 penalty units.

(3) An individual is not excused from answering a question on the ground that the answer might tend to incriminate the person.

(4) However if, before answering the question, the individual objects on the ground that answering may tend to incriminate the individual and that ground is established, the answer is not admissible in evidence, and derivative evidence is not admissible, against the individual in any proceeding for an offence, other than—

(a) an offence against a relevant law; or

(b) a proceeding for perjury.

(5) In this section—

Not authorised—indicative only

Not authorised—indicative only

derivative evidence means any information, document or other evidence obtained as a direct or indirect result of the evidence given by an individual mentioned in subsection (4).

proceeding for perjury means a criminal proceeding in which the false or misleading nature of the evidence is in question.

522 Lien for costs on regulated property of the law practice

(1) This section applies if—

(a) a receiver has been appointed for a law practice; and

(b) the law practice or a legal practitioner associate of the practice claims a lien for costs on the regulated property of the law practice.

(2) The receiver may serve on the law practice or legal practitioner associate a written notice requiring the practice or associate to give the receiver within a stated period of not less than 1 month—

(a) particulars sufficient to identify the regulated property; and

(b) a detailed bill of costs.

(3) If the law practice or legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not start until the access is given.

(4) If a requirement of a notice under this section is not complied with, the receiver may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

523 Regulated property of a law practice is not to be attached

Regulated property of a law practice for which a receiver has been appointed, including regulated property held by the receiver, is not liable to be taken, levied on or attached under any judgment, order or process of any court or another process.

Not authorised—indicative only

524 Recovery of regulated property where there has been a breach of trust etc.

(1) This section applies if regulated property of the law practice, including regulated property under its control, has, before or after the appointment of a receiver for the practice, been taken by, paid to or transferred to a person (the ***transferee***) in breach of trust, improperly or unlawfully and the transferee—

(a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or

(b) did not provide to the practice or another person any or adequate consideration for the taking, payment or transfer; or

(c) because of the taking, payment or transfer indebted or otherwise liable to the practice or to a client of the practice in the amount of the payment or in another amount.

(2) The receiver is entitled to recover from the transferee—

(a) if subsection (1)(a) applies—the amount of the payment or the value of the regulated property taken or transferred; or

(b) if subsection (1)(b) applies—the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or the value of the regulated property taken or transferred; or

(c) if subsection (1)(c) applies—the amount of the debt or liability;

and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.

(3) If any money of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been paid in breach of trust, improperly or unlawfully to a person (the ***prospective plaintiff***) in relation to a cause of action that the prospective plaintiff had, or claimed to have, against a third party—

Not authorised—indicative only

(a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or

(b) if the prospective plaintiff did not have, at the time the payment was made, a cause of action against the third party, the receiver may recover the amount of that money from the prospective plaintiff.

(4) If any regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been used in breach of trust, improperly or unlawfully so as to discharge a debt or liability of a person (the ***debtor***), the receiver may recover from the debtor the amount of the debt or liability so discharged less any consideration provided by the debtor for the discharge.

(5) A person authorised by the law society to do so may give a certificate in relation to all or any of the following—

(a) the receipt of regulated property by the law practice concerned from any person, the nature and value of the property, the date of receipt and the identity of the person from whom it was received;

(b) the taking, payment or transfer of regulated property, the nature and value of the property, the date of the taking, payment or transfer and the identity of the person by whom it was taken or to whom it was paid or transferred;

(c) the entries made in the trust account and in other ledgers, books of account, vouchers or records of the practice and the truth or falsity of those entries;

(d) the money and securities held by the practice at the stated time.

(6) If the receiver brings a proceeding under subsection (2), (3) or (4), a certificate given under subsection (5) is evidence and, in the absence of evidence to the contrary, is proof of the facts stated in it.

525 Improperly destroying property etc.

(1) Unless a person has a reasonable excuse for doing so, the person must not conceal regulated property of a law practice—

(a) for which a receiver has been appointed; or

(b) in relation to which the person ought reasonably to have known that a receiver is likely to be appointed.

Maximum penalty—200 penalty units.

(2) In this section—

conceal regulated property includes the following—

(a) destroy regulated property;

(b) remove regulated property from 1 place to another;

(c) deliver regulated property into the possession, or place regulated property under the control, of someone else other than the receiver.

526 Deceased estates

(1) It is the duty of the receiver for a law practice to cooperate with the legal personal representative relating to a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.

(2) The receiver is not, in the performance of functions or exercise of powers as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from performing functions or exercising powers as a legal personal representative if otherwise appointed as representative.

(3) Subject to subsections (1) and (2) and to the terms of the receiver's appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment, functions and powers are not affected by the death.

Not authorised—indicative only

Not authorised—indicative only

527 Termination of receiver's appointment

(1) The appointment of a receiver for a law practice terminates in the following circumstances—

(a) the term of the appointment, if any, comes to an end;

(b) the appointment is declared invalid or terminated under section 531;

(c) a termination of the appointment by the law society takes effect.

(2) The law society may, by written notice, terminate the receiver's appointment on or after a date stated in the notice.

(3) After a receiver's appointment terminates, the former receiver must transfer and deliver the regulated property of the law practice to—

(a) another external intervener for the law practice appointed within 14 days after the day the termination takes effect; or

(b) the practice, if another external intervener is not appointed as mentioned in paragraph (a) and paragraph (c) does not apply; or

(c) another person under arrangements approved by the law society, if it is not practicable to transfer and deliver the regulated property to the practice.

(4) However, the former receiver need not transfer and deliver regulated property of the law practice under subsection (3) unless the receiver's expenses for the external intervention have been paid.

(5) The law society must give a notice under subsection (2) to all persons originally given a copy of the notice of appointment.

Part 5.6 General

528 Conditions on appointment of external intervener for a law practice

(1) The appointment of an external intervener is subject to—

(a) conditions imposed by the law society at the time of appointment as mentioned in sections 499, 505 and 512, including an amendment of a condition during the appointment; and

(b) new conditions imposed by the law society during the appointment; and

(c) conditions imposed under a regulation.

(2) In relation to the appointment of an external intervener, the law society may do any of the following—

(a) impose new conditions during the term of the appointment;

(b) revoke or vary a condition mentioned in subsection (1)(a) or imposed under subsection (1)(b).

(3) This section is not limited by a power to appoint a person as an external intervener under another part.

(4) If there is any inconsistency in relation to a condition imposed at any time by the law society and a condition imposed under a regulation, the condition imposed under a regulation prevails to the extent of the inconsistency.

529 Status of acts of external intervener for a law practice

(1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of any proceeding, or any transaction that relies on that act or omission, taken to have been done or omitted to be done by the practice.

(2) Nothing in this section subjects the law practice or an associate of the law practice to any personal liability.

Not authorised—indicative only

Not authorised—indicative only

530 Eligibility for reappointment or authorisation

A person who has been appointed as an external intervener for a law practice is eligible for re-appointment as an external intervener for the practice, whether the later appointment is made as the same type of external intervener for the law practice or another type.

531 Appeal against appointment

(1) The following persons may appeal to the Supreme Court against the appointment of an external intervener for a law practice—

(a) the practice;

(b) an associate of the practice;

(c) any person authorised to operate a trust account of the practice;

(d) another person whose interests may be adversely affected by the appointment.

(2) The appeal is to be started as follows—

(a) if a notice of appointment is not required to be given to the person who proposes to appeal—within 7 days after a notice of appointment is given to the law practice;

(b) otherwise—within 7 days after a notice of appointment is given to the person who proposes to appeal.

(3) The Supreme Court may make any order it considers appropriate on the appeal, including, for example, declaring the appointment of an external intervener for a law practice is invalid or terminated.

(4) The appointment of an external intervener for a law practice is not stayed by the making of an appeal, and the external intervener may perform his or her functions and exercise his or her powers as an external intervener during the currency of the appeal except to the extent, if any, that the Supreme Court otherwise directs.

532 Directions of Supreme Court

On application by any of the following, the Supreme Court may give directions about the functions and powers of an external intervener for a law practice or a matter affecting an external intervention—

(a) an external intervener for the law practice;

(b) a principal of the law practice;

(c) the law society;

(d) another person affected by the external intervention.

533 Manager and receiver appointed for law practice

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of the inconsistency.

534 ADI disclosure requirements

(1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener without charge—

(a) whether or not the practice, or an associate of the practice stated by the intervener, keeps or has kept an account at the ADI during a period stated by the intervener; and

(b) details identifying each account so kept.

Maximum penalty—100 penalty units.

(2) An ADI at which an account of a law practice or associate of a law practice is or has been kept must, at the request of an external intervener for the law practice, and without charge—

(a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any account so kept or money deposited in any account so kept; and

Not authorised—indicative only

Not authorised—indicative only

(b) provide the intervener with full details of any transactions relating to any account so kept or money deposited in any account so kept.

Maximum penalty—100 penalty units.

(3) If an external intervener believes that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is kept must disclose to the intervener without charge—

(a) whether or not a person stated by the intervener keeps or has kept an account at the ADI during a period stated by the intervener; and

(b) the details of any account so kept.

Maximum penalty—100 penalty units.

(4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment of the intervener in relation to the law practice concerned.

(5) A request under this section may be general or limited to a particular kind of account.

(6) This section applies despite any duty of confidence to the contrary.

(7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details under this section.

535 Fees, legal costs and expenses

(1) An external intervener for a law practice is entitled to be paid all of the following under an agreement entered into with the law society about the external intervention—

(a) fees by way of remuneration;

(b) the legal costs and expenses incurred in relation to the external intervention.

(2) An account of the external intervener for fees, costs and expenses may, on application of the law society, be taxed or assessed.

(3) The fees, costs and expenses are payable by and recoverable from the law practice.

(4) Fees, costs and expenses not paid to the external intervener by the law practice are to be paid by the law society.

(5) The law society may recover the fees, costs and expenses payable under subsection (4) from the fidelity fund to the extent that the external intervention related to a default for which the fidelity fund was, or may be, liable.

(6) The law society may recover any unpaid fees, costs and expenses from the law practice.

(7) If an amount of fees, costs and expenses is paid by, or recovered from, the law practice and an amount for the fees, costs and expenses was paid from the fidelity fund, the amount paid by or recovered from the law practice is to be paid to the fidelity fund.

536 Reports by external intervener for law practice

(1) An external intervener for a law practice must give written reports under any reporting requirements to be observed by the external intervener under the instrument of appointment.

(2) If the appointment is not subject to stated reporting requirements, the external intervener must give written reports to the law society as follows—

(a) when required at any time by the law society;

(b) at the termination of the appointment.

(3) Also, the external intervener must keep the law society informed of the progress of the external intervention, including by reporting to the law society about significant events happening, or a significant state of affairs existing, in

Not authorised—indicative only

Not authorised—indicative only

connection with the intervention or other matters relating to the intervention.

(4) Nothing in this section affects another reporting obligation that may exist in relation to the law practice concerned.

(5) A regulation may prescribe matters to be included in a report.

537 Confidentiality for external intervener for law practice

(1) A person who is or was an external intervener for a law practice, or a person who helped the external intervener in the intervention, must not disclose information obtained as a result of the appointment or external intervention except so far as is necessary for exercising the functions or powers of a person who is or was an external intervener for the law practice.

(2) However, the person may disclose information to any of the following—

(a) a court, tribunal or other person acting judicially;

(b) the law society or a regulatory authority of another jurisdiction;

(c) the commissioner;

(d) an officer of, or an Australian legal practitioner instructed by, any of the following in relation to a proceeding, inquiry or other matter pending or contemplated arising out of the external intervention—

(i) the law society or another regulatory authority of another jurisdiction;

(ii) the Commonwealth or a State;

(iii) an authority of the Commonwealth or a State;

(e) a member of the police service or police force of any jurisdiction if, at the time of the disclosure, the person believes that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;

(f) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;

(g) a client or former client of the law practice concerned if the information relates to the client or former client;

(h) another external intervener for the law practice, or an Australian legal practitioner or accountant employed by that other intervener;

(i) an external examiner exercising powers in relation to the trust records of the law practice concerned.

538 Provisions relating to requirements under this chapter

(1) This section applies to a requirement imposed on a person under this chapter to give an external intervener access to documents or information.

(2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.

(3) The external intervener imposing the requirement may—

(a) inspect any document provided under the requirement; and

(b) make copies of the document or any part of the document; and

(c) retain the document for a period the external intervener considers necessary for the purposes of the external intervention in relation to which it was produced.

(4) The person is not subject to any liability, claim or demand only because of compliance with the requirement.

(5) A failure of an Australian lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.

Not authorised—indicative only

Not authorised—indicative only

(6) The law society may suspend a local legal practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

539 Obstruction of external intervener

(1) A person must not, without reasonable excuse, obstruct an external intervener exercising a power under this Act.

Maximum penalty—100 penalty units.

(2) In this section—

obstruct includes hinder, delay, resist and attempt to obstruct.

Chapter 5A Provisions for offences under Personal Injuries Proceedings Act 2002

539A Application of chapter

(1) This chapter applies to an entity to which chapter 4 does not apply.

(2) An entity to which this chapter applies is an ***external entity***.

539B Commissioner may investigate external entity

(1) The commissioner may, under chapter 6 or 6A, investigate the conduct of an external entity if the commissioner suspects the entity has contravened the following provisions—

(a) a claim farming provision;

(b) the *Personal Injuries Proceedings Act 2002*, chapter 3, part 1.

(2) An investigation into the conduct of an external entity under this chapter is a ***chapter 5A investigation***.

Chapter 6 Investigations

Part 6.1 Preliminary

540 Main purpose of ch 6

The main purpose of this chapter is to provide powers that are exercisable in connection with—

(a) part 3.3 investigations—the investigation of the affairs of law practices under part 3.3, division 3; and

(b) investigations for complaints and investigation matters—the investigation of complaints and investigation matters under chapter 4; and

(c) chapter 5A investigations—the investigation of the conduct of external entities; and

(d) ILP compliance audits—the conduct of audits under part 2.7 in relation to incorporated legal practices.

541 Definitions for ch 6

In this chapter—

ILP audit means an audit conducted under part 2.7, division 5, in relation to an incorporated legal practice.

investigation means—

(a) an investigation of a complaint or investigation matter; or

(b) a part 3.3 investigation; or

(c) a chapter 5A investigation.

investigator means a person appointed under section 575 as an investigator.

Not authorised—indicative only

Not authorised—indicative only

Part 6.2 Requirements relating to documents, information and other assistance

542 Requirements that may be imposed for investigations, examinations and audits under parts 3.3 and 2.7

(1) For carrying out a part 3.3 investigation or ILP compliance audit in relation to a law practice, an investigator may, on production of his or her identity card, require the practice, an associate or former associate of the practice or any other person who has or has had control of documents relating to the affairs of the practice to give the investigator either or both of the following—

(a) access to the documents relating to the affairs of the practice the investigator reasonably requires;

(b) information relating to the affairs of the practice the investigator reasonably requires, verified by statutory declaration if the requirement so states.

Examples of another person—

auditor, external examiner, external intervener, liquidator

(2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Maximum penalty—100 penalty units.

543 Requirements that may be imposed for investigations under ch 4 or 5A

(1) For carrying out an investigation of a complaint or investigation matter or a chapter 5A investigation in relation to a relevant person, an investigator may, by notice served on the person, require the person to do any 1 or more of the following—

(a) to produce, at or before a stated time and at a stated place, any stated document, or a copy of the document;

(b) to produce, at a stated time and stated place, any stated document, or a copy of the document;

(c) to provide written information on or before a stated date, verified by statutory declaration if the requirement so states;

(d) to otherwise help in, or cooperate with, the investigation of the complaint in a stated way.

(2) For carrying out an investigation of a complaint or investigation matter in relation to an Australian lawyer, the investigator may, on production of his or her identity card, require an associate or former associate of a law practice of which the lawyer is or was an associate, or any other person (but not including the lawyer) who has or has had control of documents relating to the affairs of the lawyer, to give the investigator either or both of the following—

(a) access to the documents relating to the affairs of the lawyer the investigator reasonably requires;

(b) information relating to the affairs of the lawyer the investigator reasonably requires, verified by statutory declaration if the requirement so states.

Examples of another person—

auditor, external examiner, external intervener, liquidator

(3) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement unless the person has a reasonable excuse for not complying with it.

Maximum penalty—100 penalty units.

(4) A notice served on a person under subsection (1) must state a reasonable time for compliance.

(5) In this section—

relevant person, for an investigation or complaint, means—

(a) for an investigation into the conduct of an Australian lawyer to whom a complaint or investigation matter relates under chapter 4—the lawyer; or

Not authorised—indicative only

Not authorised—indicative only

(b) for an investigation into whether the conduct of an Australian lawyer, law practice employee or external entity contravenes a claim farming provision—any person the investigator considers has information relevant to the investigation.

544 Provisions relating to requirements under this part

(1) This section applies to a requirement imposed on a person under this part.

(2) The investigator imposing the requirement may—

(a) inspect any document provided pursuant to the requirement; and

(b) make copies of the document or any part of the document; and

(c) retain the document for a period the investigator thinks necessary for the purposes of the investigation in relation to which it was produced.

(3) The person is not subject to any liability, claim or demand only because of compliance with the requirement.

(4) A failure of an Australian lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.

(5) The law society or bar association, as is appropriate, may suspend a local legal practitioner's practising certificate while a failure by the legal practitioner to comply with the requirement continues.

Part 6.3 Entry to places

545 Power to enter places

(1) An investigator may enter a place if—

(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; or

(e) it is a place of business where a person purports to be engaged in legal practice, or represents or advertises a legal practice operates, and the place is open for carrying on business or otherwise open for entry; or

(f) the investigator reasonably suspects, because of representations or advertisements about business conducted at the place, that a person may be engaging in legal practice at the place 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 land around premises at the place 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*—**

(a) includes a place where a government legal officer is generally engaged in government work; but

(b) does not include any part of the place where a person resides.

Not authorised—indicative only

Not authorised—indicative only

546 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 545(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 acknowledgement of the consent.

(4) The acknowledgement 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 acknowledgement, 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 acknowledgement 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.

547 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 for subsection (4)—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

548 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 or evidence (also ***the evidence***) of an offence against 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 another 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, or particulars of the offence, that the magistrate considers appropriate in the circumstances; and

Not authorised—indicative only

Not authorised—indicative only

(d) the name of the person about whom the complaint is made or who is the subject of the investigation matter, or the person suspected of committing the offence, 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.

549 Application by electronic communication and duplicate warrant

(1) An application under section 547 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—

(a) may not be made before the investigator prepares the written application under section 547(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 547(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—

Not authorised—indicative only

Not authorised—indicative only

(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 547.

(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*.

550 Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in the warrant or in compliance with section 547, 548 or 549 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 549(5).

551 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 identity card, or having the identity card displayed, as mentioned in section 578(1);

(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 549(5).

Part 6.4 Powers of investigators after entry

552 General powers of investigator after entering places

(1) This part applies to an investigator who enters a place.

(2) However if an investigator, under section 545(2), 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;

(e) take into or onto the place any person, equipment and materials the investigator reasonably requires for exercising a power under this part.

Not authorised—indicative only

Not authorised—indicative only

553 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 person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

Part 6.5 Power of investigators to seize evidence

554 Seizing evidence at place entered under s 545

(1) An investigator, who enters a place with the consent of the occupier as mentioned in section 545(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 may seize a thing at a place if—

(a) the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator; and

(b) the place is—

(i) a public place and the investigator entered the public place as mentioned in section 545(1)(b); or

(ii) a place of business and the investigator entered the place as mentioned in section 545(1)(d), (e), or (f).

(3) An investigator, who enters a place under a warrant as mentioned in section 545(1)(c), may seize the evidence for which the warrant was issued.

(4) Without limiting subsection (1), (2) or (3), 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.

555 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—

- sealing a thing and marking it to show access to it is restricted
- sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted

Not authorised—indicative only

Not authorised—indicative only

556 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.

557 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.

558 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 having regard to the thing's nature, condition and value.

559 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 paragraph (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.

Not authorised—indicative only

Not authorised—indicative only

560 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.

561 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 a proceeding involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.

(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.

562 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.

Part 6.6 General enforcement matters

563 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.

564 Compensation

(1) A person may claim compensation—

(a) from the law society if the person incurs loss or expense because of the exercise or purported exercise of a power under part 6.3, 6.4 or 6.5 in relation to a part 3.3 investigation that, at the time of the exercise or purported exercise of a power, was not a part 3.3 investigation as part of investigation into a complaint or investigation matter; or

(b) from the commissioner if the person incurs loss or expense because of any other exercise or purported exercise of a power under part 6.3, 6.4 or 6.5.

(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a

Not authorised—indicative only

Not authorised—indicative only

requirement of the person made or purported to have been made under part 6.3, 6.4 or 6.5.

(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.

565 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.

566 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.

567 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, delay, resist and attempt to obstruct.

568 Impersonation of investigators

A person must not pretend to be an investigator.

Maximum penalty—100 penalty units.

568A Extraterritorial application of chapter for particular matters

(1) This chapter applies both within and outside Queensland to the extent necessary for any investigation of a contravention of the *Personal Injuries Proceedings Act 2002*, section 71 or 71B.

(2) For subsection (1), the chapter applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

Part 6.7 Provisions about investigations relating to incorporated legal practices

569 Definition for pt 6.7

In this part—

Not authorised—indicative only

Not authorised—indicative only

ILP investigator means any of the following persons who conduct an audit or investigation to which this part applies—

(a) the commissioner;

(b) the law society;

(c) an investigator appointed by the commissioner or the law society.

570 Application of part to audits and investigations

(1) This part applies to each of the following—

(a) an audit conducted under section 130;

(b) an investigation under this Act relating to the trust accounts of an incorporated legal practice;

(c) an investigation relating to a complaint made under this Act involving legal services provided by an incorporated legal practice, however that complaint is expressed.

(2) This section does not limit the powers under chapter 4 in relation to a legal practitioner director, or an associate, of an incorporated legal practice.

(3) A person conducting an audit or investigation to which this part applies may exercise the powers set out in this part for the audit or investigation.

(4) For subsection (3), in addition to the matters mentioned in section 548(1), a magistrate may issue a warrant for a place if the magistrate is satisfied that an ILP investigator has been unreasonably refused entry to the place for an audit as mentioned in subsection (1)(a) and the provisions of this chapter about warrants apply with necessary changes.

(5) A regulation may provide for how the provisions about warrants apply in relation to the issue of a warrant for an audit, and related matters.

571 Examination of persons

(1) An ILP investigator 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.

(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 investigator;

(b) a reference to a matter that is being or is to be investigated under part 3, division 1, of that Act is taken to be a reference to a matter that is being or is to be investigated by an ILP investigator;

(c) a reference in section 19 of that Act to a person is taken to be a reference to an Australian legal practitioner or an incorporated legal practice;

(d) a reference to an inspector is taken to be a reference to an ILP investigator;

(e) a reference to a prescribed form is taken to be a reference to an approved form that is approved by the commissioner.

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

572 Inspection of books

(1) An ILP investigator 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.

Not authorised—indicative only

Not authorised—indicative only

(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 an ILP investigator;

(b) a reference to a body corporate, including a body corporate that is not an exempt public authority, is taken to be a reference to an incorporated legal practice;

(c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice;

(d) a reference to a member or staff member is taken to be a reference to the ILP investigator or a person authorised by the ILP investigator who is an officer or employee of the ILP investigator;

(e) a reference in section 37 of that Act to a proceeding is taken to be a reference to an audit or investigation to which this part applies or an examination under section 571.

573 Power to hold hearings

(1) An ILP investigator may hold hearings for the purposes of audit or investigation to which this part applies or an examination under section 571.

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

(b) a reference to a member or staff member is taken to be a reference to an ILP investigator, or a person authorised by an ILP investigator who is an officer or employee of the ILP investigator;

(c) a reference to a prescribed form is taken to be a reference to a form approved by the commissioner.

574 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 investigator, or a person authorised by the ILP investigator, in the exercise of powers conferred by this part;

(b) a contravention by an Australian legal practitioner of any condition imposed by an ILP investigator in the exercise of powers conferred by this part;

(c) a failure by a legal practitioner 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 investigator, or a person authorised by the ILP investigator, in the exercise of powers conferred by this part;

(ii) any condition imposed by an ILP investigator in the exercise of powers conferred by this part.

Not authorised—indicative only

Not authorised—indicative only

Part 6.8 Investigators

575 Appointment, qualifications etc. of investigators

(1) The commissioner may appoint a member of the staff of the commission, or a consultant to the commissioner as mentioned in section 592(2), as an investigator only if the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

(2) A regulatory authority may appoint an employee of the authority, or another person, as an investigator only if the authority is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

(3) This section does not limit the power of a regulatory authority to delegate powers to a person who is an investigator appointed by the regulatory authority.

(4) An investigator, other than a member of the staff of the commission, is not employed and is not entitled to payments under this Act or the *Public Sector Act 2022*.

576 Appointment conditions and limit on powers

(1) An investigator holds office on any conditions stated in—

(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.

577 Issue of identity card

(1) If the commissioner or a regulatory authority appoints a person as an investigator, the commissioner or the authority appointing the person must issue an identity card to the person.

(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 person 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 a person for this Act and other purposes.

578 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 545(1)(b) or (2).

579 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;

Not authorised—indicative only

Not authorised—indicative only

(b) under another condition of office, the investigator ceases to hold office;

(c) the investigator's resignation under section 580 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.

580 Resignation

An investigator may resign by signed notice given to—

(a) if the investigator was appointed by a regulatory authority—the authority; or

(b) otherwise—the commissioner.

581 Return of identity card

A person who ceases to be an investigator must return the person's identity card within 21 days after ceasing to be an investigator, unless the person has a reasonable excuse, to—

(a) if the investigator was appointed by a regulatory authority—the authority; or

(b) otherwise—the commissioner.

Maximum penalty—10 penalty units.

Chapter 6A Special investigators

581A Definitions for chapter

In this chapter—

associated person, for an investigated entity, means—

(a) if the investigated entity is an entity other than an individual—

(i) an officer, employee or contractor or former officer, employee or contractor of the entity; or

(ii) a related body corporate of the entity; or

(iii) an officer, employee or contractor or former officer, employee or contractor of the related body corporate; or

(b) if the investigated entity is a law practice—

(i) an associate of the law practice; or

(ii) a barrister briefed by the law practice in relation to a claim the commissioner reasonably suspects is connected to a contravention of the *Personal Injuries Proceedings Act 2002*, section 71 or 71B; or

(iii) a related body corporate of the law practice; or

(iv) an officer, employee or contractor or former officer, employee or contractor of the related body corporate; or

(c) if the investigated entity is a lawyer—a barrister briefed by the lawyer in relation to a claim the commissioner reasonably suspects is connected to a contravention of the *Personal Injuries Proceedings Act 2002*, section 71 or 71B.

investigated entity see section 581C(1).

special investigator means a person appointed as a special investigator under section 581C.

581B Reference to document includes reference to reproductions from electronic document

A reference in this chapter to a document includes a reference to an image or writing—

Not authorised—indicative only

Not authorised—indicative only

(a) produced from an electronic document; or

(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

581C Appointment of special investigator

(1) This section applies if the commissioner reasonably suspects an entity (the ***investigated entity***) may have contravened the *Personal Injuries Proceedings Act 2002*, section 71 or 71B.

(2) The commissioner may appoint any of the following persons as a special investigator—

(a) an Australian lawyer;

(b) a qualified accountant;

(c) another appropriately qualified person.

(3) Without limiting the powers of a special investigator under this chapter, the special investigator may investigate the relevant affairs of the investigated entity.

(4) The person's instrument of appointment—

(a) must state the terms of appointment and the matters into which the investigation is to be made; and

(b) may state a period within which the investigation must be completed.

(5) Without limiting the *Acts Interpretation Act 1954*, section 25, the commissioner may, by written notice given to the special investigator—

(a) amend the instrument of appointment; or

(b) end the appointment.

(6) In this section—

relevant affairs, of an investigated entity—

(a) means matters relating to—

(i) how the investigated entity received or was referred details of a claimant or potential claimant, or instructions for a claim; and

(ii) how the investigated entity gave or referred instructions for a claim; and

(b) includes a transaction involving the investigated entity or an associated person for the investigated entity relevant to the receipt or referral of instructions.

581D Powers of special investigators

(1) A special investigator may, by written notice, require an investigated entity or an associated person for an investigated entity—

(a) to produce to the special investigator a document that is in the custody or control of the investigated entity or associated person; and

(b) to give the special investigator all reasonable help in connection with the investigation.

(2) A special investigator may, by written notice, require an investigated entity, or an associated person for an investigated entity, who is an individual to appear before the special investigator for examination on oath or affirmation.

(3) A special investigator may administer an oath or affirmation.

(4) For an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.

581E Documents produced to special investigator

(1) If a document is produced to a special investigator under this chapter, the special investigator may keep the document for the period that the special investigator reasonably considers necessary for the investigation.

(2) The special investigator must allow a person who would be entitled to inspect the document if it were not being kept by

Not authorised—indicative only

Not authorised—indicative only

the special investigator to inspect the document at all reasonable times.

(3) The special investigator must allow an owner of the document to copy it.

581F Examination of investigated entity or associated person

(1) An investigated entity or associated person for an investigated entity must not—

(a) fail to comply with a lawful requirement (a ***relevant requirement***) of a special investigator to the extent the person is able to comply with it; or

(b) in purported compliance with a relevant requirement, give information to a special investigator knowing it to be false or misleading in a material particular; or

(c) when appearing before a special investigator for examination under a relevant requirement—

(i) state anything knowing it is false or misleading in a material particular; or

(ii) fail to be sworn or to make an affirmation.

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) Subsection (1) does not apply to a person if the person, when giving information in a document—

(a) tells the special investigator, to the best of the person's ability, how the information is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the special investigator.

(3) A person who complies with a relevant requirement of a special investigator under this section does not merely because of the compliance—

(a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy; or

(b) incur any civil liability.

(4) A person required to attend for examination under this chapter is entitled to the allowances and expenses prescribed by regulation.

581G Self-incrimination and legal professional privilege

(1) This section applies to a person who is an investigated entity or an associated person for an investigated entity if the person is required to answer a question put to the person by, or produce a document to, a special investigator.

(2) The person is not excused from failure to comply with the requirement on the basis that complying—

(a) might tend to incriminate the person or expose the person to a penalty; or

(b) for an investigated entity that is a law practice or lawyer, or an associated person for an investigated entity that is a law practice or lawyer—would disclose a privileged client communication.

(3) The special investigator must inform the person, in a way that is reasonable in the circumstances, that—

(a) the person must comply with the requirement even though complying—

(i) might tend to incriminate the person or expose the person to a penalty; or

(ii) would disclose a privileged client communication; and

(b) if the person is an individual—under section 581N, there is a limited immunity against the future use of the information or document given in compliance with the requirement.

Not authorised—indicative only

Not authorised—indicative only

(4) If the person is an individual and the individual fails to comply with the requirement when the special investigator has failed to comply with subsection (3), the individual may not be convicted of the offence against section 581F(1).

(5) If, in complying with a requirement made under section 581F, the person discloses a privileged client communication—

(a) the person is taken for all purposes not to have breached legal professional privilege in complying with the requirement; and

(b) the disclosure does not constitute a waiver of legal professional privilege or otherwise affect any claim of legal professional privilege for any purpose other than a proceeding for an offence against the *Personal Injuries Proceedings Act 2002*, section 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B.

(6) In this section—

privileged client communication means communication protected against disclosure by legal professional privilege that operates for the benefit of a client of an investigated entity.

581H Failure of person to comply with requirement of special investigator

(1) If an investigated entity or associated person for an investigated entity fails to comply with a requirement of a special investigator, the special investigator may give the Supreme Court a certificate about the failure to comply.

(2) If a special investigator gives a certificate under subsection (1), the court may inquire into the case and may order the person to comply with the requirements of the special investigator within a period fixed by the court.

581I Recording of examination

(1) A special investigator must make a record of the questions asked and the answers given at an examination under this chapter.

(2) Subject to section 581N, a record of the examination of a person under this chapter may be used in evidence in a legal proceeding against the person.

(3) The special investigator must, on the written request of the person, give a copy of the record of the examination to the person without fee.

(4) The record must be included with the special investigator's final report on the investigation.

(5) Nothing in this section affects or limits the admissibility of other written or oral evidence.

581J Report of special investigator

(1) A special investigator may, and if directed by the commissioner must, make interim reports about a special investigation to the commissioner.

(2) On the completion or termination of the investigation, the special investigator must report to the commissioner the special investigator's opinion on the matters under investigation, together with the facts on which the opinion is based.

(3) A copy of a final report must, and a copy of the whole or part of an interim report may, be given by the commissioner to the investigated entity that is the subject of the report.

(4) However, the commissioner is not bound to give an investigated entity a copy of a report, or a part of the report, if the commissioner is of the opinion that there is good reason for not divulging its contents.

(5) The commissioner may publish on its website and any other place the commissioner considers appropriate the whole or a part of a report only if—

Not authorised—indicative only

Not authorised—indicative only

(a) the investigated entity the subject of the report is convicted of an offence against a claim farming provision; and

(b) the commissioner considers publishing the report or part of the report is in the public interest.

(6) If a report given to the commissioner is accompanied by a record of an examination made under section 581I, the commissioner may give a copy of the record to any person, and on the conditions, the commissioner considers appropriate.

581K Documents taken during investigation

(1) On the completion or termination of an investigation, a special investigator must give the commissioner any documents the investigator has taken possession of under this chapter.

(2) The commissioner may—

(a) keep the documents for the period the commissioner reasonably considers necessary to enable a decision to be made about whether or not a legal proceeding ought to be started in relation to the investigation; and

(b) keep the documents for any further period the commissioner considers necessary to enable a legal proceeding to be started or continued.

(3) The commissioner may, during the period the documents are kept by the commissioner—

(a) allow a person to inspect the documents; and

(b) allow the use of the documents for a legal proceeding started because of the investigation.

(4) The commissioner must allow a person who would be entitled to inspect a document if it were not being kept by the commissioner to inspect the document at all reasonable times.

581L Costs of investigation

(1) This section applies if an investigated entity is convicted of an offence against the *Personal Injuries Proceedings Act 2002*, section 71(1) or (2) or 71B.

(2) The commissioner may recover the costs of and incidental to an investigation under this chapter from the investigated entity.

581M Other offences about investigations

(1) A person must not—

(a) conceal, destroy, mutilate or alter a document of or about an investigated entity or associated person for an investigated entity; or

(b) send, cause to be sent or conspire with someone else to send out of the State a document mentioned in paragraph (a) or any property belonging to or under the control of the investigated entity or associated person for the investigated entity.

Maximum penalty—300 penalty units or 2 years imprisonment.

(2) It is a defence to a prosecution of an offence against subsection (1) for the defendant to prove that the defendant did not act with intent to defeat the purposes of this chapter or to delay or obstruct the carrying out of an investigation under this chapter.

581N Evidential immunity for individuals complying with particular requirements

(1) This section applies if an individual gives or produces information or a document to a special investigator under section 581D.

(2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any

Not authorised—indicative only

Not authorised—indicative only

proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

(3) However, this section does not apply to—

(a) a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence; or

(b) a proceeding for an offence against the *Personal Injuries Proceedings Act 2002*, section 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B.

581O Extraterritorial application of chapter

(1) This chapter applies both within and outside Queensland to the extent necessary for any investigation of—

(a) a contravention of the *Personal Injuries Proceedings Act 2002*, section 8C, 8E, 8F, 9C, 13A, 61, 71(1) or (2) or 71B; or

(b) the affairs of an investigated entity.

(2) For subsection (1), this chapter applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

Chapter 6B Provisions about proceedings before Supreme Court

Part 6B.1 General matters

581P Application of part

This part applies in relation to a proceeding before the Supreme Court under a provision of this Act mentioned in schedule 1.

581PA Procedure for conducting proceeding

When conducting the proceeding, the Supreme Court—

(a) 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

(b) is not bound by the rules of evidence; and

(c) may inform itself in any way it considers appropriate.

581PB Prohibited publication about hearing of proceeding

(1) Before, during or immediately after the hearing of the proceeding, the Supreme Court may make an order prohibiting the publication of information stated in the order relating to—

(a) the proceeding; or

(b) the hearing; or

(c) an order of the court.

(2) A person must not contravene an order under subsection (1).

Maximum penalty—200 penalty units.

Not authorised—indicative only

Not authorised—indicative only

(3) A person must not publish or allow someone else to publish—

(a) a question disallowed by the Supreme Court at the hearing; or

(b) an answer given to a question disallowed by the Supreme Court at the hearing.

Maximum penalty—200 penalty units.

(4) Also, the Supreme Court may make an order prohibiting—

(a) the issue of the entire or part of a copy of the record made under the *Recording of Evidence Act 1962*; or

(b) the publication of the entire or part of a copy of the record made under the *Recording of Evidence Act 1962*.

(5) A person must not contravene an order under subsection (4).

Maximum penalty—200 penalty units.

(6) In this section—

publish includes publish on radio, television or the internet.

record includes an audio recording.

Part 6B.2 Discipline applications

Division 1 Preliminary

581PC Application of part

This part applies in relation to a proceeding before the Supreme Court for a discipline application.

Division 2 General provisions

581PD Entitlement to appear at hearing

The complainant for a discipline application before the Supreme Court is entitled to appear at the hearing of the application 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 court gives leave to the complainant to appear in relation to them.

581PE Standard of proof

(1) If an allegation of fact is not admitted or is challenged when the Supreme Court is hearing a discipline application, the court may act on the allegation if 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 legal practitioner or law practice employee of finding the allegation to be true.

(3) In this section—

Australian legal practitioner includes a person to whom chapter 4 applies as mentioned in section 417.

581PF Power to disregard procedural lapses

(1) The Supreme Court may order that a failure by the commissioner to observe a procedural requirement in relation to a complaint, investigation matter or discipline application is to be disregarded, if the court is satisfied 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

Not authorised—indicative only

Not authorised—indicative only

(b) after the making of the discipline application.

(3) Subsection (1) does not limit the Supreme Court's power to disregard a failure by another person to observe a procedural requirement.

Division 3 Panels and related matters

581PG Panel to help Supreme Court hear and decide discipline application

(1) For hearing and deciding a discipline application, the Supreme Court is to be helped by 2 panel members chosen by the registrar and approved by the judge presiding over the proceeding.

(2) However, the panel members do not constitute the Supreme Court for hearing and deciding the discipline application.

(3) The panel members mentioned in subsection (1) must be—

(a) 1 member of the lay panel; 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 presiding judge, 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 names of the panel members helping the Supreme Court and the discipline application for which the hearing is held.

581PH Continuing hearing with only 1 panel member

(1) This section applies if—

(a) 1 of the panel members mentioned in section 581PG(1) (the ***former panel member***) is helping, or is about to help, the Supreme Court hear and decide a discipline application; and

(b) any of the following events happens—

(i) the appointment of the panel member is ended or terminated under section 581PL(1) or (2);

(ii) the panel member disqualifies themself in relation to the hearing under section 581PN(2);

(iii) the panel member becomes unavailable to help, or to continue to help, the court hear and decide the application;

(iv) the panel member otherwise stops being a panel member or stops helping the court to hear and decide the application; and

(c) the other panel member can continue to help the court hear and decide the application.

(2) Despite section 581PG(1), the Supreme Court may continue to hear and decide the discipline application in the absence of the former panel member if the court considers—

(a) it is in the interests of justice to continue to hear and decide the application; and

(b) that not continuing to hear and decide the application would cause undue delay or expense for a party to the application.

(3) This section does not authorise the Supreme Court to hear and decide a discipline application without being helped by at least 1 panel member.

581PI Establishment of panels for helping the Supreme Court

(1) The following panels established under the *Legal Profession Act 2004*, section 437, are continued in existence under this Act—

Not authorised—indicative only

Not authorised—indicative only

(a) the lay panel;

(b) the practitioner panel.

(2) The practitioner panel is to consist of both barristers and solicitors.

581PJ Appointment of panel members

(1) The members of the panels are to be appointed under this Act by the Governor in Council.

(2) A person is eligible for appointment as a member of the lay panel only if the person—

(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 an offence against a relevant law or a corresponding law, including before the commencement of this section; and

(d) is not an insolvent under administration.

(3) A person is eligible for appointment as a member of the practitioner panel only if the person—

(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 or a corresponding law, including before the commencement of this section; and

(c) is not an insolvent under administration.

(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 1 July 2004, 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.

581PK Remuneration and appointment conditions of panel members

(1) A panel member is entitled to be paid the remuneration and allowances decided by the Governor in Council for sitting with the Supreme Court in relation to hearing and deciding a discipline application.

(2) It is a condition of a panel member's appointment that if the member's appointment is terminated under section 581PL, the member is not entitled to any remuneration or allowances applicable to any sitting after the date of the termination.

(3) To the extent that the conditions are not provided for by this Act, a panel member holds office on the conditions decided by the Governor in Council.

581PL 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 a corresponding 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.

Not authorised—indicative only

Not authorised—indicative only

581PM 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.

581PN Disclosure of interests

(1) If a panel member helping the Supreme Court becomes aware that the member has a conflict of interest about a proceeding before the court, the member must disclose the issue giving rise to the conflict to—

(a) the judge presiding over the proceeding; and

(b) the parties to the proceeding.

(2) After making the disclosure, the panel member must disqualify themself.

(3) A panel 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.

581PO Protection of panel members

A panel member has, in the performance of the member's duties as a panel member, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.

Part 6B.3 Particular appeals to Supreme Court

581PP Application of part

This part applies in relation to an appeal to the Supreme Court against a decision under a provision of this Act mentioned in schedule 1, part 1.

581PQ Starting appeal

The appeal must be started within—

(a) for a person who has been given an information notice about the decision—28 days after the day the person is given the notice; or

(b) for a person who has not been given an information notice about the decision—28 days after the day the person becomes aware of the decision.

Note—

See, however, section 15(2) under which the Supreme Court may allow an appeal after the stated number of days to appeal.

581PR Appeal against decision of board etc.

(1) This section applies if the decision was made by the board, the bar association or the law society (each the ***decision-maker***) under this Act.

(2) The appeal is by way of a fresh hearing unaffected by the decision.

(3) Fresh evidence or evidence in addition to, or in substitution for, the evidence before the decision-maker may be given on the appeal.

Not authorised—indicative only

Not authorised—indicative only

581PS Appeal against decision of committee

(1) This section applies if the decision was made by the committee.

(2) The appeal is by way of rehearing on the evidence given in the matter before the committee.

(3) However, subsection (2) does not prevent the Supreme Court 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.

581PT Orders on appeal

In the proceeding for the appeal, the Supreme Court may make any of the following orders—

(a) an order confirming or amending the decision;

(b) an order setting aside the decision and substituting its own decision;

(c) an order setting aside the decision and returning the matter for reconsideration to the entity that made the decision, with the directions the court considers appropriate;

(d) any other order the court considers appropriate.

Part 6B.4 Matters relating to costs

581PU Application of part

Unless otherwise provided, this part applies in relation to a proceeding before the Supreme Court under a provision of this Act mentioned in schedule 1.

581PV Costs for particular proceedings

(1) Each party to the proceeding must bear the party's own costs of the proceeding.

(2) Subsection (1) applies subject to subsection (3) and sections 581PW and 581PX.

(3) The Supreme Court may make an order requiring a party to the proceeding to pay all or a stated part of the costs of another party to the proceeding if the court considers the interests of justice require it to make the order.

(4) This section does not apply in relation to a proceeding for a discipline application.

Note—

For orders for costs for proceedings for discipline applications, see section 462.

581PW Costs against lawyer or other representative in interests of justice

(1) This section applies if the Supreme Court considers a lawyer for, or another representative of, a party to the proceeding, rather than the party, is responsible for unnecessarily disadvantaging another party to the proceeding.

(2) The Supreme Court may make an order for costs requiring the lawyer or representative to pay a stated amount to the other party as compensation for the unnecessary costs.

(3) Before making an order for costs under subsection (2), the Supreme Court must give the lawyer or representative a reasonable opportunity to be heard in relation to making the order.

581PX Costs against intervening parties

(1) If the Attorney-General intervenes in the proceeding for the State, the Supreme Court may make an order for costs requiring the State to pay a stated amount to a party to the proceeding as compensation for all or a part of the costs reasonably incurred by the party as a result of the intervention.

(2) If the Supreme Court gives leave to a person to intervene in the proceeding, the court may make an order for costs requiring the person to pay a stated amount to a party to the

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proceeding as compensation for all or a part of the costs reasonably incurred by the party as a result of the intervention.

Chapter 6C Provisions about discipline applications before committee

Part 6C.1 Preliminary

581PY Application of part

This part applies in relation to a proceeding before the committee for a discipline application.

Part 6C.2 Hearings

581PZ 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 a person who is—

(a) if the discipline application 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 chairperson, was engaged in legal practice in the manner of 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.

581QA Conduct of committee for hearing and deciding discipline applications

(1) To the extent a matter about the committee's procedure is not provided for by this Act or a regulation, the matter may be dealt with by directions under this section.

(2) The chairperson may issue directions of general application about the committee's procedures.

(3) The committee may issue particular directions for a hearing.

(4) Despite section 581PZ(2), the committee may be constituted by the chairperson or deputy chairperson of the committee for the purpose of issuing particular directions for a hearing.

581QB 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.

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(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 Supreme Court.

581QC 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 6C.3 Conduct of proceedings

581QD Parties

(1) The parties to a proceeding before the committee for a discipline application are—

(a) the respondent in relation to the complaint or investigation matter; 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 committee grants leave to the complainant to appear in relation to them.

(4) The committee may grant leave to another person to appear at the hearing if the committee is satisfied 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.

(6) In this section—

Australian legal practitioner includes a person to whom chapter 4 applies as mentioned in section 417.

581QE Public hearings

(1) A hearing before the committee must be open to the public, unless the committee directs that the hearing or a part of the hearing be closed to the public.

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(2) The committee 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.

581QF Procedure for hearing by committee

(1) When conducting a hearing, the committee—

(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 committee must conduct the hearing.

581QG Recording evidence

(1) The committee may decide whether or not a proceeding before it is to be recorded under the *Recording of Evidence Act 1962*.

(2) Subject to an order made under section 581QK and the requirements of the *Recording of Evidence Act 1962*, anyone is entitled to obtain a copy of the record under that Act.

581QH Committee may proceed in absence of party or may adjourn hearing

(1) At a hearing, the committee may proceed in the absence of a party if it reasonably believes the party has been given

sufficient notice of the hearing, including notice given before the commencement of this section.

(2) The committee may adjourn the hearing from time to time.

581QI Matter may be decided on affidavit evidence

If the committee receives in evidence an affidavit of 1 party, the committee 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) without the written consent of the other party if—

(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 as prescribed under a regulation; or

(ii) appropriate inquiries 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.

581QJ Standard of proof

(1) If an allegation of fact is not admitted or is challenged when the committee is hearing a discipline application, the committee may act on the allegation if the committee 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 legal practitioner or law practice employee of finding the allegation to be true.

(3) In this section—

Australian legal practitioner includes a person to whom chapter 4 applies as mentioned in section 417.

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581QK Prohibited publication about hearing of discipline application

(1) The committee, either before, during or immediately after a hearing for a discipline application, may make an order prohibiting the publication of information stated in the order that relates to the discipline application, the hearing or an order of the committee.

(2) A person must not contravene an order under subsection (1).

Maximum penalty—200 penalty units.

(3) A person must not publish or allow someone else to publish—

(a) a question disallowed by the committee at the hearing; or

(b) an answer given to a question disallowed by the committee at the hearing.

Maximum penalty—200 penalty units.

(4) Also, the committee may make an order prohibiting—

(a) the issue of the entire or part of a copy of the record made under the *Recording of Evidence Act 1962*; or

(b) the publication of the entire or part of a copy of the record made under that Act.

(5) A person must not contravene an order under subsection (4).

Maximum penalty—200 penalty units.

(6) In this section—

publish includes publish on radio, television or the internet.

record includes make an audio recording.

Part 6C.4 Powers of committee

581QL Power to disregard procedural lapses

(1) The committee may order that a failure by the commissioner to observe a procedural requirement in relation to a complaint,

investigation matter or discipline application is to be disregarded, if the committee is satisfied 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 committee's power to disregard a failure by another person to observe a procedural requirement.

581QM Directions for hearings

(1) The committee may issue directions in relation to a hearing before the committee.

(2) The committee may issue the directions—

(a) on the committee'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 practices and procedures prescribed under a regulation for hearings before the committee.

581QN Attendance notice

(1) The committee may, on 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

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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 committee 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 committee; or

(b) fail, without reasonable excuse, to answer a question the person is required to answer by the committee; 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 producing the document or other thing might tend to incriminate the individual.

581QO Authentication of documents

(1) A document relating to a proceeding for a discipline application requiring authentication by the committee is sufficiently authenticated if it is signed by the chairperson or deputy chairperson of the committee.

(2) Judicial notice must be taken of the signature of the chairperson or deputy chairperson of the committee that appears on a document issued by the committee.

Chapter 6D Particular proceedings before Court of Appeal

581QP Definition for chapter

In this chapter—

decision, of the Supreme Court, includes—

(a) an order made by the court; and

(b) an order of the court mentioned in section 459(4); and

(c) a direction given by the court.

581QQ General requirements for appeals against particular Supreme Court decisions

(1) This section applies in relation to a decision of the Supreme Court made—

(a) on appeal, from a decision of the bar association, the board, the committee or the law society, under a provision of this Act mentioned in schedule 1, part 1; or

(b) under a provision of this Act mentioned in schedule 1, part 2.

(2) However, this section applies in relation to a decision of the Supreme Court subject to sections 581QR and 581QS.

(3) A party who is dissatisfied with the decision, or the Minister, may appeal to the Court of Appeal against the decision.

(4) The appeal is by way of rehearing on the evidence given in the matter before the Supreme Court.

(5) However, subsection (4) 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.

(6) The Court of Appeal may make any order it considers appropriate on the appeal.

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581QR Appeal against particular decisions only with leave

(1) This section applies in relation to a decision of the committee mentioned in section 459(1) that has become an order of the Supreme Court under section 459(4).

(2) An appeal to the Court of Appeal against the decision may be made only with the leave of the Court of Appeal.

(3) The appeal is by way of rehearing on the evidence given in the matter before the committee.

(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.

581QS Appeal against particular decisions only on question of law and with leave

(1) This section applies in relation to a decision of the Supreme Court made on appeal from a decision of the committee under section 469(1).

(2) An appeal to the Court of Appeal against the decision may be made only—

(a) on a question of law; and

(b) with the leave of the Court of Appeal.

(3) Section 581QQ(4) does not apply in relation to the appeal.

(4) The Court of Appeal may give leave to introduce further evidence, whether fresh, additional or substituted, if the court considers the further evidence may be material to the appeal.

Chapter 7 Establishment of entities for this Act, and related matters

Part 7.1 Legal Services Commissioner

Division 1 Preliminary

582 Main purposes of pt 7.1

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

583 Legal Services Commissioner

There is to be a Legal Services Commissioner.

584 Appointment

(1) The Governor in Council may appoint a person as the commissioner by gazette notice.

(2) Before recommending a person 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 a person who is not an Australian lawyer.

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(4) The commissioner is appointed under this Act and not under the *Public Sector Act 2022*.

585 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, a person must not be reappointed if the total of the person's term of appointment would be more than 10 years.

586 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 a person appointed to act as commissioner under section 587.

587 Acting commissioner

(1) The Governor in Council may appoint a person 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 person appointed to act as commissioner must be eligible for appointment as commissioner.

588 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 a relevant law or a corresponding law.

589 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

590 Functions

(1) The commissioner has the functions conferred or imposed on the commissioner under this Act 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.

(3) Also, the commissioner may appear, by Australian legal practitioner or government legal officer, for the purposes of prosecuting a person as an unlawful operator.

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Division 4 Legal Services Commission

591 Establishment of commission

(1) The Legal Services Commission established under the *Legal Profession Act 2004*, section 421, is continued in existence under this Act.

(2) The commission consists of the commissioner and the staff of the commission.

(3) The commissioner controls the commission.

592 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 a person employed under subsection (2).

593 Preservation of rights if public service officer appointed or engaged

(1) A public service officer appointed to an office (whether under this part or under the *Legal Profession Act 2004*, chapter 6,

part 1) is entitled or continues to be 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 person stops holding that office for a reason other than misconduct, the person—

(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 Sector Commissioner under the *Public Sector Act 2022* or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had continued in employment as a public service officer.

594 Preservation of rights if person becomes public service officer

(1) On the appointment of a person holding office under this part as a public service officer, the person'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 person is guilty of misconduct in office as commissioner.

595 Preservation of rights if public service officer seconded

(1) A public service officer seconded as mentioned in section 592(3)—

(a) is entitled to the person'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 person were a public service officer.

(2) When the secondment ends, the person's employment on secondment as a member of the staff of the commission is

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employment of the same nature in the public service for working out the person's rights as a public service officer.

(3) If the secondment ended for a reason other than misconduct, the person 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 Sector Commissioner under the *Public Sector Act 2022* or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had not been seconded.

Division 5 Miscellaneous matters about the commissioner

596 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.

597 Arrangements with regulatory authority about copies of documents

If, under this Act, a regulatory authority must give a document to the commissioner, the regulatory authority may, in an electronic way, give the document to the commissioner if the commissioner has entered into an arrangement with the regulatory authority about giving documents to the commissioner in that way.

Part 7.3 Legal Practice Committee

Division 1 Preliminary

619 Main purpose of pt 7.3

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.

620 Definitions for pt 7.3

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

621 Establishment of committee

The Legal Practice Committee established under the *Legal Profession Act 2004*, section 451, is continued in existence under this Act.

622 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;

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(d) 2 lay members.

(2) Before recommending a person for appointment as the chairperson, the Minister must be satisfied the person 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 a person for appointment under subsection (1)(d), the Minister must be satisfied the person has high level experience and knowledge of consumer protection, business, public administration or another relevant area but is not an Australian lawyer or otherwise legally qualified.

623 Term of appointment

The appointment of a member of the committee is for the term stated in the member's appointment.

624 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.

625 Administrative support

The commissioner must provide administrative support for the committee, including secretariat support.

Division 3 Provisions about committee members

626 Eligibility for membership

A person can not become a member of the committee if the person—

(a) has been convicted of a serious offence or an offence against a relevant law or a corresponding law; or

(b) is an insolvent under administration.

627 Termination of office

(1) The Governor in Council may terminate 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 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 a corresponding law; or

(b) is an insolvent under administration; or

(c) if the person was appointed because the person was a solicitor—the person stops being a solicitor; or

(d) if the person was appointed because the person was a barrister—the person stops being a barrister; or

(e) if the person was appointed as a lay member—the person becomes an Australian lawyer or otherwise legally qualified.

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Not authorised—indicative only

628 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.

629 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.

630 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

631 Application of pt 7.3, div 4

This division applies to the committee in performing its advisory functions under this Act.

Note—

See section 226 (Monitoring role of committee) that provides the committee has particular functions for advising the Minister about the legal profession rules.

632 Conduct of business

Subject to this division, the committee may conduct its business, including its meetings, in the way it considers appropriate.

633 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 4 members.

(3) In the absence of the chairperson, the deputy chairperson may exercise the powers of the chairperson under this section.

634 Quorum

A quorum for the committee is 4 members.

635 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.

636 Conduct of meetings

(1) A question at a committee meeting is decided by a majority of the votes of the members present.

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(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) notice of the resolution is given under procedures approved by the committee; and

(b) a majority of the committee members give written agreement to the resolution.

637 Minutes

(1) The committee must keep—

(a) minutes of its meetings; and

(b) a record of any resolutions made under section 636(6).

(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.

638 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.

(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;

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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.

Part 7.5 Legal Practitioners Admissions Board

Division 1 Preliminary

657 Main purpose of pt 7.5

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.

658 Definitions for pt 7.5

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

659 Establishment of board

The Legal Practitioners Admissions Board established under the *Legal Profession Act 2004*, section 489, is continued in existence under this Act.

660 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) a person 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) A person mentioned in subsection (1)(a), (b) or (c) must not be appointed unless the Chief Justice is satisfied the person 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 person whom the Chief Justice considers suitable to represent the interests of the law society or the 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 a person may be reappointed.

Division 3 Board's functions and powers

661 Functions and powers of board etc.

(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.

Not authorised—indicative only

Not authorised—indicative only

(3) Fees payable to the board under section 42 are not moneys payable to the Supreme Court Library Committee under the *Supreme Court Library Act 1968*, section 11.

(4) The board is a statutory body for the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

662 Administrative support and legal services

(1) The law society must provide administrative support for the board, including secretariat support.

(2) An Australian legal practitioner employed by the law society may provide legal services to the board if it is a condition of the practitioner's employment to do so.

(3) Under an agreement with the law society, the board must pay the law society for the legal services and administrative support from fees received by the board.

662A Australian legal practitioner does not breach practising certificate by providing legal service to board

(1) This section applies to an Australian legal practitioner who—

(a) is employed by the law society and, as a condition of that employment, is required to provide legal services to the board; and

(b) has as a condition of the practitioner's practising certificate a requirement not to engage in legal practice other than providing in-house legal services under section 353(2)(b).

(2) The Australian legal practitioner does not fail to comply with the condition on the practitioner's legal practising certificate merely by providing legal services to the board in the course of the practitioner's employment by the law society.

Division 4 Provisions about board members

663 Term of appointment

A member of the board, other than the Brisbane registrar, holds office for the term stated in the member's appointment.

664 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.

665 Eligibility for membership

A person can not become a board member if the person—

(a) is an insolvent under administration; or

(b) has been convicted of a serious offence; or

(c) has been convicted of an offence against a relevant law or a corresponding law.

666 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

Not authorised—indicative only

Not authorised—indicative only

(c) is convicted of an offence against a relevant law or a corresponding law; or

(d) if the person was appointed because the person was a solicitor—stops being a solicitor; or

(e) if the person was appointed because the person was a barrister—stops being a barrister.

(3) In this section—

meeting means—

(a) if the member does not attend, a meeting with a quorum present; or

(b) if the member attends, a meeting with or without a quorum present.

667 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

668 Conduct of business

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

669 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 4 members.

(3) In the absence of the chairperson, the deputy chairperson may exercise the powers of the chairperson under this section.

670 Quorum

A quorum for the board is 4 members.

671 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 meeting.

672 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 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.

Not authorised—indicative only

Not authorised—indicative only

(6) A resolution is validly made by the board, even if it is not passed at a board meeting, if—

(a) notice of the resolution is given under procedures approved by the board; and

(b) a majority of the board members gives written agreement to the resolution.

673 Minutes

(1) The board must keep—

(a) minutes of its meetings; and

(b) a record of any resolutions made under section 672(6).

(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.

674 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

675 Delegation

(1) The board may delegate financial powers under this Act to—

(a) the chairperson; or

(b) a person appointed to or otherwise holding the position referred to by the law society as chief executive of the law society.

(2) A delegation may be for the expenditure of a reasonable amount of not more than the amount fixed by the board in the

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delegation or for a purpose decided by the board and stated in the delegation.

(3) In this section—

financial powers means day-to-day expenditure and financial activities.

676 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 *Ombudsman Act 2001*; and

(b) the *Right to Information Act 2009*.

Part 7.6 Queensland Law Society Incorporated

Division 1 Preliminary

677 Main purpose of pt 7.6

(1) The main purpose of this part is to continue in existence the Queensland Law Society Incorporated.

(2) The main purpose is to be achieved in part by providing for the council.

678 Definitions for pt 7.6

In this part—

appointed member, for the council, see section 685(2)(a).

council meeting means a meeting of the council under this part.

council member means a member of the council, including the following—

(a) a presidential member;

(b) an immediate past president as mentioned in section 685.

presidential member means a person who is the president, deputy president or vice-president of the law society.

society rules see section 696.

Division 2 Constitution and related matters about the law society

679 Establishment of Queensland Law Society

(1) The body corporate in existence before 1 July 2004 by the name of the Queensland Law Society Incorporated as continued in existence under that name by the *Legal Profession Act 2004*, section 508, is continued in existence under this Act.

(2) The body may continue to refer to itself or be referred to as the Queensland Law Society.

(3) The law society—

(a) is a body corporate; and

(b) has perpetual succession; and

(c) has a common seal; and

(d) may sue and be sued in its corporate name.

(4) All courts and persons acting judicially must take judicial notice of the imprint of the law society's seal appearing on a document and, until the contrary is proved, must presume the seal was properly affixed.

680 Functions of the law society

The law society's functions are—

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(a) to perform the functions conferred on the law society under this Act; and

(b) to manage the affairs, income and property of the law society for the purposes and benefit of the law society; and

(c) to perform other functions given to the law society under another Act.

681 General powers of the law society

(1) The law society has all the powers of an individual and may, for example—

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with property; and

(c) appoint agents and attorneys; and

(d) engage consultants; and

(e) fix charges, and other terms, for services and other facilities it supplies; and

(f) do anything else necessary or convenient to be done for its functions.

(2) Without limiting subsection (1), the law society has the powers given to it under this Act or another Act.

(3) However, the law society's powers are subject to any limitations under this Act or another Act.

(4) The law society may exercise its powers inside or outside Queensland.

(5) Without limiting subsection (4), the law society may exercise its powers outside Australia.

682 Status of the law society because of its establishment in Act

(1) The law society is a statutory body for the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the law society's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

(3) The law society—

(a) does not represent the State; and

(b) is not entitled to any immunities or privileges of the State.

683 Delegation

(1) The law society may delegate its powers under this Act to the following—

(a) an Australian lawyer who is a council member;

(b) a committee of the law society that includes at least 1 council member who is an Australian lawyer;

(c) an Australian lawyer who is a member of the law society's staff;

(d) another Australian lawyer other than 1 mentioned in paragraph (a) or (c);

(e) another person that the law society considers is an appropriate person to exercise the powers of the law society proposed to be delegated.

(2) A delegation of a power may permit the subdelegation of the power.

(3) However, a subdelegation must be made in a way allowed under a society rules.

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(4) This section does not limit the power of the law society to make the society rules relating to delegations and subdelegations that may be made under this section.

Division 3 Membership of law society

684 Membership of law society

(1) The law society consists of the persons who, from time to time, are enrolled as members of it.

(2) The following persons are eligible to be enrolled as members of the law society—

(a) an individual who is entitled to engage in legal practice in this jurisdiction or is an Australian-registered foreign lawyer;

(b) an individual who is a member of a class stated under the society rules as persons who are appropriate to be members of the law society;

(c) an individual whom the council considers is a fit and proper person to be a member having regard to that person's involvement with the legal profession;

(d) an incorporated legal practice.

Division 4 Council and its membership and officers of the law society

685 Council of the law society

(1) There is to be a council of the law society.

(2) The council is to consist of not less than 7 and not more than 12 council members, namely—

(a) an Australian legal practitioner appointed by the Minister (the ***appointed member***); and

(b) the president, any deputy president and the vice-president of the law society as mentioned in section 686; and

(c) members of the law society, elected or appointed under the society rules.

(3) Each of the council members is to hold office for a term of 2 years and is eligible for re-election or reappointment under the society rules.

(4) In addition to the members under subsection (2), a person who is the immediate past president of the law society is, without further appointment, a council member for a term of not longer than 1 year after the person stops being the president.

(5) This section is subject to section 686.

686 President, deputy president and vice-president of the law society

(1) Subject to subsection (4), the law society is to have a president, a deputy president and a vice-president, each of whom is to be elected or appointed under the society rules.

(2) The term of office for the president of the law society is 1 year.

(3) If, at the end of the president's term of office, a person is the deputy president, that person is to assume the office of president.

(4) When the deputy president assumes the office of president, a vacancy exists in the office of deputy president and that office must not be filled until the next election or appointment of all officers of the law society under the society rules.

(5) Subject to subsections (2) to (4), the term of office of the presidential members is 2 years and each of those presidential members is to be eligible for re-election or reappointment.

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687 Dealing with casual vacancy

(1) This section applies despite the society rules about filling a casual vacancy in the office of presidential member or elected council member.

(2) If a vacancy happens in relation to the appointed member, the Minister must appoint another person who is an Australian lawyer to be the appointed member until the term of office of the previous appointed member ends.

688 No defect because of vacancy

The performance of a function or the exercise of a power of the law society is not affected by the fact that at the time of the performance or exercise a vacancy existed in the membership of the council or that the election or appointment of a council member was defective.

689 Secretary and other staff of the law society

The law society may appoint a secretary and other members of the staff of the law society as it may consider necessary.

Division 5 Council meetings

690 Conduct of business at meetings

(1) Subject to this division, the law society may conduct its business and proceedings at council meetings in the way it decides.

(2) The council meetings must be held at the place and at the time decided by a presidential member.

(3) However, the council must meet at least 6 times a year.

691 Presiding at meetings

(1) The president is to preside at council meetings at which the president is present.

(2) If the president is not present at a council meeting, the deputy president is to preside.

(3) If both the president and deputy president are not present at a council meeting, the vice-president is to preside.

(4) If no presidential member is present at a council meeting, a member chosen by the council members present at the meeting is to preside.

692 Quorum

(1) A quorum of the council consists of a majority of council members for the time being holding office.

(2) A council meeting at which a quorum is present may perform the functions and exercise the powers of the law society.

693 Conduct of council meetings

(1) A question at a council meeting is decided by a majority of the votes of the council members present.

(2) Each council member present at a council 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 council member present at a council meeting who abstains from voting is taken to have voted for the negative.

(4) The council may hold its meetings, or allow council members to take part in its meetings, by using any technology that reasonably allows council members to hear and take part in discussions as they happen.

Example of use of technology—

teleconferencing

(5) A council member who takes part in a council meeting under subsection (4) is taken to be present at the meeting.

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Not authorised—indicative only

(6) A resolution is validly made by the council, even if it is not passed at a council meeting, if—

(a) notice of the resolution is given under the society rules; and

(b) a majority of the council members gives written agreement to the resolution.

694 Minutes

The council must keep—

(a) minutes of the council's meetings; and

(b) a record of resolutions made under section 693(6).

695 Disclosure of interest

(1) This section applies to a council member (the ***interested member***) if—

(a) the member has a personal interest, or a direct or indirect financial interest, in an issue being considered, or about to be considered, by the council; and

(b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.

(2) After the relevant facts come to the interested member's knowledge, the member must disclose the nature of the interest to a council meeting.

(3) Unless the council otherwise directs, the interested member must not—

(a) be present when the council considers the issue; or

(b) take part in a decision of the council about the issue.

(4) The interested member must not be present when the council is considering whether to give a direction under subsection (3).

(5) If there is another council member who must, under subsection (2), also disclose an interest in the issue, the other council member must not—

(a) be present when the council is considering whether to give a direction under subsection (3) about the interested member; or

(b) take part in making the decision about giving the direction.

(6) If—

(a) because of this section, a council member is not present at a council 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 council member were present;

the remaining council members present are a quorum of the council for considering or deciding the issue, or for considering or deciding whether to give the direction, at the council meeting.

(7) A disclosure under subsection (2) must be recorded in the minutes of the council meeting.

Division 6 Law society may make rules

696 Rules

(1) The law society may make rules (the ***society rules***) for the following purposes—

(a) to define, and carry out, the objects of the law society;

(b) for the regulation and good government of the law society and its members;

(c) to provide for the way of electing or appointing the presidential members and other council members, and filling a vacancy of a council member, other than an

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appointed member or person appointed because the person is the immediate past president;

(d) to regulate council meetings and the conduct of business at the meetings;

(e) the custody and use of the law society's common seal;

(f) the admission, re-admission, resignation, and expulsion of members of the law society;

(g) to fix fees, levies and subscriptions in relation to membership of the law society and to recover unpaid fees, levies and subscriptions;

(h) to waive compliance with the society rules, in whole or in part, absolutely or conditionally, in relation to a member or a class of members.

(2) Society rules must be made by resolution of the council.

697 Notice by Minister about law society making rules

(1) Society rules have no effect unless the Minister notifies the making of the rules.

(2) The notice is subordinate legislation.

698 Availability of society rules

The law society must ensure that an up-to-date version of the society rules is available, without charge, for public inspection—

(a) at the law society's principal place of business during normal working hours; or

(b) on the law society's internet site or an internet site identified on the authority's internet site.

Division 7 Miscellaneous

699 Starting proceedings

(1) The secretary, or another person authorised by resolution of the law society, may start, carry on and defend any proceeding in the name of the law society.

(2) In any proceeding on behalf of the law society, it is not necessary to prove the election or appointment of the presidential members, another council member or the secretary.

700 Recovery of unpaid amount

(1) This section applies if there is a charge under a relevant law and the charge or part of the charge is not paid by a person required under the relevant law to pay it.

(2) The law society may recover from the person the unpaid charge, or the unpaid part, as a debt.

(3) In this section—

charge includes—

(a) contributions, dues, fees, levies or subscriptions that become payable on or after the commencement of this section; and

(b) contributions, dues, fees, fines, levies or subscriptions that became payable before the commencement of this section.

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Not authorised—indicative only

Chapter 8 General

Part 8.1 General provisions

Division 1 Liabilities, injunctions, protection of information etc.

701 Liability of principals

(1) If a law practice contravenes, whether by act or omission, any provision of this Act or a regulation imposing an obligation on the practice, each principal of the practice is taken to have contravened the same provision, unless the principal establishes that—

(a) the practice contravened the provision without the knowledge actual, imputed or constructive of the principal; or

(b) the principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision; or

(c) the principal, if in that position, used all due diligence to prevent the contravention by the practice.

(2) Subsection (1) does not affect the liability of the law practice for the contravention.

(3) A contravention of a requirement imposed on a law practice by this Act is capable of constituting unsatisfactory professional conduct or professional misconduct by a principal of the practice.

703 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 a relevant law; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a relevant law; 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 a relevant law.

(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 proceeding, 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; or

Not authorised—indicative only

Not authorised—indicative only

(b) the subject person has previously refused or failed to do that act or thing; or

(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 another person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(8) For applying this section in relation to an offence against the *Personal Injuries Proceedings Act 2002*, section 71(1) or (2) or 71B, a reference to the Supreme Court includes a reference to a court of another State vested with jurisdiction under—

(a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and

(b) the laws of other States that correspond to the Act mentioned in paragraph (a).

704 Disclosure of information by commissioner, regulatory authorities and other entities

(1) This section applies to each of the following—

(a) the commissioner;

(b) a regulatory authority;

(c) the board;

(d) the Brisbane registrar and other registrars;

(e) the tribunal's principal registrar;

(f) for an entity mentioned in paragraphs (a) to (e)—

(i) a member of the entity; and

(ii) an employee of the entity; and

(iii) a person acting at the direction of the entity or of the staff of the entity.

(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 this Act; 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 92(1).

Note—

Section 92 states when the board or a regulatory authority may disclose a suitability report or information in a suitability report.

(5) This section does not limit a provision of this Act that expressly allows an entity to give stated information to another entity, including, for example, a report of an audit as mentioned in section 130.

705 Confidentiality 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

Not authorised—indicative only

Not authorised—indicative only

(c) made with the consent of the person to whom the information relates; or

(d) made in connection with a legal proceeding under a relevant law or any report of a proceeding, including a proceeding before a disciplinary body relating to a discipline application; or

(e) otherwise made with a 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 legal practitioner, law practice employee or other entity that is the subject of a complaint or investigation matter, or an entity or law practice that employs the entity, legal practitioner or employee; or

(iii) an investigated entity that is the subject of a chapter 5A investigation; or

(iv) a person associated with an entity mentioned in subparagraph (i), (ii) or (iii);

(b) a disclosure by an investigator—

(i) to the commissioner; or

(ii) if the investigator was appointed by a regulatory authority—to the regulatory authority; or

(iii) to the person to whom the information relates;

(c) a disclosure as prescribed under a regulation.

(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.

(5) In this section—

Australian legal practitioner includes a person to whom chapter 4 applies as mentioned in section 417.

706 Duty of relevant entities to report suspected offences

(1) This section applies if, in the course of the administration of this Act, a relevant entity suspects a person has committed an offence, other than—

(a) an offence against part 3.3 or the *Trust Accounts Act 1973* that the relevant entity considers is of a minor nature; or

(b) a suspicion arising from an answer, information or a document obtained under section 491 that is privileged or confidential; or

(c) an offence against part 2.2 committed by either of the following persons if the relevant entity considers the person committed the offence inadvertently—

(i) a person employed by, or appointed to, a government entity who is engaged in legal practice for the entity;

(ii) a person who is employed by a corporation, other than an incorporated legal practice, and who provides only in-house legal services to the corporation or a related body corporate.

(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

Not authorised—indicative only

Not authorised—indicative only

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's suspicion is based only on an allegation by a person and the suspected offence is not in relation to a relevant law, the relevant entity may advise the person as follows—

(a) that the relevant entity is not going to report the suspected offence to an appropriate authority;

(b) that if the person wishes to pursue the matter of the suspected offence, the person 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 other 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 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 Corruption 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).

government entity means an agency, authority or instrumentality of this jurisdiction, the Commonwealth or another jurisdiction, other than an entity mentioned in section 12(1)(a) to (d).

offence means an offence against either of the following—

(a) a relevant law;

(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.

Not authorised—indicative only

Not authorised—indicative only

707 Protection from liability

(1) An Act entity 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 entity, 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 475 or 581QC.

(4) In this section—

Act entity means the following—

(a) the commissioner;

(b) the committee, any member of the committee or a panel member;

(c) the Brisbane registrar and other registrars;

(d) a regulatory authority;

(e) an external intervener;

(f) the board;

(g) an employee or member of the staff of an entity mentioned in paragraphs (a) to (f), including, for example, an investigator.

civil liability includes a liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.

Division 2 Offences, starting proceedings and evidentiary and other matters

708 Offences are summary offences

An offence against this Act is a summary offence.

709 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.

710 Appointments and authority

The following must be presumed unless a party to the proceeding under this Act, 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.

711 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) the chairperson or deputy chairperson of the committee;

(e) the chairperson of the board;

(f) the Brisbane registrar or another registrar;

(g) an investigator;

Not authorised—indicative only

Not authorised—indicative only

(h) the president of the law society or the bar association.

712 Evidentiary aids—documents

A document purporting to be a copy of a person's admission to the legal profession, a person's practising certificate or another document about a person made or given under this Act or a previous Act, is evidence of the admission, practising certificate or other document and of matters contained in it.

713 Dealing with particular trust money and trust property

(1) This section applies if, on 1 April in a year—

(a) a law practice has in its possession or under its control trust money or trust property of a person who, on that day is, and for 12 months immediately preceding that day was, absolutely entitled to the money or property; and

(b) the person, or another person legally entitled to receive the money or property, is not known to the practice or can not be found by the practice.

(2) Also, this section applies if, on 1 April in a year—

(a) a law practice has in its possession or under its control trust money or trust property for which the law practice can not, and could not for 2 years immediately preceding that day, determine who is legally entitled to receive the money or property; and

(b) the law practice considers legal proceedings are necessary to resolve who is legally entitled to receive the money or property; and

(c) the persons who may be, or claim to be, entitled to receive the money or property have not started legal proceedings to resolve the matter.

(3) The law practice must, by 1 June in the year, give to the public trustee a return about the trust money or trust property.

Maximum penalty—50 penalty units.

(4) The return must—

(a) be signed by a principal or legal practitioner director of the law practice; and

(b) include full details of the trust money or trust property; and

(c) include details of any claim or lien of the law practice in relation to the money or property, including, for example, details of all costs, charges and expenses, if any, claimed by the practice in relation to the money or property; and

(d) include a statement of the reasons that the money or property is in the possession of or under the control of the practice; and

(e) include other information the public trustee reasonably requires about the money or property and the person who is, or the persons who may be, entitled to it.

(5) On receipt of a return under subsection (3), the public trustee may, by signed notice given to the law practice, require the practice to transfer to the public trustee the trust money or trust property mentioned in the return within the period stated in the notice.

(6) On the giving of a notice under subsection (5), any lien of the law practice claimed in relation to the trust money or trust property stops having effect.

(7) If a law practice does not comply with a requirement under subsection (5), the public trustee may apply by motion to the Supreme Court for an order that the practice immediately transfer the trust money or trust property to the public trustee.

(8) An order under subsection (7) may be made in the absence of the law practice if the notice of motion has been duly served on the practice, or the court is satisfied that reasonable efforts have been made to serve the notice.

(9) If a law practice transfers trust money or trust property to the public trustee under this section—

Not authorised—indicative only

Not authorised—indicative only

(a) the practice is relieved from any further liability in relation to the money or property; and

(b) for trust money—the public trustee must place the money in the unclaimed moneys fund under the *Public Trustee Act 1978* and deal with it as unclaimed money under that Act.

(10) In this section—

transfer includes pay, assign and deliver.

713A Destruction of client documents

(1) A law practice may destroy a client document relating to a matter if—

(a) it is at least 7 years since the completion of the matter; and

(b) the law practice has been unable, despite making reasonable efforts, to obtain instructions from the client about the destruction of the document; and

(c) it is reasonable in the circumstances, having regard to the nature and content of the document, to destroy the document.

(1A) For subsection (1), it does not matter whether the person entitled to the client document is or was a client of the law practice holding the document or of another law practice.

(2) Destruction of a client document by a law practice, other than as provided by subsection (1) or on instructions from the client, is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of—

(a) any Australian legal practitioner involved in the destruction; and

(b) if an associate of the law practice involved in the destruction is not a principal of the law practice—a principal of the practice.

(3) The law society may destroy a client document relating to a matter if—

(a) the law society is holding the document (for example, because of the appointment, under part 5.5, of a receiver for the law practice that was engaged by the client to provide legal services for the matter); and

(b) it is at least 7 years since the end of the law practice's engagement by the client to provide legal services for the matter; and

(c) the law society has been unable, despite making reasonable efforts, to obtain instructions from the client about the destruction of the document; and

(d) it is reasonable in the circumstances, having regard to the nature and content of the document, to destroy the document.

(4) In this section—

client document means a document to which a client is entitled.

law practice includes a community legal service.

713B Intervention by Attorney-General

The Attorney-General may, for the State, intervene in a proceeding in the Supreme Court under this Act at any time.

Division 3 Statements of reasons

713C Obtaining statement of reasons

(1) This section applies if—

(a) the bar association, the board or the law society (each a ***decision-maker***) makes a decision under this Act; and

(b) a person may appeal to the Supreme Court against the decision; and

Not authorised—indicative only

Not authorised—indicative only

(c) the person has not been given a written statement of the reasons for the decision.

(2) The person may ask the decision-maker to give the person a written statement of the reasons for the decision.

(3) The request must—

(a) be in writing, whether in paper or electronic form; and

(b) be made within 14 days after—

(i) if the person was notified of the decision—the day the person was notified; or

(ii) if subparagraph (i) does not apply—the day the person became aware of the decision.

(4) The decision-maker must give the person the statement within a reasonable period of not more than 28 days after the request is made.

Note—

See the *Acts Interpretation Act 1954*, section 27B in relation to the content of the statement.

713D Court order requiring statement of reasons be given

(1) This section applies if—

(a) under section 713C, a person has asked a decision-maker for a written statement of the reasons for a decision; and

(b) the decision-maker has not given the person the statement under section 713C(4).

(2) The person may apply to the Supreme Court for an order that the decision-maker give the person the statement.

(3) If the person applies for an order under subsection (2), the person must give written notice of the application to the decision-maker.

(4) If the Supreme Court is satisfied the person is entitled to receive the statement, the court may make an order requiring

the decision-maker to give the person the statement within the period of not more than 28 days stated in the order.

713E Further statement

(1) This section applies if, under this division, a decision-maker gives a person a written statement of the reasons for a decision—

(a) under section 713C(4); or

(b) in response to an order under section 713D(4).

(2) The person may apply to the Supreme Court for an order under this section against the decision-maker.

(3) If the Supreme Court considers the statement does not contain adequate particulars of the reasons for the decision, the court may make an order requiring the decision-maker to give the person, within a stated period, an additional statement containing further and better particulars about stated matters.

Part 8.2 Machinery provisions

714 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, or for a costs assessment—the rules committee within the meaning of the *Supreme Court of Queensland Act 1991*, section 89; or

(b) if the form is to be used for an application to or another purpose relating to the committee—the chairperson of the committee; or

Not authorised—indicative only

Not authorised—indicative only

(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.

(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.

(4) Subsection (2) is subject to a provision that expressly provides who may approve a form.

715 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 a person's admission to the legal profession and other relevant information about the 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; and

(e) providing for the practice and procedure of the committee.

(3) A regulation mentioned in subsection (2)(c) may be made—

(a) prescribing 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

(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 professional misconduct of the person who has contravened.

(5) Also, a regulation may be made about a matter for which a regulatory authority may make rules and, if a regulation provides for the matter, the regulation prevails to the extent of any inconsistency.

Chapter 9 Transitional, savings and repeal provisions for Legal Profession Act 2007

Part 9.1 Purposes, definitions and general approach

716 Main purposes of ch 9

The main purposes of this chapter are as follows—

(a) to provide for provisions of this Act that are substantially the same as provisions of the *Legal Profession Act 2004* to be dealt with as replacements of the provisions of the *Legal Profession Act 2004*;

(b) without limiting paragraph (a), if a matter was dealt with in the *Legal Profession Act 2004*, chapter 8, part 5, by providing for something to be dealt with under that Act, to provide for the matter to be dealt with under this Act;

Not authorised—indicative only

Not authorised—indicative only

(c) to provide for matters that were not dealt with in the *Legal Profession Act 2004* that are dealt with under this Act.

717 Definitions for ch 9

In this chapter—

authorised action or document means an action done or a document made or kept under a previous provision.

corresponding provision means a provision of this Act that is substantially the same as a previous provision.

made includes given and issued.

obligation includes duty.

previous, in relation to a stated provision that includes a number, means the provision of the *Legal Profession Act 2004* with that number immediately before the repeal of the *Legal Profession Act 2004*.

previous provision means a provision of the *Legal Profession Act 2004* as in force immediately before the commencement of this section.

protection includes a statement that—

(a) there is no liability; and

(b) there is no invalidity; and

(c) a person has an entitlement.

718 Authorised actions and documents etc. under previous provision

(1) This section applies to the following—

(a) an authorised action or document done, made or kept under a previous provision if the authorised action or document continued to have effect or was in force immediately before the commencement;

(b) an entity's obligation under a previous provision if the obligation applied to the entity immediately before the commencement;

(c) a protection under a previous provision that applied to an entity immediately before the commencement.

(2) Subject to a specific provision of this Act in relation to an authorised action or document, obligation or protection under a previous provision, if there is a corresponding provision for the previous provision, the authorised action or document, obligation or protection—

(a) continues in force or to have effect according to its terms; but

(b) is taken to have been done, made, kept or applied under the corresponding provision.

(3) Subsection (2) does not apply to a statutory instrument that is, immediately before the commencement, subordinate legislation.

(4) However subsection (2)(b) applies whether or not the previous provision refers to the action or document, obligation or protection by reference to a provision of the *Legal Profession Act 2004*.

(5) Other provisions of this part include examples for this section.

Note—

The examples are examples under the *Acts Interpretation Act 1954*, section 14D.

719 Things continued in force under Legal Profession Act 2004

(1) This section applies to a thing (***the thing***) that happened under an Act other than the *Legal Profession Act 2004* but that, under that Act and in particular under chapter 8, part 5, of that Act, continued to have effect.

(2) If the thing has not ended before the commencement of this section, the thing continues to have effect under this Act.

Not authorised—indicative only

Not authorised—indicative only

(3) Matters in relation to the thing are to be done under this Act unless a provision of the *Legal Profession Act 2004*, chapter 8, part 5, provides otherwise and for the purpose the provision continues to have effect.

(4) This section does not limit section 718 or another provision of this chapter about the thing.

720 Terminology in things mentioned in s 718(1)

(1) This section applies to a document that is—

(a) any of the things mentioned in section 718(1), including, for example, an authorised action or document; or

(b) evidence of any of the things.

(2) A reference in the document to the thing is to be read, if the context permits and with the necessary changes to terminology, as if the thing were done, made or kept under this Act.

Example for subsection (2)—

A recommendation of the board that a person be admitted under the *Legal Profession Act 2004* as a legal practitioner is to be read as if the recommendation were that the person be admitted to the legal profession under this Act.

721 Period stated in previous provision

(1) This section applies if, in a previous provision, there is a period for doing something, and the period for doing the thing started before the commencement.

(2) If there is a corresponding provision to the previous provision and both the corresponding provision and the previous provision state the same period, the period for the thing continues to have started from when the period started under the previous provision.

(3) If there is a corresponding provision to the previous provision and the corresponding provision and the previous provision state different periods—

(a) the period stated in the previous provision applies; and

(b) the period for the thing continues to have started from when the period started under the previous provision.

722 Period or date stated in document given under previous provision

(1) This section applies if—

(a) there was a previous provision that provided for a document to be made under it; and

(b) there is a corresponding provision to the previous provision; and

(c) under the previous provision and before the commencement—

(i) a document was given to a person, whether or not the person had received the document before the commencement; or

Example for subparagraph (i)—

a notice under previous section 257 that states a date by which a complainant must comply with the notice

(ii) a document was published before the commencement.

Example for subparagraph (ii)—

a notice under previous section 164 fixing a date after which claims relating to a default can not be made

(2) If the document stated a period for doing something—

(a) the stated period continues to apply for doing the thing; and

(b) the period continues to have started from when the period started under the previous provision.

(3) If the document stated a date before which, or by which, a thing is to be done (however expressed), the thing must be done by the stated date.

Not authorised—indicative only

Not authorised—indicative only

723 Acts Interpretation Act 1954, s 20 not limited

This chapter does not limit the *Acts Interpretation Act 1954*, section 20.

Part 9.2 Transitional provisions relating to chapter 2

724 Act or omission happening before commencement may be relevant to proceeding for particular acts or omissions

(1) An act or omission that happened before the commencement of this section may be relevant to a proceeding relating to a contravention of a provision of this Act involving an act or omission that happened after the commencement, including, for example, a contravention of section 24 or 25.

(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) This section does not limit the *Acts Interpretation Act 1954*, section 20C.

(4) In this section—

contravention includes an alleged contravention.

725 Examples for ch 2 of things under s 718

(1) In relation to chapter 2, the following are examples of authorised actions or documents for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an application under previous section 48 to a regulatory authority for the grant or renewal of a practising certificate;

(b) the granting or renewing of a practising certificate by a regulatory authority under previous section 52;

(c) an information notice, including an information notice requiring a health assessment under previous section 533;

(d) a written notice, other than an information notice, under a previous provision;

(e) a referral under previous section 36(3) of an application to the Supreme Court for a direction;

(f) a direction under previous section 34(5) by the Supreme Court;

(g) an appeal under a previous provision;

(h) an application under previous section 36 for a declaration that a matter stated in an application will not, without more, adversely affect the board's assessment of the person's suitability for admission (however expressed);

(i) a declaration by the Supreme Court in relation to an application mentioned in paragraph (h);

(j) a recommendation under previous section 33 about an application for admission;

(k) an application under the Supreme Court rules for admission and an order in relation to the application, including admission to the legal profession under a previous Act;

(l) a show cause notice under previous section 68 and any representation made in relation to the show cause notice;

(m) an agreement to amend a local practising certificate under previous section 69(1)(b)(ii);

(n) a request to the commissioner of police for a written report under previous section 532;

(o) an appointment of a person under previous section 534 to conduct all or part of a health assessment;

(p) a heath assessment report under previous section 535;

Not authorised—indicative only

Not authorised—indicative only

(q) an order of the Supreme Court, including, for example, the following—

(i) an order for the removal of a local lawyer's name from the local roll under previous section 40(2)(b);

(ii) an order that a person's name not be removed from the local roll or practising certificate not be cancelled;

(r) jurisdictional protocols entered into under previous section 80.

(2) Also, in relation to chapter 2 of this Act, the following are examples of obligations for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an obligation to give notice of a particular conviction, or a charge of a serious offence, if the conviction or charge happened before the commencement;

(b) an obligation to pay a fee or charge or cost, including the cost of an assessment by a health assessor;

(c) an obligation to give written notice of removal of a name from an interstate roll or the taking of foreign regulatory action;

(d) an obligation to comply with a requirement under previous section 72 to return a local regulatory certificate to a regulatory authority;

(e) an obligation under previous section 532(4) to give a report to a regulatory authority;

(f) an obligation under previous section 536 to pay a person appointed as a health assessor;

(g) an obligation under previous section 538 not to disclose a suitability report or information in a suitability report and to destroy a suitability report.

(3) Also, in relation to chapter 2, the following are examples of protections for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) the statement in previous section 537 that a report relating to a health assessment is not admissible in any proceedings;

(b) the statement in previous section 537 that a person can not be compelled to produce a suitability report or to give evidence about a suitability report or its contents.

Part 9.3 Transitional provisions relating to chapter 3

Division 1 Examples for chapter 3

726 Examples for ch 3 of things under s 718

(1) In relation to chapter 3, the following are examples of authorised actions or documents for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an arrangement entered into under previous section 148 by the law society for insurance in relation to claims, and liabilities arising out of claims, against the fidelity fund;

(b) a notice under previous section 155 requiring the law society to give the Minister a report on the fidelity fund on matters stated in the notice;

(c) the giving or an advance under previous section 158 of an amount for the fidelity fund;

(d) a claim against the fidelity fund under previous section 162, including a claim mentioned in previous section 184;

(e) an allowance of a further period, or a refusal to allow a further period, under previous section 163;

(f) a notice under previous section 164 seeking information about a default, or inviting claims relating to a default;

Not authorised—indicative only

Not authorised—indicative only

(g) an order relating to costs under previous section 170;

(h) a decision mentioned in previous section 178(1);

(i) a postponement, imposition or partial payment as mentioned in previous section 183(1);

(j) the treatment of a concerted interstate default as mentioned in previous section 186;

(k) a request to a corresponding authority under previous section 195;

(l) an arrangement entered into under previous section 207 by the chief executive with a financial institution about the financial institution paying interest to the department;

(m) the keeping of accounts under previous section 208 for the Legal Practitioner Interest on Trust Accounts Fund;

(n) an approval mentioned in previous section 209(1)(h);

(o) a decision and written authority by the Minister that an amount may be paid from the Legal Practitioner Interest on Trust Accounts Fund as mentioned in previous section 209(2);

(p) a request to prepare and submit a budget as mentioned in previous section 211.

(2) Also, in relation to chapter 3, the following are examples of obligations for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) a continuing obligation under previous section 51 in relation to professional indemnity insurance;

(b) a requirement for the auditor-general to audit the accounts of the fidelity fund under previous section 153 if the auditor-general has not audited the accounts for the 2007 calendar year before the commencement of section 365;

(c) a requirement for the law society to give the Minister a report about the fidelity fund under previous section 155;

(d) a requirement to pay a contribution or levy to the fidelity fund under previous section 156 or 157;

(e) a requirement to pay costs from the fidelity fund under an order under previous section 170.

(3) Also, in relation to chapter 3, the following are examples of protections for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) the statement in previous section 148(4) that no liability was incurred as mentioned in that subsection;

(b) the statement in previous section 164(6) that no liability was incurred as mentioned in that subsection;

(c) the statement in previous section 206 that no action at law or equity may lie as mentioned in that section.

Division 2 Matters dealt with in part 3.3

727 Continued application of Trust Accounts Act 1973

(1) Despite part 3.3, a law practice to which the part applies may, for keeping or dealing with trust money or keeping records of the trust money, comply with the Trust Accounts Act for the relevant period as if—

(a) the trust money were trust moneys under that Act; and

(b) the law practice were a trustee under that Act.

(2) For the purposes of subsection (1)—

(a) the Trust Accounts Act is taken to apply in relation to the law practice for the relevant period; and

(b) a reference in the Trust Accounts Act to a trustee or a solicitor is taken to include—

(i) a law practice that, immediately before the commencement, was a trustee under that Act; and

(ii) a law practice that is an incorporated legal practice; and

Not authorised—indicative only

Not authorised—indicative only

(iii) each legal practitioner partner of a law practice that is a multi-disciplinary partnership; and

(c) a reference in the Trust Accounts Act to a provision of the *Legal Profession Act 2004* (the ***2004 provision***) is taken to be a reference to a provision of the *Legal Profession Act 2007* that is substantially the same as the 2004 provision.

(3) If a law practice complies with a provision of the Trust Accounts Act under subsection (1) (the ***trust provision***)—

(a) the law practice is taken to have complied with part 3.3 in relation to a provision of that part, about keeping or dealing with trust money or keeping records of the trust money, that is substantially the same as the trust provision; and

(b) an obligation or requirement imposed on the law practice as a trustee under that Act, about keeping or dealing with the trust money or keeping records of the trust money, continues to apply to the law practice despite the ending of the relevant period.

(4) In this section—

commencement means the commencement of this section.

relevant period means the period starting on the commencement and ending on 31 March 2008.

Trust Accounts Act means the *Trust Accounts Act 1973* as in force immediately before the commencement.

728 Provision about application of s 268

For the first external examination of a law practice's trust records under section 268, the financial period for the law practice is 1 April 2007 to 31 March 2008.

729 Provision about application of s 270

(1) This section applies to an entity that, immediately after the commencement of this section—

(a) is a law practice to which part 3.3 applies; and

(b) is taken to have an external examiner for the practice because of section 757.

(2) Despite section 270(1), the law practice need not give the law society notice of the external examiner under the subsection.

730 Provision about application of s 276

(1) This section applies if section 276 applies to a law practice before the first external examination of the practice's trust records has been conducted.

(2) Section 276 applies to the law practice as if a reference in section 276(2)(a) to an external examination of the practice's trust records were a reference to an audit under the *Trust Accounts Act 1973* of the accounting and other records and trust accounts of the practice under that Act.

731 Provision about application of s 278

For section 278, a reference in section 278(1)(a) to an external examination is taken to include a reference to an audit of a trustee's accounting and other records and trust accounts under the *Trust Accounts Act 1973*.

Division 3 Matters dealt with in part 3.4

Subdivision 1 Preliminary

732 Definitions for pt 9.3, div 3

In this division—

client agreement means a written agreement made under—

(a) repealed section 48 before the commencement; or

(b) section 734 after the commencement.

Not authorised—indicative only

Not authorised—indicative only

commencement means the commencement of section 299.

relevant day means the day that is 6 months after the day of commencement.

repealed, in relation to a numbered provision, means the provision with that number in the repealed *Queensland Law Society Act 1952* as that provision was in force immediately before the repeal.

Example—

A reference to 'repealed part 4A' means part 4A of the repealed *Queensland Law Society Act 1952*, as that part was in force immediately on its repeal.

733 General application of pt 3.4

The application of part 3.4 to a matter is subject to this division.

Subdivision 2 Client agreements

734 Client agreements may be entered into despite pt 3.4

(1) Despite part 3.4 and the repeal of the *Queensland Law Society Act 1952*, a law practice to which the part applies may—

(a) make a client agreement as if the *Queensland Law Society Act 1952*, section 48, had not been repealed; and

(b) perform urgent work that could have been performed, under repealed section 48, even though there is no client agreement or costs agreement for the work.

(2) Subsection (1) applies to the law practice even though a reference to a law firm in the repealed *Queensland Law Society Act 1952* would not have included the law practice.

(3) However, on and after the relevant day, the law practice can not rely on subsection (1) for not complying with part 3.4 in relation to a matter to which that part applies after the relevant day.

Not authorised—indicative only

735 Application of part 3.4 to client agreements etc.

(1) This section applies if—

(a) a client agreement under repealed section 48, including after the commencement, is made between a client and a law practice; or

(b) a law practice performs urgent work as mentioned in section 734(1)(b) even though there is no client agreement or costs agreement for the work.

(2) To the extent part 3.4 provides for any of the following, part 3.4 does not apply to the law practice in relation to the client for the matter the subject of the client agreement or urgent work—

(a) a thing to be done before a costs agreement is made, including, for example, disclosures under sections 308, 309 and 313;

(b) the form of a disclosure to be made under part 3.4, including, for example, the requirements under section 314;

(c) the parties to, or a provision that must, may or may not be included in, a costs agreement, including, for example, matters stated in sections 322, 323, 324 and 325;

(d) a consequence for failing to do a thing before a costs agreement is made, including, for example, the effect of failure to make a disclosure as mentioned in section 316 or 327.

(3) However, subsection (2) does not prevent the application of part 3.4 to other matters including the application of a provision that refers to a costs agreement.

Note—

The definition of *costs agreement* includes an agreement made under repealed part 4A or section 734.

(4) Without limiting subsection (3), the following provisions apply, in the way stated, to a law practice in relation to a client for the matter the subject of a client agreement—

Not authorised—indicative only

(a) section 315 as if a reference to 'under this division' included 'for a client agreement';

(b) section 318 as if a reference to 'under this division' included 'for a client agreement';

(c) section 319 as if a reference to 'a costs agreement made under division 5' were to 'a client agreement made under the repealed *Queensland Law Society Act 1952*, part 4A';

(d) section 328 as if a reference to 'disclosures required under division 3' were to disclosures required under the repealed *Queensland Law Society Act 1952*, section 48.

(5) Despite the repeal of the *Queensland Law Society Act 1952*, repealed section 48F continues to apply to a client agreement.

736 Failure to comply with Queensland Law Society Act 1952 after commencement and before relevant day

(1) This section applies to a law practice, other than a barrister, in relation to a client for a matter if—

(a) the law practice may enter into a client agreement with the client for the matter under section 734 but has not done so, including a law practice that performed work as urgent work before the relevant day; and

(b) work for the matter remains to be performed on the relevant day.

(2) Part 3.4, division 3, applies to the law practice (***the practice***) in relation to the client for the matter on and after the relevant day with the following changes—

(a) section 310(1) applies to the practice and the practice must disclose to the client the matters required to be disclosed by the subsection as soon as practicable after the relevant day and before a costs agreement is entered into;

(b) section 310(2) applies to the practice and the practice must disclose to the law practice that retained the

practice and that requests the disclosures, the matters required to be disclosed by the subsection as soon as practicable after the relevant day and before a costs agreement is entered into.

Subdivision 3 Billing

737 Application of pt 3.4, div 6

(1) This section applies to—

(a) work performed under a client agreement; or

(b) urgent work performed before the commencement or as mentioned in section 734(1)(b).

(2) A bill given to a client by a law practice for the work must comply with the requirements of—

(a) part 3.4, division 6, in relation to a bill and the giving of a bill; or

(b) if the bill is given to the client before the relevant day—repealed section 48J(1)(a) or (b).

(3) If a bill that complies with repealed section 48J(1)(a) or (b) is given to a person before the relevant day—

(a) the bill is a bill under part 3.4, division 6, even though it does not comply with the requirements in section 330 or 331; and

(b) part 3.4, division 6, applies to the bill as if it were made under the division, including, for example, sections 329 and 332.

Subdivision 4 Costs assessments

738 All costs assessments to be under pt 3.4, div 7

(1) On and after the commencement, a costs assessment must be made under part 3.4, division 7, even if the application relates

Not authorised—indicative only

Not authorised—indicative only

to work performed under a client agreement or as urgent work before the commencement or the relevant day.

(2) Subsection (1) is subject to section 739.

739 Costs assessment started before commencement

(1) This section applies if, before the commencement—

(a) a person (the ***applicant***) applied as mentioned in the *Queensland Law Society Act 1952*, section 6ZA, for the appointment of a costs assessor to assess an account given to the person by a practitioner or firm; and

(b) the appointed costs assessor has not made the assessment.

(2) The costs assessor must continue to deal with the costs assessment under the repealed *Queensland Law Society Act 1952*.

(3) For subsection (2), repealed part 2A, division 6A, continues to apply to the applicant, the practitioner or firm, the costs assessor and the application, as if that division had not been repealed, including, for example repealed sections 6ZD, 6ZE and 6ZF.

(4) However, if the applicant and the relevant practitioner or firm gives written notice to the costs assessor that they agree the matter should be dealt with under this Act, the costs assessor must not continue to deal with the costs assessment under the repealed *Queensland Law Society Act 1952*.

(5) The applicant may apply for a costs assessment under this Act in relation to the account despite the previous application.

(6) If an application is made under this Act within 1 year of the date of the notice mentioned in subsection (4), a provision of this Act, that provides that an application must be made within a particular period, does not prevent the application being made, including, for example, sections 335 and 336.

Division 4 Matters dealt with in part 3.6

740 Amounts payable to and from the fidelity fund before commencement

(1) This section applies to an amount that was payable into, or was payable from, the fidelity fund as it existed from time to time before the commencement of this section.

(2) If the amount is payable into the fidelity fund and is received by the law society after the commencement, the amount must be paid into the fidelity fund.

(3) If the amount was payable from the fidelity fund before the commencement but was not paid before the commencement, it may be paid from the fidelity fund after the commencement.

(4) Also, if an amount becomes payable in relation to an act or omission before the commencement that constituted a default under a relevant law at the time that the act or omission happened, the amount may be paid from the fidelity fund after the commencement.

741 Delegation to committee of management before commencement

(1) This section applies to a delegation as mentioned in the *Queensland Law Society Act 1952*, section 18, as in force immediately before the repeal of that section that continued to have effect as if it were a valid delegation under the *Legal Profession Act 2004*.

(2) If the delegation has not been revoked by the law society before the commencement of this section, the delegation continues to have effect as if it had been made under this Act.

(3) The delegation may be revoked by the law society.

Not authorised—indicative only

Not authorised—indicative only

742 Claims for acts or omissions happening before commencement

(1) If a person made a claim against the fidelity fund as it existed before the commencement of this section in relation to an act or omission that also happened before the commencement—

(a) the claim is to be dealt with under the repealed provision; and

(b) the law governing the liability of the fidelity fund, and the amount of the reimbursement, is the law as in force under the repealed provision.

(2) If the person did not made a claim against the fidelity fund as it existed before the commencement in relation to an act or omission before the commencement—

(a) the claim may be made under this Act; but

(b) the law governing the liability of the fidelity fund, and the amount of the reimbursement, is the law as in force immediately before the commencement.

(3) If section 397 applies, the amount of a reimbursement may be dealt with in the same way as a payment from the fidelity fund after the commencement.

(4) In this section—

repealed provision means either of the following as was in force at the time of the relevant act or omission—

(a) the *Queensland Law Society Act 1952*, part 3, as in force immediately before the commencement of previous section 609;

(b) the *Legal Profession Act 2004*, chapter 2, part 7.

743 Reference in s 377 to previous sections

(1) A reference in section 377 to a notice under section 376 includes a notice under previous section 164.

(2) A reference in section 377(3) to section 375 includes previous section 163.

744 Right of subrogation to continue despite repeal

(1) This section applies despite the repeal of previous sections 173 and 174.

(2) Previous section 173 continues to apply to payments made from the fidelity fund before the commencement of section 397.

(3) Previous section 174 continues to apply to proceedings brought in a court under previous section 173, whether before or after the commencement.

745 Payments for defaults under previous ch 2, pt 7

A reference in section 395 to 'this part' includes previous chapter 2, part 7.

Part 9.4 Transitional provisions relating to chapter 4

746 Examples for ch 4 of things under s 718

(1) In relation to chapter 4, the following are examples of authorised actions or documents for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) a consent under previous section 250(2)(a) or (b);

(b) a complaint or delegation under previous section 256;

(c) a notice under previous section 257(1) requiring a complainant to do a thing;

(d) an extension of time under previous section 257(3);

(e) a referral, dismissal, decision or information notice under previous section 258;

(f) a dismissal under previous section 259;

(g) a withdrawal under previous section 260;

Not authorised—indicative only

Not authorised—indicative only

(h) a referral of a complaint or an investigation matter, or an extension or direction in relation to a complaint or an investigation matter, under previous section 265;

(i) a notice under previous section 266(3) or 267(1);

(j) an appointment of an investigator, or a report or recommendation, under previous section 268;

(k) an engagement of a costs assessor, or a notice to an Australian legal practitioner, under previous section 269;

(l) a written submission under previous section 270;

(m) a referral of a matter under previous section 271;

(n) a starting of proceedings under previous section 273;

(o) a dismissal of a complaint under previous section 274;

(p) a discipline application under previous section 276 or a variation of a discipline application under previous section 278;

(q) an order under previous section 279, 280, 282, 284 or 286;

(r) an appeal under previous section 292, 293 or 294;

(s) a register under previous section 296;

(t) an arrangement entered into under previous section 302 or 305;

(u) a request or report under previous section 303;

(v) an investigation, authorisation or report under previous section 304;

(w) a waiver under previous section 313.

(2) Also, in relation to chapter 4 of this Act, the following are examples of obligations for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an obligation under previous section 267 to give written notice to a respondent;

(b) an obligation under previous section 268 to investigate and report about a complaint or investigation matter;

(c) an obligation of an Australian legal practitioner under previous section 269 to comply with a requirement;

(d) an obligation under previous section 270(3) to consider submissions;

(e) an obligation of the commissioner under previous section 275 to record his or her decision about a complaint;

(f) an obligation of a disciplinary body under previous section 277 to hear and decide each allegation stated in a discipline application;

(g) an obligation of the Brisbane registrar under previous section 281 after the tribunal makes an order as mentioned in that previous section;

(h) an obligation under an order under previous section 280, 282 or 284;

(i) an obligation under previous section 285 to give effect to and notify an order as mentioned in that previous section;

(j) an obligation of the commissioner under previous section 296 to keep the discipline register;

(k) an obligation under previous section 299 to remove any reference to disciplinary action that is quashed on an appeal.

(3) Also, in relation to chapter 4, the statement in previous section 300 that no liability was incurred as mentioned in that section is an example of a protection for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*.

Not authorised—indicative only

Not authorised—indicative only

Part 9.5 Transitional provisions relating to chapter 5

747 Examples for ch 5 of things under s 718

(1) In relation to chapter 5, the following are examples of authorised actions or documents for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an appointment of external intervener for a law practice, whether as a supervisor of trust money under previous section 320, a manager for a law practice under previous 326 or as a receiver for a law practice under previous section 333, unless the appointment was terminated before the commencement;

(b) an instrument of appointment under previous section 320, 326 or 333, unless the appointment was terminated before the commencement, and the conditions to which the appointment is subject under previous section 349;

(c) an agreement entered into under previous section 320(5), 326(5) or 333(5);

(d) an arrangement for withdrawing money under previous section 322(3), 328(5) or 335(4);

(e) records kept under previous section 324, 330 or 337;

(f) a termination of appointment under previous section 325, 332 or 348;

(g) an order of the Supreme Court under previous section 338(3) or (4) or 342;

(h) a notice to a legal practice associate under previous section 343;

(i) an appeal under previous section 352 against the appointment of an external intervener for a law practice;

(j) a direction of the Supreme Court under previous section 353 about a matter mentioned in that previous section.

(2) Also, in relation to chapter 5 of this Act, the following are examples of obligations for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) a obligation, whether under previous section 321, 327 or 334, to give a copy of a notice of an appointment;

(b) an obligation of a financial institution or any other entity under previous section 322, 328 or 335;

(c) an obligation under previous section 324, 330 or 337 to keep records;

(d) an obligation under previous section 325(3), 332(5) or 348(5) to give a copy of a notice of termination;

(e) an obligation of a receiver under previous section 338(6) to return anything seized under previous section 338;

(f) an obligation of a person under previous section 339 to deliver property to a receiver;

(g) an obligation under previous section 341 to comply with a requirement under that previous section;

(h) an obligation of a financial institution under previous section 354 to disclose matters or permit copies or extracts as mentioned in that section;

(i) an obligation of external intervener under previous section 356 to give a written report;

(j) an obligation under previous section 357 not to disclose information.

(3) Also, in relation to chapter 5 of this Act, the following are examples of protections for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) a protection under section 342(4);

(b) a protection under section 344 in relation to regulated property of a law practice.

Not authorised—indicative only

Not authorised—indicative only

Part 9.6 Transitional provisions relating to chapter 6

748 Examples for ch 6 of things under s 718

(1) In relation to chapter 6 the following are examples of authorised actions or documents for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) the appointment of a person as an investigator under previous section 542;

(b) an identity card issued to an investigator under previous section 544;

(c) an acknowledgement of consent to enter a place under previous section 550;

(d) an application for a warrant for a place under previous section 551;

(e) a warrant issued for a place under previous section 552;

(f) a receipt under previous section 562 for a thing seized;

(g) a notice of damage under previous section 567.

(2) Also, in relation to chapter 6 of this Act, the following are examples of obligations for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an obligation under previous section 548 for a person who ceases to be an investigator to return an identity card to the commissioner;

(b) an obligation of an investigator under previous section 553(6) to send documents relating to a warrant under the previous section to a magistrate;

(c) an obligation under previous section 560 in relation to a thing that is seized;

(d) an obligation under previous section 561 to comply with a requirement under that previous section;

(e) an obligation under previous section 565 to return a seized thing that has not been forfeited to the State;

(f) an obligation under previous section 566 to allow the inspection or the copying of a document as mentioned in that previous section.

(3) Also, in relation to chapter 6 of this Act, the statement in previous section 554 that a warrant is not invalidated by a defect is an example of a protection for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*.

Part 9.7 Transitional provisions relating to chapter 7

749 Examples for ch 7 of things under s 718

(1) In relation to chapter 7, the following are examples of authorised actions or documents for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an appointment of a person as the Legal Services Commissioner under previous section 414;

(b) a decision about the remuneration and allowances to be paid to the commissioner under previous section 416;

(c) an appointment of a person as the acting commissioner under previous section 417;

(d) an approval of the chief executive, or a secondment of a public service officer to the commission, under previous section 422;

(e) a delegation by the commissioner under previous section 426;

(f) an arrangement between the commissioner and a regulatory authority under previous section 427;

(g) a direction about the tribunal's procedure issued, or a delegation by the chairperson of the tribunal, under previous section 434;

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Not authorised—indicative only

(h) an appointment of a person to the lay panel, or the practitioner panel, under previous section 438;

(i) a decision about the remuneration and allowances to be paid to a member of the lay panel under previous section 439;

(j) an appointment, an invitation to recommend for appointment or a recommendation for appointment, of a person under previous section 452;

(k) an appointment of a person as the deputy chairperson of the Legal Practice Committee under previous section 459;

(l) a decision about the remuneration and allowances to be paid to a lay member of the Legal Practice Committee under previous section 460;

(m) minutes of a meeting of the Legal Practice Committee, and resolutions made under previous section 466(6), kept under previous section 467;

(n) a direction under previous section 468 or 482;

(o) an arrangement made about constituting a committee for hearing and deciding a discipline application under previous section 469;

(p) a direction about the committee's procedure issued under previous section 470;

(q) a decision about recording a proceeding under previous section 476;

(r) an order prohibiting publication of information under previous section 480;

(s) an order of a disciplinary body about a failure to observe a procedural requirement under previous section 481;

(t) a direction in relation to a hearing before a disciplinary body issued under previous section 482;

(u) a notice given to a person to attend a hearing of, or to produce a stated document or thing to, a disciplinary body under previous section 483;

(v) an appointment of a person, or a nomination of a person for appointment, to the Legal Practitioners Admissions Board under previous section 490;

(w) an appointment of a person as the chairperson or deputy chairperson of the Legal Practitioners Admissions Board under previous section 494;

(x) minutes of a meeting of the Legal Practitioners Admissions Board, and resolutions passed at a board meeting, kept under previous section 503;

(y) a delegation by the law society under previous section 512;

(z) an appointment for a casual vacancy under previous section 516 and of the secretary and other persons under previous section 518.

(2) Also, in relation to chapter 7 of this Act, the following are examples of obligations for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an obligation under previous section 418(2), 440(2), 457(2) or 496(2) to terminate the appointment of a person;

(b) an obligation of the chairperson of the Legal Practice Committee under previous section 463(2), or the chairperson of the Legal Practitioners Admissions Board under previous section 499(2), to call a meeting.

(3) Also, in relation to chapter 7 of this Act, the following are examples of protections for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) a statement under previous section 423 relating to a public service officer appointed to an office as mentioned in that previous section;

(b) a statement under previous section 425 relating to a seconded public service officer;

(c) a statement under previous section 446 about tribunal members and panel members;

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Not authorised—indicative only

(d) a statement under previous section 448 or 472 about persons mentioned in that previous section;

(e) a statement under previous section 517 about the performance of a function or exercise of a power of the law society.

Part 9.8 Transitional provisions relating to chapter 8

750 Examples for ch 8 of things under s 718

(1) In relation to chapter 8, the following are examples of authorised actions or documents for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*—

(a) an application or injunction under previous section 581;

(b) an application to the Supreme Court for a declaration as mentioned in previous section 583(7);

(c) an approval of a person as an associate by a regulatory authority under previous section 584;

(d) a written arrangement under previous section 591(3) about allowing or giving access to information.

(2) Also, in relation to chapter 8 of this Act, an obligation under previous section 583 to report a suspected offence is an example of an obligation for section 733 in relation to matters dealt with under the *Legal Profession Act 2004*.

(3) Also, in relation to chapter 8 of this Act, the statement in previous section 593 that an Act official is not civilly liable is an example of a protection for section 718 in relation to matters dealt with under the *Legal Profession Act 2004*.

Part 9.10 Repeal of the Legal Profession Act 2004

752 Repeal of Legal Profession Act 2004

The Legal Profession Act 2004 No. 11 is repealed.

Part 9.11 Provisions relating to Trust Accounts Act 1973

753 Definitions for pt 9.11

In this part—

accounting and other records, of a trustee, means the accounting and other records, relating to trust moneys, kept by the trustee under the Trust Accounts Act.

auditor, of a trustee, means an individual who, under the Trust Accounts Act, section 14 or 15, is appointed as an auditor to audit the trustee's accounting and other records and trust accounts.

commencement day means the day on which the provision in which the term is used commences.

financial period, for a trustee, see the Trust Accounts Act, section 4.

supervising entity means the law society.

Trust Accounts Act means the *Trust Accounts Act 1973*.

trustee means a person who, immediately before the commencement day—

(a) is a solicitor and trustee under the Trust Accounts Act; or

(b) is a former solicitor who is a trustee under the Trust Accounts Act, section 4C.

trust moneys see the Trust Accounts Act, section 4.

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754 Trust accounts and trust moneys under Trust Accounts Act

On the commencement day—

(a) a trust account kept by a trustee under the Trust Accounts Act is taken to be a general trust account kept by the trustee under this Act; and

(b) trust moneys held by a trustee are taken to be trust money under this Act.

755 Accounting and other records

On the commencement day, the accounting and other records of a trustee are taken to be trust records under this Act.

756 Dealing with particular trust moneys

(1) This section applies to trust moneys that—

(a) were received by a trustee before the commencement day; and

(b) on the commencement day, have not been paid into a trust account under the Trust Accounts Act, section 7(3).

(2) The trustee must deal with the trust moneys under this Act as if the trust moneys were trust money under this Act received by the trustee immediately after the commencement day.

(3) This section applies subject to section 727.

757 Provision about particular auditors and audits

(1) On the commencement day, an individual who is a trustee's auditor immediately before that day is taken to be appointed as the external examiner for the trustee under section 267(1).

(2) Despite subsection (1), the external examiner is taken to continue as the trustee's auditor under the Trust Accounts Act for the purpose of doing, or continuing to do, any thing under that Act as the trustee's auditor.

758 Continuing application of Trust Accounts Act, s 5

(1) This section applies if, immediately before the commencement day, a trustee or other person—

(a) was subject to a requirement under the Trust Accounts Act, section 5(1), (2), (3), (5) or (6), to lodge with or give to the supervising entity notice of a matter mentioned in the subsections; and

(b) has not complied with the requirement.

(2) The Trust Accounts Act, section 5, as in force immediately before the commencement day continues to apply to the trustee or person in relation to the matter.

759 Continuing application of Trust Accounts Act, ss 12 and 13

(1) This section applies if—

(a) before the commencement day, a trustee received a demand mentioned in the Trust Accounts Act, section 12(3) or 13; and

(b) on the commencement day, the trustee has not dealt with the demand, or the trust moneys to which the demand relates, under that Act.

(2) Despite section 754, the trustee must deal or continue to deal with the demand and the trust moneys under the Trust Accounts Act, section 12 or 13.

(3) For dealing or continuing to deal with the demand and the trust moneys, the Trust Accounts Act as in force immediately before the commencement day continues to apply to the trustee.

760 Continuing application of Trust Accounts Act, s 14(2) and (3)

(1) Subsection (2) applies if, immediately before the commencement day, a trustee—

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Not authorised—indicative only

(a) was subject to a requirement under the Trust Accounts Act, section 14(2) or (3); and

(b) has not complied with the requirement.

(2) The Trust Accounts Act, section 14(2) and (3), as in force immediately before the commencement day continues to apply to the trustee.

761 Continuing application of Trust Accounts Act, ss 15 and 16

(1) This section applies in relation to an audit, under the Trust Accounts Act, of the accounting and other records and trust accounts of a trustee.

(2) The Trust Accounts Act, section 15, as in force immediately before the commencement day continues to apply in relation to the performance of the audit by the trustee's auditor.

(3) The Trust Accounts Act, section 16, as in force immediately before the commencement day continues to apply to the trustee and the trustee's auditor in relation to the performance of the audit.

(4) Without limiting subsection (2)—

(a) an obligation imposed on the trustee's auditor under the Trust Accounts Act, section 15(9) or (10), continues to apply to the auditor; and

(b) the Trust Accounts Act, section 15(12) and (13), continues to apply in relation to the audit.

762 Continuing application of Trust Accounts Act, s 17

The Trust Accounts Act, section 17, as in force immediately before the commencement day continues to apply to a trustee's auditor in relation to the performance of the auditor's duties as auditor under the Trust Accounts Act, whether before or after the commencement day, for the trustee.

Not authorised—indicative only

763 Continuing application of Trust Accounts Act, s 19

(1) This section applies if—

(a) a person ceased to carry on practice or business or to act as a trustee before the commencement day; and

(b) immediately before the commencement day, the person or the person's personal representative has not complied with a requirement under the Trust Accounts Act, section 19.

(2) The Trust Accounts Act, section 19, continues to apply to the person or the person's personal representative in relation to ceasing to carry on practice or business or acting as a trustee.

764 Continuing application of Trust Accounts Act, s 28A

The Trust Accounts Act, section 28A, as in force immediately before the commencement day continues to apply to the supervising entity in relation to the performance of its functions under the Trust Accounts Act before or after the commencement day.

765 Continuing application of Trust Accounts Act, s 30

(1) This section applies to an auditor's report given under the Trust Accounts Act to the supervising entity in relation to an audit of the accounting and other records and trust accounts of a trustee.

(2) The Trust Accounts Act, section 30(1), as in force immediately before the commencement day continues to apply to the supervising entity in relation to the report.

(3) Also, the supervising entity must make the report available for inspection by—

(a) an external examiner who first examines the trustee's trust records under this Act after the commencement day; and

(b) another person the supervising entity considers has a genuine reason for inspecting the report.

Not authorised—indicative only

(4) An external examiner or other person mentioned in subsection (3) may, with the supervising entity's approval, make a copy of, or take an extract from, the report.

766 Continuing application of Trust Accounts Act, s 33

(1) Subsection (2) applies if, immediately before the commencement day, a trustee—

(a) was subject to a requirement under the Trust Accounts Act, section 33(1), to lodge with the public trustee a return in relation to property mentioned in that section; and

(b) has not complied with the requirement.

(2) The Trust Accounts Act, section 33, as in force immediately before the commencement day continues to apply to the trustee in relation to the property.

(3) Also, the Trust Accounts Act, section 33, as in force immediately before the commencement day continues to apply for the purposes of dealing with any property to which a return given to the public trustee under that section, whether before or after the commencement day, relates.

Part 9.12 Repeal of Queensland Law Society Act 1952

767 Repeal of the Queensland Law Society Act 1952

The Queensland Law Society Act 1952 is repealed.

Editor's note—

The *Queensland Law Society Acts 1927* to *1952* and *Queensland Law Society Acts 1930* to *1952* were consolidated by authority of *Queensland Law Society Acts Amendment Act 1952* 1 Eliz 2 No. 24 pt 4 [1952 Sess Vol p 421].

768 Transitional provision about examination of accounts under Queensland Law Society Act 1952

(1) This section applies to an examination of accounts under the *Queensland Law Society Act 1952*, section 31, if—

(a) before the commencement of this section, a person (the ***accountant***) was appointed under that section to examine an entity's accounts; and

(b) on the commencement, the accountant has not completed the examination or has not given to the council a report under that section.

(2) On the commencement—

(a) the examination of the entity's accounts is taken to be a trust account investigation; and

(b) the accountant is taken to be an investigator under this Act for the purposes of the investigation.

769 Another transitional provision for repeal of Queensland Law Society Act 1952

(1) On the repeal, the existing members—

(a) stop holding office as members of the solicitors complaints tribunal under the repealed *Queensland Law Society Act 1952*; and

(b) are not entitled to any payments, remuneration or allowances for a period after the repeal.

(2) The person who, immediately before the repeal, is the clerk of the former tribunal must give—

(a) to the Brisbane registrar the former tribunal's register of costs assessors, and all related documents to that register; and

(b) to the commissioner all other documents held immediately before the repeal by the person as the clerk of the former tribunal.

Not authorised—indicative only

Not authorised—indicative only

(3) A regulation may provide for how the Brisbane registrar or the commissioner must deal with the documents given to the Brisbane registrar or the commissioner under subsection (2) to protect confidentiality, including creating an offence for unauthorised disclosures.

(4) Also, a regulation may provide for a person to apply to the Supreme Court for an order that allows the Brisbane registrar or the commissioner to disclose information, including by giving the person access to or a copy of a document.

(5) In this section—

existing members mean the members of the solicitors complaints tribunal under the *Queensland Law Society Act 1952* immediately before its repeal.

former tribunal means the solicitors complaints tribunal under the *Queensland Law Society Act 1952* before its repeal.

repeal means the repeal of the *Queensland Law Society Act 1952*.

Chapter 10 Other transitional provisions

Part 2 Transitional provisions for QCAT Amendment Act

772 Definitions for pt 2

In this part—

commencement means the commencement of this section.

former tribunal means the former Legal Practice Tribunal.

QCAT Amendment Act means the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

unamended Act means this Act as in force before the commencement.

773 Acts Interpretation Act 1954, section 20 not limited

This part does not limit the *Acts Interpretation Act 1954*, section 20.

Note—

See also the QCAT Act, chapter 7.

774 Particular court decisions continue

(1) A stay ordered by the Supreme Court under section 62 or 189 of the unamended Act continues in effect as if the QCAT Amendment Act had not been enacted.

(2) An extension of a period of amendment of suspension by the Supreme Court under section 63 or 197 of the unamended Act continues in effect as if the QCAT Amendment Act had not been enacted.

775 Particular notification giving requirement continues

(1) This section applies if, after the commencement, the Supreme Court decides an appeal against a decision mentioned in section 98(1)(a) in favour of an Australian lawyer.

(2) Section 98(2) and (3) of the unamended Act continues to apply in relation to the decision in the appeal as if the QCAT Amendment Act had not been enacted.

776 Particular orders taken to be orders of QCAT

(1) An order made by the former tribunal under section 650(1) as in force before the commencement—

Not authorised—indicative only

Not authorised—indicative only

(a) is taken to be an order made by QCAT under section 656D(1); and

(b) section 656D applies to the order accordingly.

(2) An order made by the former tribunal under section 650(4) as in force before the commencement—

(a) is taken to be an order made by QCAT under section 656D(4); and

(b) section 656D applies to the order accordingly.

777 Authentication of documents continues

Section 654 of the unamended Act continues to apply in relation to the following as if the QCAT Amendment Act had not been enacted—

(a) documents relating to a proceeding before the former tribunal;

(b) documents issued by the former tribunal.

Part 3 Transitional provision for Justice and Other Legislation Amendment Act 2010

778 Amended definition of *previous admission rules*

The definition *previous admission rules* as inserted into the schedule by the *Justice and Other Legislation Amendment Act 2010*, section 143, is taken to have always been the definition of the term for the purposes of the Act from the commencement of section 5.

Part 4 Transitional provisions for Justice and Other Legislation Amendment Act 2013

779 Application of amendments made by Justice and Other Legislation Amendment Act 2013

(1) This section applies if, before the commencement of this section, an Australian legal practitioner employed by the law society provided legal services to the board.

(2) Section 662A(2) applies to the Australian legal practitioner in providing the services as if the services had been provided after the commencement.

780 Amendment of regulation by Justice and Other Legislation Amendment Act 2013

The amendment of the *Legal Profession Regulation 2007* by the *Justice and Other Legislation Amendment Act 2013* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Part 5 Transitional provisions for the Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016

781 Existing approved ADIs

(1) This section applies to an ADI approved before the commencement by the law society under section 280 as in force before the commencement.

(2) The ADI is taken to have been approved by the chief executive under section 280.

Not authorised—indicative only

Not authorised—indicative only

782 Existing arrangements with ADIs

From the commencement, an arrangement under section 287(a) as in force before the commencement has no effect.

783 Closure of Legal Practitioner Interest on Trust Accounts Fund

(1) The Legal Practitioner Interest of Trust Accounts Fund established under section 288 is closed.

(2) Any amount remaining in the fund on the commencement is transferred to the consolidated fund.

(3) An amount payable to the fund on the commencement that has not been paid is payable to the department.

Part 6 Transitional provisions for Court and Civil Legislation Amendment Act 2017

784 Application of s 9(1) and additional obligation to disclose suitability matter

(1) This section applies if, before the commencement, a person had applied to a regulatory authority for the grant or renewal of a local practising certificate under section 49 and the regulatory authority had not decided the application under section 51.

(2) Section 9(1)(c), as in force after the commencement (***new section 9(1)(c)***), applies to the person for the application.

(3) If the person is or has been a legal practitioner director of an incorporated legal practice as mentioned in new section 9(1)(c), the person must, within 7 days after the day of commencement, give the regulatory authority a notice about that fact.

785 Application of amended *show cause event* definition and additional obligation to give notice and statement

(1) This section applies to a person who is a local legal practitioner, or a locally registered foreign lawyer, and who—

(a) on the commencement, is a legal practitioner director of an incorporated legal practice that is an externally-administered body corporate under the Corporations Act; or

(b) at any time before the commencement, was a legal practitioner director of an incorporated legal practice while it was an externally-administered body corporate under the Corporations Act.

(2) It is declared that the matter mentioned in subsection (1)(a) or (b) is a show cause event that has happened in relation to the person.

(3) The person must comply with the following for the show cause event—

(a) if the person is a local legal practitioner—section 68;

(b) if the person is a locally registered foreign lawyer—section 193.

(4) For subsection (3), the show cause event is taken to have happened on the commencement.

Part 7 Transitional provision for Justice and Other Legislation Amendment Act 2020

786 Application of ss 9 and 46 and additional obligation to disclose suitability matters

(1) This section applies if, before the commencement—

(a) a person made an application to a regulatory authority for the grant or renewal of a local practising certificate under section 49; and

Not authorised—indicative only

Not authorised—indicative only

(b) the regulatory authority had not decided the application under section 51.

(2) Sections 9(1) and 46(2), as in force from the commencement, apply to the person for the application.

(3) Subsection (4) applies if the person—

(a) is or has been a legal practitioner director of an incorporated legal practice while the practice is or was a chapter 5 body corporate; or

(b) is or has been a director of a corporation while the corporation is or was a chapter 5 body corporate.

(4) The person must, within 7 days after the commencement, give the regulatory authority written notice of the fact.

Part 8 Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021

787 Law society must make additional payments for claims limited under former s 396

(1) This section applies if, before the commencement, the law society paid an amount (the ***capped payment***) from the fidelity fund for a claim that was less than the allowed amount for the claim because the payment was limited by an amount fixed under former section 396.

(2) As soon as practicable after the commencement, the law society must pay the claimant an amount from the fidelity fund for the claim that is equal to the difference between—

(a) the capped payment; and

(b) the allowed amount of the claim.

(3) The law society must also pay the claimant interest on the amount payable from the fidelity fund under subsection (2).

(4) The interest—

(a) must be calculated at the rate prescribed by regulation from the day the capped payment was made; and

(b) is payable from the fidelity fund.

(5) In this section—

allowed amount, for a claim, means the amount payable in relation to the claim as decided by the law society under chapter 3, part 3.6, division 5 or, if the law society's decision is reviewed by QCAT, the amount payable in relation to the claim as decided by QCAT.

former section 396 means section 396 as in force before the commencement.

Part 9 Transitional provision for Personal Injuries Proceedings and Other Legislation Amendment Act 2022

788 Application of s 347

(1) This section applies in relation to a speculative personal injury claim if—

(a) before the commencement, a costs agreement was entered into between a law practice and the client for the claim; and

(b) on the commencement, the claim has not been settled, decided by a court or otherwise concluded.

(2) Section 347, as amended by the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022*, applies to the law practice in relation to the claim.

(3) In this section—

Not authorised—indicative only

Not authorised—indicative only

speculative personal injury claim see section 346.

Part 10 Transitional provisions for Legal Profession (Strengthening Disciplinary Matters) Amendment Act 2026

Division 1 Preliminary

789 Definitions for part

In this part—

amendment Act means the *Legal Profession (Strengthening Disciplinary Matters) Amendment Act 2026*.

former, in relation to a provision of this Act, whether generally or by reference to a stated provision, means the provision as in force from time to time before the commencement of the transitional provision in which the term is used.

hear or decide, an application, does not include conducting a proceeding for making an order or another decision pending the final hearing of the application.

new, in relation to a provision of this Act, means the provision as in force from the commencement of the transitional provision in which the term is used.

transitional provision means a provision of this part.

Division 2 Making and deciding applications and related matters

790 Applications for review of decisions previously reviewable by tribunal

(1) This section applies if—

(a) before the commencement, an entity made a decision affecting a person under this Act; and

(b) immediately before the commencement—

(i) the person could have, but had not, applied to the tribunal for a review of the decision under a former provision; and

(ii) the period allowed for making the application under the QCAT Act, section 33 (the ***original period***) had not ended; and

(c) the person would be able to appeal to the Supreme Court against the decision under a new provision if the decision were made after the commencement.

(2) The person may, within the original period, appeal to the Supreme Court against the decision under the new provision.

(3) If the person does not appeal against the decision within the original period, the Supreme Court may allow the person to appeal against the decision after the original period has ended if the court considers it appropriate having regard to the extent of, and reasons for, the delay.

791 Existing applications tribunal has started to hear or decide

(1) This section applies if—

(a) before the commencement—

(i) an application was made, referred or transferred to the tribunal under a former provision (the ***existing application***); and

Not authorised—indicative only

Not authorised—indicative only

(ii) the tribunal had started to hear or decide, but had not finished hearing or deciding, the application; and

(b) after the commencement, an application (however called) or an appeal seeking relief in the nature of the relief sought in the existing application would be authorised or required under a new provision to be made, referred or transferred to the Supreme Court.

(2) The tribunal must continue to deal with the existing application as if the amendment Act had not been enacted.

(3) Without limiting subsection (2), the tribunal may make an order or give a direction in relation to the existing application that the tribunal could have made or given under this Act as in force immediately before the commencement.

792 Application of new s 32 to particular directions

The reference in new section 32(5) to a direction given under new section 32(4) includes a reference to a direction given by the tribunal under former section 32(3)(b), whether before the commencement or after the commencement under section 791.

793 Application of new s 70 to particular reviews

The reference in new section 70(4)(a) to a successful appeal against a decision under that section includes a reference to a successful application to the tribunal under former section 70(3) for a review of the decision under that section, whether the application was decided before the commencement or after the commencement under section 791.

794 Application of new s 98 to particular reviews

(1) The reference in new section 98(1)(b) to a lawyer being successful in an appeal to the Supreme Court against a decision includes a reference to the lawyer being successful in an application to the tribunal for a review of the decision,

whether the application was decided before the commencement or after the commencement under section 791.

(2) The reference in new section 98(2) and (3)(b)(ii) to the result of the appeal includes a reference to the result of the review mentioned in subsection (1).

795 Application of new s 375 to particular periods

The reference in new section 375(1)(c) to a further period allowed by the Supreme Court under new section 375(4) includes a reference to a further period allowed by the tribunal on an application mentioned in former section 375(1)(c), whether the application was decided before the commencement or after the commencement under section 791.

796 Application of new s 377 to particular periods

The reference in new section 377(2)(c) to a further period allowed by the Supreme Court under new section 377(6) includes a reference to a further period allowed by the tribunal as mentioned in former section 377(2)(c), whether before the commencement or after the commencement under section 791.

797 Application of new s 396 to particular reviews

The reference in new section 396(5), definition *allowed amount* to an appeal to the Supreme Court against a claim decided by the law society includes a reference to a review by the tribunal mentioned in former section 396(5), definition *allowed amount*, whether the review was decided before the commencement or after the commencement under section 791.

Not authorised—indicative only

Not authorised—indicative only

798 Application of new s 474 to particular disciplinary action

New section 474 applies in relation to disciplinary action as if a reference in the section to a review included a reference to a review by the tribunal under a former provision, whether the review was decided before the commencement or after the commencement under section 791.

799 Application of new s 581QQ to particular decisions and directions of tribunal

(1) This section applies if, after the commencement, the tribunal makes an order or gives a direction under section 791.

(2) New section 581QQ applies in relation to the order or direction as if—

(a) the order or direction had been made or given by the Supreme Court; and

(b) the reference in new section 581QQ(4) to the Supreme Court were a reference to the tribunal.

(3) However, if the order is made under former section 469(1), new section 581QQ as applied under subsection (2) applies in relation to the order subject to new section 581QS.

800 Existing applications tribunal has not started to hear or decide

(1) This section applies if—

(a) before the commencement—

(i) an application was made, referred or transferred to the tribunal under a former provision (the ***existing application***); and

(ii) the tribunal had not started to hear or decide the application; and

(b) after the commencement, an application (however called) or an appeal seeking relief in the nature of the relief sought in the existing application would be

authorised or required under a new provision to be made, referred or transferred to the Supreme Court.

(2) On the commencement, the existing application is transferred to the Supreme Court.

(3) The Supreme Court must deal with the existing application as if the application had been made, referred or transferred to the Supreme Court under the new provision.

Division 3 Orders and related matters

801 Enforcement of particular tribunal orders

(1) This section applies if—

(a) before the commencement, the tribunal made—

(i) an order under former section 456, former section 462 or former part 4.10; or

(ii) an order under the QCAT Act as mentioned in former section 457(1)(b); or

(b) after the commencement, the tribunal makes an order mentioned in paragraph (a)(i) or (ii) under section 791.

(2) Former section 457 continues to apply in relation to the order as if the amendment Act had not been enacted.

802 Compliance with particular tribunal orders

(1) This section applies if—

(a) before the commencement, the tribunal made an order under former section 456 or former section 460; or

(b) after the commencement, the tribunal makes an order mentioned in paragraph (a) under section 791.

(2) Former section 461 continues to apply in relation to the order as if the amendment Act had not been enacted.

Not authorised—indicative only

Not authorised—indicative only

803 Confidentiality of client communications relating to discipline application or disciplinary action of tribunal

(1) This section applies in relation to—

(a) a discipline application the tribunal was hearing under former part 4.9 before the commencement or has continued to hear under section 791 after the commencement; or

(b) disciplinary action mentioned in former section 471, definition *disciplinary action* instigated by the tribunal before the commencement or under section 791 after the commencement.

(2) Former section 491 continues to apply in relation to a requirement under the QCAT Act to answer a question or produce information or a document relating to a matter to which the discipline application or disciplinary action relates.

Division 4 Panel members

804 Continuation of appointment of panel member for Supreme Court

(1) This section applies to a person who, immediately before the commencement, was appointed as a panel member.

(2) From the commencement, the person's appointment continues for helping the Supreme Court to hear and decide discipline applications.

(3) Subsection (2) applies despite the terms of the person's appointment as a panel member.

(4) In a document relating to the person's appointment as a panel member, a reference to the tribunal may, if the context permits, be taken to be a reference to the Supreme Court.

805 Panel members to finish helping tribunal for hearing

(1) This section applies to a panel member if—

(a) before the commencement, the panel member was helping the tribunal hear and decide a discipline application; and

(b) section 791 applies in relation to the application.

(2) The panel member must continue to help the tribunal hear and decide the discipline application under former section 599 as if the amendment Act had not been enacted.

(3) This section is not affected by section 804.

806 Entitlement of member of practitioner panel to remuneration for helping tribunal

(1) This section applies to a member of the practitioner panel who is helping the tribunal hear and decide a discipline application under section 805(2).

(2) The panel member is not entitled to be paid remuneration or allowances for sitting with the tribunal in relation to hearing and deciding the discipline application.

Division 5 Transitional regulation-making power

807 Transitional regulation-making power

(1) A regulation (a ***transitional regulation***) may make provision about a matter for which—

(a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force before the commencement of the amendment Act to the operation of this Act as in force after the commencement of the amendment Act; and

(b) this Act does not provide or sufficiently provide.

(2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.

Not authorised—indicative only

Not authorised—indicative only

(3) A transitional regulation must declare it is a transitional regulation.

808 Expiry of division and transitional regulation

This division and any transitional regulation under section 807 expire on the day that is 2 years after the day this section commences.

Schedule 1 Procedural provisions for Supreme Court for chapters 6B and 6D

sections 581P, 581PP, 581PU and 581QQ

Part 1 Provisions for appeals to Supreme Court

section 26(4)	Associates who are disqualified or convicted persons
section 33A	Appeal to Supreme Court against board's refusal to make suitability declaration
section 51(9)	Grant or renewal of local practising certificate
section 54(2) and (4)	Applications relating to conditions
section 61(3)	Amending, suspending or cancelling a local practising certificate
section 69(3)	Refusal, amendment, suspension or cancellation of local practising certificate because of failure to show cause
section 70(3)	Restriction on making further application
section 76(3)	Additional condition on interstate legal practitioner engaging in legal practice in this jurisdiction
section 87(5)	Health assessment
section 183(4)	Grant or renewal of local registration
section 185(7)	Refusal to grant or renew registration
section 188(3)	Amending, suspending or cancelling registration

Not authorised—indicative only

Not authorised—indicative only

section 194(3)	Refusal, amendment, suspension or cancellation of local registration—failure to show cause
section 195(3)	Restriction on making further applications
section 208(4)	Additional conditions on practice of interstate-registered foreign lawyers
section 375(3)	Time limit for making claims
section 377(5)	Time limit for making claims following advertisement
section 392	Appeal against decision on claim
section 469(1)	Appeal to Supreme Court against committee's decision

Part 2 Provisions for decisions or orders of Supreme Court at first instance

section 32(4)	Early consideration of suitability
section 62(3)	Operation of amendment, suspension or cancellation of local practising certificate
section 63(9)	Immediate amendment or suspension of local practising certificate
section 189(3)	Operation of amendment, suspension or cancellation of registration
section 197(8)	Immediate suspension of registration
section 393	Application for direction and order for failure to decide claim
section 443(4)	Powers for investigations
section 452(1)(a)	Starting proceeding before a disciplinary body

section 459(4)	Notification and filing of committee orders
section 581QB(6)	Disclosure of interests

Not authorised—indicative only

Not authorised—indicative only

Schedule 2 Dictionary

section 4

accounting and other records, for part 9.11, see section 753.

ADI means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cwlth).

administration rules see section 231(4).

admission rules see section 29.

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

(a) a lawyer; or

(b) a legal practitioner; or

(c) a barrister; or

(d) a solicitor; or

(e) a barrister and solicitor; or

(f) a solicitor and barrister;

under this Act, a previous Act or a corresponding law but does not include the grant of a practising certificate under this Act, a previous Act or a corresponding law.

affairs, of a law practice, include the following—

(a) all accounts and records required under a relevant law to be kept by the practice or an associate or former associate of the practice;

(b) other records of the practice or an associate or former associate of the practice;

(c) any transaction—

(i) to which the practice or an associate or former associate of the practice was or is a party; or

(ii) in which the practice or an associate or former associate of the practice has acted for a party.

amend includes—

(a) in relation to a practising certificate—

(i) impose a condition on the certificate; and

(ii) amend or revoke a condition already imposed on the certificate; and

(b) in relation to registration as a foreign lawyer—

(i) amend the lawyer's registration certificate; and

(ii) impose a condition on the registration; and

(iii) amend or revoke a condition already imposed on the registration.

applicant for admission see section 29.

application for admission see section 29.

appointed member, for the council, see section 685(2)(a).

approved ADI, for part 3.3, see section 237(1).

approved form see section 714.

associate, of a law practice, see section 7(1).

associated person, for chapter 6A, see section 581A.

associated third party payer see section 300.

auditor, of a trustee, for part 9.11, see section 753.

Australia, for chapter 2, see section 163.

Australian financial services licence see the Corporations Act, section 761A.

Australian law, for chapter 2, see section 163.

Australian lawyer see section 5(1).

Australian legal practitioner see section 6(1).

Australian practising certificate means a local practising certificate or an interstate practising certificate.

Australian-registered foreign lawyer means a locally registered foreign lawyer or an interstate-registered foreign lawyer.

Not authorised—indicative only

Not authorised—indicative only

Australian roll means the local roll or an interstate roll.

Australian trust account means a local trust account or an interstate trust account.

authorised action or document, for chapter 9, see section 717.

authorised representative see the Corporations Act, section 761A.

bar association means the Bar Association of Queensland (ACN 009 717 739).

barrister—

(a) for part 7.3—see section 620; and

(b) for part 7.5—see section 658; and

(c) otherwise means—

(i) a local legal practitioner who holds a current local practising certificate to practise as or in the manner of a barrister; or

(ii) an interstate legal practitioner who holds a current interstate practising certificate that entitles the practitioner to practise only as or in the manner of a barrister.

barristers rules, for chapter 3, part 3.2, see section 218.

board means the Legal Practitioners Admissions Board established under the *Legal Profession Act 2004*, section 489, as continued in existence under section 659.

Brisbane registrar means the registrar under the *Supreme Court of Queensland Act 1991* for the Brisbane Supreme Court district.

capping and sufficiency provisions, for part 3.6, see section 356.

certificate holder means—

(a) for a current local practising certificate or current interstate practising certificate—the person who is named in the certificate as the person 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 person who was the holder of the certificate when it was current.

change includes a modification whether the change is by way of an addition, alteration, omission or substitution.

chapter 5A investigation see section 539B(2).

chapter 5 body corporate means a Chapter 5 body corporate under the Corporations Act.

claim, for part 3.6, see section 356.

claimant, for part 3.6, see section 356.

claim farming provision means each of the following provisions of the *Personal Injuries Proceedings Act 2002*—

(a) chapter 2, part 1, division 1AA;

(b) section 9B, 9C or 13A;

(c) chapter 2, part 4;

(d) chapter 3, parts 2 and 2A.

client—

(a) for part 3.4, division 7—see section 334; or

(b) otherwise—includes a person to whom or for whom legal services are provided.

commencement, for chapter 10, part 2, see section 772.

commencement day, for part 9.11, see section 753.

commission means the Legal Services Commission established under the *Legal Profession Act 2004*, section 421, as continued in existence under section 591.

commissioner means a person holding the appointment of the Legal Services Commissioner.

commissioner of police, for part 2.5, see section 85.

Not authorised—indicative only

Not authorised—indicative only

committee means the Legal Practice Committee established under the *Legal Profession Act 2004*, section 451, as continued in existence under section 621.

committee member means a person holding an appointment to the committee under section 622.

community legal service means—

(a) an organisation that—

(i) holds itself out as—

(A) a community legal service; or

(B) a community legal centre; or

(C) an Aboriginal and Torres Strait Islander Legal Service; or

(D) a family violence prevention legal service; and

(ii) is established and operated on a not-for-profit basis; and

(iii) provides legal services that—

(A) are directed generally to people who are disadvantaged (including being financially disadvantaged) in accessing the legal system or in protecting their legal rights; or

(B) are conducted in the public interest; and

(iv) satisfies any other criteria prescribed under a regulation; or

(b) an organisation prescribed under a regulation as a community legal service.

compensation order see section 464.

complaint means—

(a) for part 4.5—a complaint made under section 429 other than a complaint under that section about the conduct of an unlawful operator; or

(b) otherwise—a complaint made under section 429.

concerted interstate default, for part 3.6, see section 356.

conditional costs agreement see section 300.

conditions means conditions, limitations or restrictions.

conduct means conduct whether consisting of an act or omission.

consumer dispute, for part 4.5, see section 440.

controlled money, for part 3.3, see section 237(1).

controlled money account, for part 3.3, see section 237(1).

conviction see section 11(1).

corporation see section 110.

corresponding authority means—

(a) a person or body having functions or powers under a corresponding law; or

(b) when used in the context of a person or body having functions or powers under this Act (the ***local authority***)—

(i) a person or body with corresponding functions or powers under a corresponding law; and

(ii) without limiting subparagraph (i), if the functions or powers of the local authority relate to local lawyers or local legal practitioners generally or are limited to any particular class of local lawyers or local legal practitioners—a person or body having corresponding functions or powers under a corresponding law regardless of whether they relate to interstate lawyers or interstate legal practitioners generally or are limited to any particular class of interstate lawyers or interstate legal practitioners.

corresponding disciplinary body means—

(a) a court or tribunal having functions or powers under a corresponding law, that correspond to any of the functions and powers of a disciplinary body under this Act; or

Not authorised—indicative only

Not authorised—indicative only

(b) the Supreme Court of another jurisdiction exercising—

(i) its inherent jurisdiction or powers in relation to the control and discipline of any Australian lawyers; or

(ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction in relation to any Australian lawyers.

corresponding foreign law means the following—

(a) a law of a foreign country that corresponds to the relevant provisions of this Act or, if a regulation is made declaring a law of the foreign country to be a law that corresponds to this Act, the law declared under that regulation for the foreign country;

(b) if the term is used in relation to a matter that happened before the commencement of the law of a foreign country that, under paragraph (a), is the corresponding law for the foreign country, a previous law applying to legal practice in the foreign country.

corresponding law means 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 to be a law that corresponds to this Act, the law declared under that regulation for the other jurisdiction;

(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 provision, for chapter 9, see section 717.

costs agreement see section 300.

costs application see section 300.

costs assessment see section 300.

costs assessor see section 300.

council means the council of the law society as mentioned in section 685.

council meeting see section 678.

council member see section 678.

decide includes determine.

decision, of the Supreme Court, for chapter 6D, see section 581QP.

decision-maker, for part 8.1, division 3, see section 713C(1)(a).

default, in relation to a law practice, see section 356.

defence costs means costs payable by an insurer in relation to any claim, or notification that may lead to a claim, under the relevant policy of insurance.

deposit record, for part 3.3, see section 237(1).

detailed disclosure threshold amount, for chapter 3, part 3.4, see section 300.

director see section 110.

disbursements see section 300.

disciplinary action see section 471.

disciplinary body means either of the following entities to which the commissioner makes a discipline application—

(a) the Supreme Court;

(b) the committee, other than the committee exercising advisory functions as mentioned in part 7.3, division 4.

discipline application see section 452.

discipline register see section 472.

disclosure threshold amount, for chapter 3, part 3.4, see section 300.

dishonesty includes fraud.

Not authorised—indicative only

Not authorised—indicative only

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

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

(b) a person whose Australian practising certificate has been suspended or cancelled under this Act or a corresponding law and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom that suspension has not finished;

(c) a person who has been refused a renewal of an Australian practising certificate under this Act or a corresponding law, and to whom an Australian practising certificate has not been granted at a later time;

(d) a person who is the subject of an order under this Act or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice;

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

(f) a person who is the subject of an order under section 133 or 158, or under provisions of a corresponding law that correspond to section 133 or 158.

document means any record of information, and includes—

(a) anything on which there is writing; and

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and

(d) a map, plan, drawing or photograph;

and a reference in this Act to a document, as so defined, includes a reference to—

(e) any part of the document; and

(f) any copy, reproduction or duplicate of the document or of any part of the document; and

(g) any part of a copy, reproduction or duplicate mentioned in paragraph (f).

Example of a document—

register

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

(a) the person works full-time, part-time, or on a temporary or casual basis; or

(b) the person is a law clerk or article clerk.

engaged in government work, in relation to a government legal officer, see section 12(2).

engage in legal practice includes practise law.

external entity see section 539A.

external examination means an external examination under part 3.3, division 4, of a law practice's trust records.

external examiner means a person holding an appointment as an external examiner under part 3.3, division 4.

external intervener see section 494(1).

external intervention see section 494(1).

fidelity fund see section 359.

financial period, for a trustee, for part 9.11, see section 753.

financial service see the Corporations Act, section 766A.

financial services business see the Corporations Act, section 761A.

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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 the following—

(a) for part 2.8—the law of a foreign country;

(b) otherwise—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 law practice, for part 2.8, see section 163.

foreign registration authority see section 163.

foreign regulatory action means—

(a) removal of a person's name from a foreign roll for disciplinary reasons; or

(b) suspension or cancellation of, or refusal to renew, a person's right to engage in legal practice in a foreign country.

foreign roll means an official roll of lawyers, whether admitted, practising or otherwise, kept in a foreign country, but does not include a roll prescribed under a regulation for this definition.

former disciplinary body means—

(a) the tribunal as a disciplinary body under this Act as in force before the commencement of this definition; or

(b) the tribunal continuing to deal with an existing application under section 791 after the commencement of this definition, if the existing application is, or relates to, an application made to the tribunal under former section 452(1)(a).

former tribunal, for chapter 10, part 2, see section 772.

general trust account, for part 3.3, see section 237(1).

government legal officer see section 12(1).

grant, of an interstate practising certificate, includes the issue of an interstate practising certificate.

happening includes occurring.

health assessment report see section 89.

health assessor see section 88.

home jurisdiction see section 8.

ILP audit see section 541.

ILP authority means—

(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.

ILP investigator see section 569.

incorporated legal practice see section 111.

indemnity rules see section 231(5).

information notice see section 10.

in-house legal services mean legal services provided to a corporation or a related body corporate by a person employed by the corporation concerning a proceeding or transaction to which the corporation or the related body corporate is a party.

insolvent under administration means—

(a) a person who is an undischarged bankrupt within the meaning of the *Bankruptcy Act 1966* (Cwlth) or the corresponding provisions of the law of a foreign country or external territory; or

(b) a person who has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X, or the corresponding provisions of the law of a foreign country or external territory, if the terms of the deed have not been fully complied with; or

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(c) a person whose creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X, or the corresponding provisions of the law of a foreign country or external territory, if a final payment has not been made under that composition; or

(d) a person for whom a debt agreement has been made under the *Bankruptcy Act 1966* (Cwlth), part IX, or the corresponding provisions of the law of a foreign country or external territory, if the debt agreement has not ended or has not been terminated; or

(e) a person who has executed a personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth), part X, or the corresponding provisions of the law of a foreign country or external territory, but not if the agreement has been set aside or terminated or all of the obligations that the agreement created have been discharged.

interstate lawyer see section 5(3).

interstate legal practitioner see section 6(3).

interstate practising certificate means a current practising certificate granted under a corresponding law.

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

interstate registration, for part 2.5, see section 85.

interstate roll means a roll of lawyers kept under a corresponding law.

interstate trust account means a trust account kept under a corresponding law.

investigated entity, for chapter 6A, see section 581C(1).

investigation see section 541.

investigation matter means—

(a) for chapter 4—an investigation matter under section 435 other than an investigation matter under that section about the conduct of an unlawful operator; or

(b) otherwise—an investigation matter under section 435.

investigator see section 541.

issue includes grant or renew.

itemised bill see section 300.

jurisdiction means a State or Territory of the Commonwealth.

kept includes maintained.

law firm means a partnership consisting only of—

(a) Australian legal practitioners; or

(b) 1 or more Australian legal practitioners and 1 or more Australian-registered foreign lawyers.

law practice means—

(a) an Australian legal practitioner who is a sole practitioner; or

(b) a law firm; or

(c) an incorporated legal practice; or

(d) a multi-disciplinary partnership.

law practice employee means an employee of a law practice engaged in the activities associated with the practice, other than an Australian legal practitioner who is an employee of the practice.

law society means the Queensland Law Society Incorporated established under the *Queensland Law Society Act 1952*, section 4, and continued in existence under the *Legal Profession Act 2004*, section 508, as continued in existence under section 679.

law society approved form means a form approved under section 714 by the law society.

lay associate—

(a) generally—see section 7(3); and

(b) for section 26—see section 26(7).

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lay panel means the lay panel established under the *Legal Profession Act 2004*, section 437(1)(a), as continued in existence under section 581PI(1)(a).

legal practice, for part 2.5, see section 85.

legal practitioner associate, of a law practice, see section 7(2).

legal practitioner director, in relation to an incorporated legal practice, see section 110.

legal practitioner partner, in relation to a multi-disciplinary partnership, see section 110.

legal profession rules see section 218.

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

litigious matter see section 300.

local lawyer see section 5(2).

local legal practitioner see section 6(2).

locally registered foreign lawyer means a person who is registered as a foreign lawyer under this Act.

local practising certificate means a practising certificate granted, or another document that is evidence of the renewal of a practising certificate granted, by the law society or by the bar association under this Act.

local registration, for part 2.5, see section 85.

local registration certificate, for part 2.8, see section 163.

local roll means the roll of persons admitted to the legal profession, under this Act or a previous Act, that is kept under section 37.

local trust account means a trust account kept under this Act.

lump sum bill see section 300.

made, for chapter 9, see section 717.

managed investment scheme has the same meaning as in the Corporations Act, chapter 5C.

manager means a person appointed under section 505 as a manager for a law practice.

mentioned includes referred to.

misconduct, of a law practice employee, means misconduct, whether consisting of an act or omission, by the law practice employee.

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

(a) any instrument of a kind that is prescribed under a regulation as a mortgage; and

(b) a proposed mortgage.

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

(a) acting as an intermediary to match a prospective lender and borrower; or

(b) arranging a loan; or

(c) receiving or dealing with payments under the loan;

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

multi-disciplinary partnership see section 144.

non-associated third party payer see section 300.

obligation, for chapter 9, see section 717.

officer see section 110.

overseas-registered foreign lawyer, for part 2.8, see section 163.

panel member means a person holding an appointment to the lay panel or the practitioner panel under part 6B.2, division 3.

part 3.3 investigation see section 263(5).

pecuniary loss, in relation to a default, see section 356.

permanent form, for part 3.3, see section 237(1).

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

(a) legal training by participation in course work;

(b) legal training under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise.

practise foreign law, for part 2.8, see section 163.

practising certificate means a practising certificate granted, or another document that is evidence of the granting of a renewal of a practising certificate, under this Act or a corresponding law.

practitioner panel means the practitioner panel established under the *Legal Profession Act 2004*, section 437(1)(b), as continued in existence under section 581PI(1)(b).

presidential member see section 678.

previous, for chapter 9, see section 717.

previous Act means—

(a) in relation to admission, the following as in force from time to time—

(i) the *Legal Profession Act 2004*;

(ii) the *Legal Practitioners Act 1995*;

(iii) the previous admission rules; or

(b) otherwise—the *Legal Profession Act 2004* or *Legal Practitioners Act 1995*, as in force from time to time.

previous admission rules means rules made for the Supreme Court providing for the admission of barristers and solicitors as in force at any time before 1 July 2004.

Note—

See, for example, the following—

(a) the repealed Barristers' Admission Rules 1975 and the rules repealed by those rules;

(b) the repealed Solicitors' Admission Rules 1968 and the rules repealed by those rules.

previous provision, for chapter 9, see section 717.

principal, of a law practice, see section 7(4).

pro bono means—

(a) done for the public good; and

(b) without charge or at a reduced cost.

professional misconduct—

(a) for dealing with a complaint about conduct that happened before 1 July 2004—see chapter 9; or

(b) otherwise—see section 419.

professional obligations, of an Australian legal practitioner, see section 110.

protection, for chapter 9, see section 717.

public authority see section 300.

QCAT Amendment Act, for chapter 10, part 2, see section 772.

qualified accountant means—

(a) a member of CPA Australia Ltd ACN 008 392 452 who is entitled to use the letters 'CPA' or 'FCPA'; or

(b) a member of Chartered Accountants Australia and New Zealand ARBN 084 642 571 who is entitled to use the letters 'CA' or 'FCA'; or

(c) a member of the Institute of Public Accountants Ltd ACN 004 130 643 who is entitled to use the words 'MIPA' or 'FIPA'.

quashing a conviction see section 11(2).

receiver means a person appointed under section 512 as a receiver for a law practice.

registered, when used in conjunction with a foreign country, see section 163.

registrar see the *Supreme Court of Queensland Act 1991*, schedule 5.

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registration, for part 2.5, see section 85.

regulated property, of a law practice, see section 494(1).

regulatory authority means—

(a) in relation to this jurisdiction—the law society or the bar association; or

(b) in relation to another jurisdiction—

(i) if there is only 1 regulatory authority for the other jurisdiction—that regulatory authority, unless subparagraph (iii) applies; 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, unless subparagraph (iii) applies; or

(iii) if a regulation states, or provides for deciding, 1 or more regulatory authorities for the other jurisdiction either generally or for particular purposes—the regulatory authority or authorities stated, or decided, under the regulation.

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 another body corporate prescribed by regulation for this definition—a person prescribed by regulation to be a related body corporate.

relevant authority, for part 2.5, see section 85.

relevant jurisdiction, for part 3.6, see section 371.

relevant law means—

(a) this Act; or

(b) a previous Act; or

(c) the *Queensland Law Society Act 1952* as in force at any time before the commencement of this paragraph; or

(d) the *Trust Accounts Act 1973* as in force at any time before the commencement of this paragraph; or

(e) the *Personal Injuries Proceedings Act 2002*, chapter 3, part 1, as in force at any time before or after the commencement of this paragraph; or

(f) the *Personal Injuries Proceedings Act 2002*, section 71(1) or (2), 71B or 71G(2); or

(g) the *Motor Accident Insurance Act 1994*, section 74(1) or (2) or 75; or

(h) the *Workers' Compensation and Rehabilitation Act 2003*, section 325R(1) or (2) or 325T.

relevant practice means legal services provided by a law practice.

relevant regulatory authority means—

(a) if the person 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.

respondent, for chapter 4, see section 421.

scale of costs see section 300.

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

(a) an indictable offence against a law of the Commonwealth or any jurisdiction, whether or not the offence is or may be dealt with summarily; or

(b) an offence against a law of another jurisdiction that would be an indictable offence against a law of this jurisdiction if committed in this jurisdiction, whether or not the offence could be dealt with summarily if committed in this jurisdiction; or

(c) an offence against a law of a foreign country that would be an indictable offence against a law of the

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Commonwealth or this jurisdiction if committed in this jurisdiction, whether or not the offence could be dealt with summarily if committed in this jurisdiction.

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

(a) his or her becoming bankrupt or being served with notice of a creditor's petition presented to the Court under the *Bankruptcy Act 1966* (Cwlth), section 43; or

(b) his or her presentation, as a debtor, of a declaration to the Official Receiver under the *Bankruptcy Act 1966* (Cwlth), section 54A, of his or her intention to present a debtor's petition or his or her presentation, as a debtor, of a petition under section 55 of that Act; or

(c) his or her applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit; or

(d) the person being a legal practitioner director of an incorporated legal practice that becomes a chapter 5 body corporate; or

(e) the person being a director of a corporation that becomes a chapter 5 body corporate; or

(f) his or her conviction for a serious offence or a tax offence, whether or not—

(i) the offence was committed in or outside this jurisdiction; or

(ii) the offence was committed while the person was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer; or

(iii) other persons are prohibited from disclosing the identity of the offender.

society rules see section 696.

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

solicitor—

(a) for part 7.3—see section 620; and

(b) for part 7.5—see section 658; and

(c) otherwise means—

(i) a local legal practitioner who holds a current local practising certificate to practise as a solicitor; or

(ii) an interstate legal practitioner who holds a current interstate practising certificate that does not restrict the practitioner to engaging in legal practice only as or in the manner of a barrister.

solicitors complaints tribunal see the *Queensland Law Society Act 1952*, section 3.

solicitors rules, for chapter 3, part 3.2, see section 218.

sophisticated client see section 300.

special investigator, for chapter 6A, see section 581A.

speculative personal injury claim, for part 3.4, division 8, see section 346.

staff, in relation to the office of the commissioner or the commission, see section 592.

stated includes specified.

subject person, for part 2.5, see section 85.

suitability matter, in relation to a natural person, see section 9.

suitability report, for part 2.5, see section 85.

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

(a) as an employee of a law practice if—

(i) at least 1 partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and

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(ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or

(b) as a partner in a law firm if—

(i) at least 1 other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and

(ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or

(c) in a capacity approved under administration rules.

supervising entity, for part 9.11, see section 753.

supervisor means a person appointed under section 499 as a supervisor of trust money of a law practice.

Supreme Court, for part 2.3, see section 29.

tax offence means an offence under the *Taxation Administration Act 1953* (Cwlth), whether committed in or outside this jurisdiction.

third party payer see section 300.

this jurisdiction means this State.

transit money, for part 3.3, see section 237(1).

tribunal means QCAT.

tribunal's principal registrar means the principal registrar under the QCAT Act.

trust account see section 237(1).

Trust Accounts Act, for part 9.11, see section 753.

trustee, for part 9.11, see section 753.

trust money, other than trust moneys, see section 237(1).

trust moneys, for part 9.11, see section 753.

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

services by the practice, but does not include trust money or money mentioned in section 238.

trust records see section 237(1).

unamended Act, for chapter 10, part 2, see section 772.

Uniform Civil Procedure Rules see the *Supreme Court of Queensland Act 1991*, section 85(4).

unlawful operator means—

(a) a person who engages in legal practice in this jurisdiction even though the person must not do so under section 24; or

(b) a person who represents or advertises that the person is entitled to engage in legal practice even though the person must not do so under section 25.

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

unsatisfactory professional conduct—

(a) for dealing with a complaint about conduct that happened before 1 July 2004—see chapter 9; or

(b) otherwise—see section 418.

uplift fee see section 300.

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