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Version No. 044
Legal Profession Act 2004
No. 99 of 2004

Version incorporating amendments as at
26 November 2012

The Parliament of Victoria enacts as follows:

CHAPTER 1—INTRODUCTION

PART 1.1—PRELIMINARY

1.1.1 Purpose

The purpose of this Act is—

- (a) to improve the regulation of the legal profession, principally by—
 - (i) implementing national model provisions for the regulation of the profession; and
 - (ii) establishing new bodies responsible for regulating the profession;
- (b) to facilitate the regulation of legal practice on a national basis across State and Territory borders;
- (c) to repeal the **Legal Practice Act 1996**;
- (d) to make consequential amendments to Acts.

1.1.2 Commencement

- (1) Subject to subsections (2) and (3), this Act comes into operation on a day or days to be proclaimed.
- (2) Sections 3.5.2(7) and (9) and 8.1.1(1) come into operation on the day after the day on which this Act receives the Royal Assent.

Legal Profession Act 2004
No. 99 of 2004
Part 1.1—Preliminary

s. 1.1.2

- (3) If a provision of this Act (other than section 3.5.2(7) or (9) or 8.1.1(1)) does not come into operation before 1 January 2006, it comes into operation on that day.
-

PART 1.2—INTERPRETATION

1.2.1 Definitions

(1) In this Act—

ADI means an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth;

admission rules means rules relating to the admission of local lawyers and associated matters made under Division 5 of Part 2.3;

admission to the legal profession means—

- (a) admission by the Supreme Court under this Act as a lawyer; or
- (b) admission by a Supreme Court under a corresponding law as—
 - (i) a lawyer; or
 - (ii) a legal practitioner; or
 - (iii) a barrister; or
 - (iv) a solicitor; or
 - (v) a barrister and solicitor; or
 - (vi) a solicitor and barrister—

but does not include the grant of a practising certificate under this Act or a corresponding law;

advocate member of the Board, means the member referred to in section 6.2.8(1)(a);

S. 1.2.1
amended by
No. 12/2007
s. 4(2) (ILA
s. 39B(1)).

S. 1.2.1(1)
def. of
*admission
rules*
amended by
No. 29/2006
s. 3(Sch. 1
item 17.1).

S. 1.2.1(1)
def. of
*admission to
the legal
profession*
amended by
No. 18/2005
s. 4(a).

s. 1.2.1

S. 1.2.1(1)
def. of
affairs
inserted by
No. 18/2005
s. 4(b),
substituted by
No. 12/2007
s. 4(1)(b).

affairs of a law practice includes the following—

- (a) all accounts and records required under this Act or the regulations to be maintained by the practice or an associate or former associate of the practice;
- (b) other records of the practice or an associate or former associate of the practice;
- (c) any transaction—
 - (i) to which the practice or an associate or former associate of the practice was or is a party; or
 - (ii) in which the practice or an associate or former associate of the practice has acted for a party;

S. 1.2.1(1)
def. of
amend
amended by
No. 12/2007
s. 4(1)(c).

amend includes—

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

appointed member of the Board, means a member of the Board referred to in section 6.2.5(1)(c);

approved external examiner has the meaning given in section 3.3.51;

associate, of a law practice, has the meaning given in section 1.2.4;

audit year means the year ending on 31 October;

Australian lawyer has the meaning given in section 1.2.2(a);

Australian legal practitioner has the meaning given in section 1.2.3(a);

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

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

Australian roll means the local roll or an interstate roll;

Australian trust account means a local trust account or an interstate trust account;

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

Board means Legal Services Board established by Part 6.2;

Board of Examiners means Board of Examiners under section 6.5.9;

civil complaint has the meaning given in section 4.2.2(1);

s. 1.2.1

civil dispute has the meaning given in section 4.2.2(2);

S. 1.2.1(1)
def. of
client
inserted by
No. 12/2007
s. 4(1)(a).

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

Commissioner means Legal Services Commissioner appointed under Part 6.3;

S. 1.2.1(1)
def. of
community legal centre
substituted by
No. 12/2007
s. 4(1)(d).

community legal centre means an organisation, whether incorporated or not—

- (a) that is held out or holds itself out as being a community legal centre (or a centre or establishment of a similar description); and
- (b) that provides legal services—
 - (i) that are directed generally to persons or organisations that lack the financial means to obtain privately funded legal services or whose cases are expected to raise issues of public interest or are of general concern to disadvantaged groups in the community; and
 - (ii) that are made available to persons or organisations that have a special need arising from their location or the nature of the legal matter to be addressed or have a significant physical or social disability; and
 - (iii) that are not intended, or likely, to be provided at a profit to the community legal centre and the income (if any) from which cannot or will not be distributed to

any member or employee of the centre otherwise than by way of reasonable remuneration under a contract of service or for services;

compensation order has the meaning given in section 4.3.17(1)(a);

complainant means a person who makes a complaint;

complaint means a complaint made under Chapter 4;

conditions means conditions, limitations or restrictions;

conduct includes an act or omission;

conduct complaint means a complaint to the extent that it is not a civil complaint;

contributor class means a class determined by the Board under section 6.7.24;

corporate legal practitioner means an Australian legal practitioner who engages in legal practice as an employee of a person who, or body that, is not—

S. 1.2.1(1)
def. of
*corporate
legal
practitioner*
substituted by
No. 15/2012
s. 3.

- (a) an Australian legal practitioner; or
- (b) an Australian-registered foreign lawyer; or
- (c) a law practice;

corresponding authority means—

- (a) a person or body having functions under a corresponding law; or
- (b) when used in the context of a person or body having functions under this Act (the *local authority*)—

s. 1.2.1

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

corresponding disciplinary body means—

- (a) a court or tribunal having functions under a corresponding law that correspond to any of the disciplinary functions of the Tribunal; or
- (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—

- (a) a law of a foreign country that corresponds to the relevant provisions of this Act or, if the regulations declare a law of a foreign country to be a law that corresponds to this Act, the law declared under those regulations 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—

- (a) a law of another jurisdiction that corresponds to the relevant provisions of this Act or, if the regulations declare a law of another jurisdiction to be a law that corresponds to this Act, the law declared under those regulations 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 other jurisdiction, a previous law applying to legal practice in the other jurisdiction;

Costs Committee means Legal Costs Committee established under section 3.4.25;

costs dispute means a dispute referred to in section 4.2.2(2)(a);

Council means Council of Legal Education under section 6.5.1;

s. 1.2.1

disciplinary complaint has the meaning given in section 4.2.3;

S. 1.2.1(1)
def. of
*disqualified
person*
inserted by
No. 12/2007
s. 4(1)(a).

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

- (a) a person whose name has (whether or not at his or her own request) been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession under this Act or a corresponding law; or
- (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; or
- (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; or
- (d) a person who is the subject of an order under section 2.2.6 or an order under a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice; or
- (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; or

- (f) a person who is the subject of an order under section 2.7.25 or 2.7.50 or under provisions of a corresponding law that correspond to section 2.7.25 or 2.7.50;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
- (i) for fee or reward; or
- (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

S. 1.2.1(1)
def. of
domestic partner
inserted by
No. 12/2007
s. 4(1)(a),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 36.1).

elected member of the Board, means a member of the Board referred to in section 6.2.5(1)(b);

engage in legal practice includes practise law;

external intervener has the meaning given in section 5.1.2;

s. 1.2.1

S. 1.2.1(1)
def. of
family
member
inserted by
No. 12/2007
s. 4(1)(a).

family member of a person means—

- (a) a spouse or domestic partner of the person; or
- (b) a parent or grandparent of the person; or
- (c) a child or grandchild of the person; or
- (d) a sibling of the person; or
- (e) a child of a sibling of the person;

Fidelity Fund means the fund maintained under section 6.7.15;

financial institution means—

- (a) an ADI; or
- (b) a person (other than a law practice or an Australian legal practitioner) whose sole or principal business activities are the borrowing of money or the provision of finance or both; or
- (c) a person (other than a law practice or an Australian legal practitioner)—
 - (i) whose business activities include the borrowing of money or the provision of finance or both; and
 - (ii) who is, or is a member of a class of persons that is, prescribed as a financial institution for the purposes of this Act;

foreign country means—

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

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

function includes duty and power;

grant of an interstate practising certificate includes the issue of an interstate practising certificate;

S. 1.2.1(1)
def. of
grant
inserted by
No. 18/2005
s. 4(b).

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth;

S. 1.2.1(1)
def. of
GST
inserted by
No. 46/2007
s. 19(a).

home jurisdiction has the meaning given in section 1.2.5;

incorporated legal practice has the same meaning as in Part 2.7;

information notice has the meaning given in section 1.2.7;

insolvent under administration means—

- (a) a person who is an undischarged bankrupt within the meaning of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory); or
- (b) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of a foreign country or external territory) if the

S. 1.2.1(1)
def. of
insolvent under administration
substituted by
No. 12/2007
s. 4(1)(e).

s. 1.2.1

terms of the deed have not been fully complied with; or

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

interstate lawyer has the meaning given in section 1.2.2(c);

interstate legal practitioner has the meaning given in section 1.2.3(c);

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

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

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

interstate trust account means a trust account maintained under a corresponding law;

jurisdiction means a State or Territory of the Commonwealth;

law firm means a partnership consisting only of—

- (a) Australian legal practitioners; or
- (b) one or more Australian legal practitioners and one or more Australian-registered foreign lawyers; or
- (c) incorporated legal practices; or
- (d) one or more incorporated legal practices and one or more Australian legal practitioners; or
- (e) one or more incorporated legal practices and one or more Australian-registered foreign lawyers; or
- (f) one or more incorporated legal practices, one or more Australian legal practitioners and one or more Australian-registered foreign lawyers;

S. 1.2.1(1)
def. of
law firm
amended by
No. 79/2006
s. 32(a)(b).

Law Institute means Law Institute of Victoria Limited A.C.N. 075 475 731;

law practice means—

- (a) an Australian legal practitioner who is a sole practitioner; or
- (b) a law firm; or

s. 1.2.1

S. 1.2.1(1)
def. of
legal costs
amended by
No. 12/2007
s. 4(1)(f).

- (c) a multi-disciplinary partnership; or
- (d) an incorporated legal practice; or
- (e) a community legal centre;

lay associate has the meaning given in section 1.2.4;

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

legal practitioner associate has the meaning given in section 1.2.4;

legal practitioner director, in relation to an incorporated legal practice, has the meaning given in Part 2.7;

legal practitioner partner, in relation to a multi-disciplinary partnership, has the meaning given in Part 2.7;

legal profession rules means rules relating to legal practice or approved clerks made under Part 3.2;

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

Liability Committee means Legal Practitioners' Liability Committee under section 6.6.1;

local lawyer has the meaning given in section 1.2.2(b);

local legal practitioner has the meaning given in section 1.2.3(b);

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

local roll means the roll of lawyers kept under this Act;

local trust account means a trust account maintained under this Act;

locally registered foreign lawyer is a person who is registered as a foreign lawyer under this Act;

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

mental impairment includes alcoholism and drug-dependence;

S. 1.2.1(1)
def. of
mental infirmity
substituted as
mental impairment by
No. 46/2007
s. 19(b).

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

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

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

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

- (a) acting as an intermediary to match a prospective lender and borrower; or
- (b) arranging the loan; or

s. 1.2.1

S. 1.2.1(1)
def. of
*practical legal
training*
amended by
No. 79/2006
s. 32(c).

- (c) receiving or dealing with payments for the purposes of, or under, the loan—
but does not include providing legal advice or preparing an instrument for the loan;
- multi-disciplinary partnership*** has the meaning given in Part 2.7;
- non-advocate member*** of the Board, means a member referred to in section 6.2.8(1)(b);
- perform a function*** includes exercise a power;
- practical legal training*** means—
- (a) legal training by participation in course work; or
 - (b) supervised legal training, whether involving articles of clerkship or otherwise; or
 - (c) a combination of both paragraphs (a) and (b);
- prescribed investigatory body*** means a person or body that is, or is a member of a class that is, prescribed by the regulations for the purposes of this definition;
- principal***, of a law practice, has the meaning given in section 1.2.4;
- professional association*** means—
- (a) the Law Institute;
 - (b) the Victorian Bar;
 - (c) a person or body prescribed by the regulations;
- professional misconduct*** has the meaning given in Division 2 of Part 4.4;

regulatory authority, in relation to another jurisdiction, means—

- (a) if there is only one regulatory authority for the other jurisdiction— that regulatory authority unless paragraph (c) applies; or
- (b) 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 paragraph (c) applies; or
- (c) if the regulations specify or provide for the determination of one or more regulatory authorities for the other jurisdiction either generally or for particular purposes—the regulatory authority or authorities specified in or determined in accordance with the regulations;

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

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

s. 1.2.1

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

S. 1.2.1(1)
def. of
show cause event
substituted by
No. 12/2007
s. 4(1)(g).

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 section 43 of the Bankruptcy Act 1966 of the Commonwealth; or
- (b) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the Bankruptcy Act 1966 of the Commonwealth of his or her intention to present a debtor's petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act; or
- (c) 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) his or her being found guilty of a serious offence or a tax offence, whether or not—
- (i) the offence was committed in or outside this jurisdiction; or

(ii) the offence was committed while the person was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer, as the case requires; or

(iii) other persons are prohibited from disclosing the identity of the offender;

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

spouse of a person means a person to whom the person is married;

S. 1.2.1(1)
def. of
spouse
inserted by
No. 12/2007
s. 4(1)(a).

suitability matter has the meaning given in section 1.2.6;

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

(a) as an employee of a law practice if—

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

(ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); or

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

supervising legal practitioner, in relation to a community legal centre, means a person employed or engaged to be responsible for the provision of legal services by the centre under section 2.9.2;

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

this jurisdiction means Victoria;

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

trust money has the meaning given in section 3.3.2;

trust property means property entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, but does not include trust money or money referred to in section 3.3.3;

unsatisfactory professional conduct has the meaning given in Division 2 of Part 4.4;

S. 1.2.1(1)
def. of *trust property*
amended by
No. 12/2007
s. 4(1)(h).

Victorian Bar means Victorian Bar Inc, an association incorporated under the **Associations Incorporation Reform Act 2012**.

S. 1.2.1(1)
def. of
Victorian Bar
amended by
No. 20/2012
s. 226(Sch. 5
item 17(1)).

- (2) For the purposes of the definition of ***domestic partner*** in subsection (1)—
- (a) ***registered relationship*** has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.

S. 1.2.1(2)
inserted by
No. 12/2007
s. 4(2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 36.2).

1.2.2 Terms relating to lawyers

For the purposes of this Act—

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

1.2.3 Terms relating to legal practitioners

For the purposes of this Act—

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

1.2.4 Terms relating to associates and principals of law practices

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

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

S. 1.2.4(1)(a)(vi)
amended by
No. 12/2007
s. 4(3)(a).

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- (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
- (da) a person (not being an Australian legal practitioner) who is a partner in a multi-disciplinary partnership; or
- (e) an Australian-registered foreign lawyer who has a relationship with the law practice, being a relationship that is of a class prescribed by the regulations.
- (2) For the purposes of this Act—
- (a) a *legal practitioner associate* of a law practice is an associate of the practice who is an Australian legal practitioner;
- (b) a *lay associate* of a law practice is an associate of the practice who is not an Australian legal practitioner.
- (3) For the purposes of this Act, a *principal* of a law practice is an Australian legal practitioner who is—
- (a) a sole practitioner (in the case of a law practice constituted by the practitioner); or
- (b) a partner in the law practice (in the case of a law firm); or
- (c) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or

S. 1.2.4(1)(da)
inserted by
No. 12/2007
s. 4(3)(b).

- (d) a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership); or
- (e) a supervising legal practitioner of a community legal centre.

1.2.5 Home jurisdiction

- (1) This section has effect for the purposes of this Act.
- (2) The *home jurisdiction* for an Australian legal practitioner is the jurisdiction in which the practitioner's only or most recent current Australian practising certificate was granted.
- (3) The *home jurisdiction* for an Australian-registered foreign lawyer is the jurisdiction in which the lawyer's only or most recent current registration was granted.
- (4) The *home jurisdiction* for an associate of a law practice who is neither an Australian legal practitioner or an Australian-registered foreign lawyer is—
 - (a) if only one jurisdiction is the home jurisdiction for the only associate of the practice who is an Australian legal practitioner or for all the associates of the practice who are Australian legal practitioners—that jurisdiction; or
 - (b) if no one jurisdiction is the home jurisdiction for all the associates of the practice who are Australian legal practitioners—
 - (i) the jurisdiction in which the office is situated at which the associate performs most of his or her duties for the law practice; or

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- (ii) if a jurisdiction cannot be determined under subparagraph (i)—the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at elections for the jurisdiction; or
 - (iii) if a jurisdiction can be determined under neither subparagraph (i) nor subparagraph (ii)—the jurisdiction determined in accordance with criteria specified or referred to in the regulations.

1.2.6 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 has been found guilty of an offence in Australia or a foreign country, and if so—
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the person's age when the offence was committed;
 - (d) whether the person engaged in legal practice in Australia—
 - (i) when not admitted, or not holding a practising certificate, as required under this Act or a previous law of this jurisdiction that corresponds to this Act or under a corresponding law; or

s. 1.2.6

-
- (ii) if admitted, in contravention of a condition on which admission was granted; or
 - (iii) if holding an Australian practising certificate, in contravention of a condition of the certificate or while the certificate was suspended;
- (e) whether the person has engaged in legal practice in a foreign country—
- (i) when not permitted by or under a law of that country to do so; or
 - (ii) if permitted to do so, in contravention of a condition of the permission;
- (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following—
- (i) this Act or a previous law of this jurisdiction that corresponds to this Act; or
 - (ii) a corresponding law or corresponding foreign law;
- (g) whether the person—
- (i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or
 - (ii) has been the subject of disciplinary action, however expressed, in another profession or occupation that involved a finding of guilt;
- (h) whether the person's name has been removed from—
- (i) a local roll, and has not since been restored to or entered on a local roll; or
-

-
- (ii) an interstate roll, and has not since been restored to or entered on an interstate roll; or
 - (iii) a foreign roll;
 - (i) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;
 - (j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;
 - (k) whether, under this Act, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;
 - (l) whether the person is or has been subject to an order, under this Act, a 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;
 - (m) whether the person currently has a material mental impairment.
- (2) A matter is a suitability matter even if it happened before the commencement of this section, except if the provision in subsection (1) about the matter refers to the current situation in relation to the person.

S. 1.2.6(1)(m)
amended by
No. 46/2007
s. 19(c).

1.2.7 Information notices

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

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based; and
- (d) whether or not the person may apply under this Act for review of the decision; and
- (e) if the person may apply for review—
 - (i) the person or body to which the application is to be made; and
 - (ii) the day by which the application must be made.

1.2.8 References to findings of guilt

- (1) A reference in this Act to the finding of guilt in relation to an offence includes a reference to the acceptance of a guilty plea in relation to the offence.
- (2) A reference in this Act to the quashing or setting aside of a finding of guilt in relation to an offence includes a reference to the quashing or setting aside of the acceptance of a guilty plea in relation to the offence.

S. 1.2.8(2)
amended by
No. 68/2009
s. 97(Sch.
item 77.1).

1.2.9 References to Parts

Unless the context otherwise requires, a reference in this Act to a Part by a number must be construed as a reference to the Part, designated by that number, of this Act.

CHAPTER 2—GENERAL REQUIREMENTS FOR ENGAGING IN LEGAL PRACTICE

PART 2.1—INTRODUCTION AND OVERVIEW

2.1.1 Simplified outline of Chapter

- (1) This Chapter sets out general requirements for engaging in legal practice in this jurisdiction.
- (2) The following is a general outline of the contents of this Chapter—
 - Part 2.2 provides for the reservation of legal work and legal titles to properly qualified persons and bodies;
 - Part 2.3 sets out the qualifications and procedure for admission to the legal profession in this jurisdiction;
 - Part 2.4 provides for the grant, renewal, amendment, suspension and cancellation of practising certificates in this jurisdiction and sets out the entitlements of holders of interstate practising certificates to engage in legal practice in this jurisdiction;
 - Part 2.5 provides for the obtaining of criminal record and health assessment reports to assist the Board or interstate authorities in making decisions about practising certificates;
 - Part 2.6 provides a scheme for notification of and response to action taken by courts and other authorities in this jurisdiction and elsewhere regarding admission to the legal profession and the right to engage in legal practice;

S. 2.1.1(2)
amended by
No. 12/2007
s. 5.

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- Part 2.7 regulates the provision of legal services in this jurisdiction by corporations (which are called *incorporated legal practices*) and by partnerships that provide legal services and non-legal services (called *multi-disciplinary partnerships*);
 - Part 2.8 regulates the practice of the law of a foreign country in this jurisdiction;
 - Part 2.9 regulates community legal centres.
- (3) Subsection (2) is intended only as a guide to readers as to the general scheme of this Chapter.
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PART 2.2—RESERVATION OF LEGAL WORK AND LEGAL TITLES

Division 1—Preliminary

2.2.1 Purposes

The purposes of this Part are—

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

Division 2—General prohibitions on unqualified practice

2.2.2 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.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply to—
 - (a) a person who engages in legal practice under the authority of a law of this jurisdiction or of the Commonwealth;
 - (b) an incorporated legal practice that engages in legal practice in accordance with Part 2.7;
 - (c) a community legal centre that engages in legal practice in accordance with Part 2.9;
 - (d) an Australian-registered foreign lawyer who practises foreign law in accordance with Part 2.8;

- (e) a person who prepares—
- (i) an enterprise agreement within the meaning of the Fair Work Act 2009 of the Commonwealth; or
 - (ii) an agreement-based transitional instrument within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth—

S. 2.2.2(2)(e)
amended by
No. 12/2007
s. 6(1),
substituted by
No. 74/2009
s. 15.

on behalf of a party or proposed party to the agreement;

- (ea) a licensee within the meaning of the **Conveyancers Act 2006** who performs conveyancing work in accordance with that Act;
- (f) a person (other than an Australian legal practitioner) who represents another person in a proceeding before a court or tribunal, or in arbitration proceedings, if the person is so authorised by or under a law of this jurisdiction, or has leave of the court or tribunal or the arbitrator or umpire;
- (g) a person who does anything in the course of their employment with the Crown or a public authority or in the performance of duties under an appointment by the Governor in Council;
- (h) a person who engages in legal practice of a kind prescribed by the regulations.

S. 2.2.2(2)(ea)
inserted by
No. 12/2007
s. 6(2).

Note

Section 53A of the **Estate Agents Act 1980** provides an exemption from subsection (1) for persons who do certain things under that Act.

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- (3) Nothing in subsection (2)(f) affects the power of a court, tribunal, arbitrator or umpire to give or refuse leave for a person to represent another.
 - (4) A person is not entitled to recover any amount in respect of anything the person did in contravention of subsection (1).
 - (5) A person may recover from another person in a court of competent jurisdiction, as a debt due to the person, any amount the person paid to the other person in respect of anything the other person did in contravention of subsection (1).
 - (6) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act to persons engaged in legal practice of a kind referred to in subsection (2) other than paragraphs (a) and (b).

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

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

Penalty: 120 penalty units.

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

Penalty: 120 penalty units.

- (3) Subsections (1) and (2) do not apply to a representation or advertisement about being entitled to engage in legal practice of a kind referred to in section 2.2.2(2).

- (4) A reference in this section to a person—
- (a) representing or advertising that the person is entitled to engage in legal practice; or
 - (b) representing or advertising that a body corporate is entitled to engage in legal practice—

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

2.2.4 Presumptions about taking or using name, title or description specified in regulations

- (1) This section applies to the following names, titles and descriptions—
- (a) legal practitioner;
 - (b) barrister;
 - (c) solicitor;
 - (d) attorney;
 - (e) counsel;
 - (f) Queen's Counsel;
 - (g) King's Counsel;
 - (h) Her Majesty's Counsel;
 - (i) His Majesty's Counsel;
 - (j) Senior Counsel.

S. 2.2.4(1)
substituted by
No. 12/2007
s. 7(1).

- (1A) The regulations may specify the kind of persons who are entitled, and the circumstances in which they are entitled, to take or use a name, title or description to which this section applies.

S. 2.2.4(1A)
inserted by
No. 12/2007
s. 7(1).

- (2) For the purposes of section 2.2.3(1), the taking or using of a name, title or description to which this section applies by a person who is not entitled to take or use that name, title or description gives rise to a rebuttable presumption that the person

S. 2.2.4(2)
amended by
No. 12/2007
s. 7(2).

s. 2.2.5

represented that they are entitled to engage in legal practice.

S. 2.2.4(3) amended by No. 12/2007 s. 7(2).

- (3) For the purposes of section 2.2.3(2), the taking or using of a name, title or description to which this section applies by a person in relation to a body corporate, of which the person is a director, officer, employee or agent, gives rise to a rebuttable presumption that the person represented that the body corporate is entitled to engage in legal practice.

Division 3—Prohibitions regarding associates

2.2.5 Definitions

In this Division—

S. 2.2.5 def. of *disqualified person* repealed by No. 12/2007 s. 8(a).

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S. 2.2.5 def. of *lay associate* amended by No. 12/2007 s. 8(b).

lay associate of a local legal practitioner or law practice, has the same meaning as in section 1.2.4, and includes—

- (a) in relation to a local legal practitioner—
- (i) a person (not being an Australian legal practitioner) who is a partner of the local legal practitioner in a business that includes the local legal practitioner's practice;
 - (ii) a person (not being an Australian legal practitioner) who shares the receipts of the local legal practitioner's practice;
 - (iii) a person who is employed or paid in connection with the local legal practitioner's practice;

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- (b) in relation to a law practice—
- (i) a person (not being an Australian legal practitioner) who is a partner in the law practice;
 - (ii) a person (not being an Australian legal practitioner) who shares the receipts from legal services provided by the law practice;
 - (iii) a person who is employed or paid in connection with the law practice;
 - (iv) a consultant to the law practice (however described) who—
 - (A) is not an Australian legal practitioner; and
 - (B) provides services to the law practice, other than services of a kind prescribed by the regulations;

relevant offence means—

- (a) an offence against Division 2 of Part I of the **Crimes Act 1958**; or
- (b) an offence against a law of another jurisdiction, the Commonwealth or a foreign country that corresponds to an offence referred to in paragraph (a).

2.2.6 Order disqualifying persons

- (1) The Board may apply to the Tribunal for an order that a person (other than an Australian legal practitioner) is a disqualified person for the purposes of this Division if the person—
 - (a) has been convicted of a relevant offence; or

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- (b) in the opinion of the Board has been a party to an act or omission that, if the person had been an Australian legal practitioner, may have resulted in a charge being brought in the Tribunal.
- (2) The Tribunal may order that the person is a disqualified person for the purposes of this Division, for a specified period or indefinitely.
- (3) If an order under this section specifies that a person is a disqualified person indefinitely, the person may apply to the Tribunal to have the order revoked.
- (4) The Tribunal, on application under subsection (3), may revoke an order if it considers it appropriate to do so.
- (5) A person against whom an order is made under this section may appeal to the Court of Appeal on a question of law.

2.2.7 Prohibition on certain associates

- (1) Unless the Board gives its approval, a local legal practitioner, or a law practice in this jurisdiction, must not have a lay associate who the practitioner or practice knows to be—
- (a) a disqualified person; or
- (b) a person who has been found guilty of a relevant offence.
- (2) A contravention of subsection (1) is capable of constituting unsatisfactory professional conduct or professional misconduct by any Australian legal practitioner concerned in the contravention.
- (3) A disqualified person, or a person found guilty of a relevant offence, must not become or seek to become a lay associate of a local legal practitioner or law practice, unless the person first informs the

practitioner or practice of the disqualification or finding of guilt.

Penalty: 60 penalty units.

- (4) Proceedings for an offence under subsection (3) may only be brought within 6 months after discovery of the offence by the Board.
- (5) This section does not apply in circumstances prescribed by the regulations.

2.2.8 Approval of associates

- (1) The Board may, on application by a local legal practitioner or law practice, approve a lay associate for the purposes of section 2.2.7(1).
- (2) An approval under this section may be subject to specified conditions.
- (3) A local legal practitioner or law practice may appeal to the Supreme Court within 30 days—
 - (a) from a refusal of the Board to give an approval; or
 - (b) against any conditions imposed on an approval by the Board.
- (4) If the Board has not given or refused to give an approval within 60 days after an application for approval was made, the Board must be taken to have refused to give the approval.
- (5) After hearing the matter, the Supreme Court—
 - (a) may refuse, grant or confirm an approval; and
 - (b) if it grants an approval, may impose any conditions on the approval it thinks fit; and
 - (c) if it confirms an approval, may confirm or vary any conditions imposed on that approval by the Board and impose any

further conditions on the approval it thinks fit.

- (6) A local legal practitioner or law practice must comply with any conditions imposed on an approval by the Board or the Supreme Court.

Penalty: 60 penalty units.

Division 4—Further prohibitions and restrictions

2.2.9 Sharing income with unqualified persons

- (1) An Australian legal practitioner or a law practice must not enter into an agreement or arrangement with a person who is not an Australian legal practitioner under which that person is entitled to share in the income from the practitioner's or practice's legal practice otherwise than as is permitted by this Act.

Penalty: 240 penalty units.

- (2) An Australian legal practitioner or a law practice—
- (a) may pay an annuity or other amount out of the income from legal practice to a retired Australian legal practitioner or to the dependants or personal representatives of a deceased Australian legal practitioner;
 - (b) may share income from legal practice with a community legal centre.
- (3) An Australian legal practitioner may share income from legal practice—
- (a) with a family member; or
 - (b) with a corporation the total beneficial interests in which are held by the practitioner or family members or both; or

- (c) in the case of a corporate legal practitioner, with his or her employer.
- (4) A law practice may share income from legal practice—
- (a) with a family member of—
- (i) a principal of the law practice; or
- (ii) an employee of the practice who is an Australian legal practitioner; or
- (b) with a corporation the total beneficial interests in which are held by that principal or employee or their family members or both.
- (5) A law practice, or a principal of a law practice, may share income from legal practice with—
- (a) another principal of the practice; or
- (b) a partner or director of the practice who is an Australian-registered foreign lawyer.

S. 2.2.9(3)(c)
amended by
No. 18/2005
s. 19(a).

Note

See also section 2.7.20, which provides for the sharing of receipts in relation to incorporated legal practices, and section 2.7.48, which provides for the sharing of receipts in relation to multi-disciplinary partnerships.

2.2.10 Permitting or assisting unqualified persons to practise

- (1) An Australian legal practitioner or a law practice must not permit or assist a person who is not an Australian lawyer to engage in legal practice in this jurisdiction.
- (2) An Australian legal practitioner or law practice that contravenes subsection (1) commits a contempt of the Supreme Court.

2.2.11 Prisoners must not practise

- (1) An Australian lawyer who is a prisoner (within the meaning of the **Corrections Act 1986**) must not, as an Australian lawyer, commence or continue to act in any civil or criminal proceeding.
- (2) A person who contravenes subsection (1)—
 - (a) commits a contempt of the Supreme Court; and
 - (b) is not entitled to recover any amount in respect of anything done during the course of that contravention; and
 - (c) must repay any amount so received to the person from whom they were received.
- (3) If an Australian lawyer does not repay an amount required by subsection (2)(c) to be repaid, the person entitled to be repaid may recover the amount from the lawyer as a debt in a court of competent jurisdiction.

Division 5—General

2.2.12 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.
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PART 2.3—ADMISSION OF LOCAL LAWYERS

Division 1—Preliminary

2.3.1 Purposes

The purposes of this Part are—

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

Division 2—Eligibility and suitability for admission

2.3.2 Eligibility for admission

- (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 over; 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.

s. 2.3.2

S. 2.3.2(1A)
inserted by
No. 46/2007
s. 4(1).

(1A) The Council may require a person who seeks admission to the legal profession on the basis of having attained academic qualifications or completed practical legal training requirements outside Australia to pay the reasonable costs of the Council in assessing the person's qualifications or practical legal training.

(2) In this section—

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

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

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

2.3.3 Suitability for admission

- (1) The Board of Examiners must, in deciding whether or not to recommend that a person is a fit and proper person to be admitted to the legal profession under this Act, consider—
 - (a) each of the suitability matters in relation to the person to the extent that a suitability matter is appropriate; and
 - (ab) whether the person is or has been the subject of disciplinary action, however described, arising out of the person's conduct in—
 - (i) attaining approved academic qualifications or corresponding academic qualifications; or
 - (ii) completing approved practical legal training requirements or corresponding practical legal training requirements; and
 - (b) any other matter it considers relevant.
- (2) However, the Board of Examiners may recommend that a person is a fit and proper person despite a suitability matter because of the circumstances relating to that matter.
- (3) An education or training body must, at the written request of the Board of Examiners, produce for inspection or copying by the Board of Examiners any documents held by the body that are relevant to the Board of Examiners' consideration of a matter referred to in subsection (1)(ab).
- (4) Subsection (3) does not apply unless the person to whom the document relates pays the reasonable costs of the education or training body in complying with the request.

S. 2.3.3(1)(ab)
inserted by
No. 46/2007
s. 4(2).

S. 2.3.3(3)
inserted by
No. 46/2007
s. 4(3).

S. 2.3.3(4)
inserted by
No. 46/2007
s. 4(3).

s. 2.3.4

S. 2.3.3(5)
inserted by
No. 46/2007
s. 4(3).

(5) In this section—

approved academic qualifications, corresponding academic qualifications, approved practical legal training requirements and corresponding practical legal training requirements have the same meanings as in section 2.3.2;

education or training body means a person or body that provides a course or other service for the purposes of allowing a person to—

- (i) attain approved academic qualifications or corresponding academic qualifications; or
- (ii) complete approved practical legal training requirements or corresponding practical legal training requirements.

Division 3—Admission to the legal profession

2.3.4 Application for admission

- (1) A person may apply to the Supreme Court to be admitted as a lawyer.
- (2) An application—
 - (a) must be made in accordance with the admission rules; and
 - (b) must be accompanied by the admission fee.

2.3.5 Admission fee

The admission fee consists of—

- (a) a prescribed general fee, to be applied to meet the expenses of the Council and the Board of Examiners; and

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- (b) a prescribed library fee, to be applied for the purposes of the Supreme Court library.

Note

Fees may also be payable under the **Supreme Court Act 1986** for admission to the legal profession.

2.3.6 Admission by the Supreme Court

- (1) The Supreme Court may admit a person as a lawyer if—
- (a) the Supreme Court is satisfied that the person—
 - (i) is eligible for admission to the legal profession; and
 - (ii) is a fit and proper person to be admitted to the legal profession; and
 - (b) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.
- (2) In determining whether or not to admit a person, the Supreme Court may rely on the recommendation of the Board of Examiners.

2.3.7 Roll of persons admitted to the legal profession

- (1) The Supreme Court must keep a roll of persons admitted to the legal profession under this Act.
- (2) A person admitted under this Act must sign the roll.
- (3) The Prothonotary must forward to the Board the name, date of birth and date of admission of each person admitted under this Act as soon as practicable after the person has signed the roll.

2.3.8 When is admission effective?

The admission of a person to the legal profession under this Act is effective from the time the person signs the local roll.

2.3.9 Local lawyer is officer of the Supreme Court

- (1) On being admitted to the legal profession under this Act, a person becomes an officer of the Supreme Court.
- (2) Subsection (1) does not confer on a person any right to bring proceedings in the Supreme Court, or any immunity from proceedings in any court, that the person would not have if he or she were not an officer of the Supreme Court.
- (3) A person ceases to be an officer of the Supreme Court under subsection (1) if the person's name is removed from the local roll.

S. 2.3.9(3)
inserted by
No. 12/2007
s. 9.

Division 4—Functions of Board of Examiners

2.3.10 Functions of Board of Examiners

- (1) The functions of the Board of Examiners are—
 - (a) to consider applications by persons for admission to the legal profession under this Act;
 - (b) to recommend to the Supreme Court that an applicant is—
 - (i) eligible for admission; and
 - (ii) a fit and proper person to be admitted.
- (2) The Board of Examiners may refer to the Supreme Court for determination any question concerning the eligibility or suitability for admission of an applicant.

2.3.11 Appeal to Supreme Court

- (1) A person may appeal to the Supreme Court against a decision of the Board of Examiners with respect to his or her application for admission to the legal profession under this Act.

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- (2) An appeal under subsection (1) must be made within 30 days after being notified of the decision.
 - (3) An appeal under subsection (1) is to be conducted as a hearing de novo.

Division 5—Admission rules

2.3.12 Admission Rules

- (1) The Council may at a meeting make rules for or with respect to—
 - (a) academic qualifications required for admission to the legal profession;
 - (b) legal training required for admission to the legal profession; S. 2.3.12(1)(b) amended by No. 46/2007 s. 5(1)(a).
 - (c) procedural requirements for applying for admission to the legal profession. S. 2.3.12(1)(c) inserted by No. 46/2007 s. 5(1)(b).
- (2) The admission rules must not require a person to satisfactorily complete before admission a period of supervised training that exceeds in length a period or periods equivalent to one full-time year (as determined in accordance with the admission rules).
- (2A) The admission rules may require an applicant for admission to give the Board of Examiners, or consent to the Board of Examiners obtaining, a report on the applicant's criminal record (if any) from—S. 2.3.12(2A) inserted by No. 46/2007 s. 5(2).
 - (a) the Chief Commissioner of Police; or
 - (b) the police force, however described, of any place outside Victoria where the applicant attained academic qualifications, undertook practical legal training or engaged in legal practice.

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- (3) A power conferred by this section to make rules may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (4) Rules made under this section may be made—
- (a) so as to apply at all times or at a specified time; and
 - (b) so as to require a matter affected by the rules to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body; or
 - (iii) as specified in both subparagraphs (i) and (ii); and

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- (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—
- (i) wholly or partially or as amended by the rules; or
 - (ii) as in force at a particular time or as in force from time to time; and
- (d) so as to confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body; and
- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the rules, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (5) For the purposes of the **Subordinate Legislation Act 1994**, rules made under this section are deemed to be statutory rules.
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PART 2.4—LEGAL PRACTICE BY AUSTRALIAN LEGAL PRACTITIONERS

Division 1—Preliminary

2.4.1 Purposes

The purposes of this Part are—

- (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 in this jurisdiction;
- (b) to provide a system for the granting and renewing of local practising certificates.

S. 2.4.1(b)
amended by
Nos 18/2005
s. 19(b),
12/2007
s. 10(1)(a).

Division 2—Legal Practice in this jurisdiction by Australian legal practitioners

2.4.2 Entitlement of holder of Australian practising certificate to practise in this jurisdiction

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

Division 3—Local practising certificates generally

2.4.3 Local practising certificates

- (1) Practising certificates may be granted by the Board under this Part.
- (2) A local practising certificate is to be in a form approved by the Board.

(3) A local practising certificate is subject to the following conditions, as determined by the Board—

- (a) a condition that the holder is authorised or not authorised to receive trust money; and
- (b) a condition that the holder is authorised to engage in legal practice—
 - (i) as a principal of a law practice; or
 - (ii) as an employee of a law practice; or
 - (iii) as a volunteer at a community legal centre; or
 - (iv) as a corporate legal practitioner.

(4) A local practising certificate is also subject to—

- (a) any conditions imposed on it under Division 5; and
- (b) any conditions imposed on it by the Supreme Court; and
- (c) the condition referred to in subsection (8).

S. 2.4.3(4)(b) amended by No. 12/2007 s. 10(1)(b).

S. 2.4.3(4)(c) inserted by No. 12/2007 s. 10(1)(c).

(5) The conditions referred to in subsection (3) to which a local practising certificate is subject must appear on the face of the certificate.

(5A) Subject to subsection (5B), a local legal practitioner whose practising certificate is subject to the condition referred to in subsection (3)(b)(iv) must provide legal services only to, and for the purposes of, his or her employer.

S. 2.4.3(5A) inserted by No. 15/2012 s. 4.

s. 2.4.3

S. 2.4.3(5B)
inserted by
No. 15/2012
s. 4.

(5B) A local legal practitioner whose practising certificate is subject to the condition referred to in subsection (3)(b)(iv) may also engage in legal practice—

(a) as a volunteer at a community legal centre as described in subsection (6); and

(b) otherwise on a pro bono basis.

S. 2.4.3(6)
inserted by
No. 79/2006
s. 33(1).

(6) A local legal practitioner whose practising certificate is subject to a condition referred to in subsection (3)(b)(i), (ii) or (iv) is not required to hold a practising certificate that is subject to the condition referred to in subsection (3)(b)(iii) to engage in legal practice as a volunteer at a community legal centre.

S. 2.4.3(7)
inserted by
No. 79/2006
s. 33(1).

(7) A local legal practitioner whose practising certificate is subject to the condition referred to in subsection (3)(b)(i) is not required—

(a) to hold a practising certificate that is subject to the condition referred to in subsection (3)(b)(ii) to engage in legal practice as an employee of a law practice; or

(b) to hold a practising certificate that is subject to the condition referred to in subsection (3)(b)(iv) to engage in legal practice as a corporate legal practitioner.

S. 2.4.3(8)
inserted by
No. 12/2007
s. 10(2).

(8) 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 local practising certificate.

2.4.4 Suitability to hold local practising certificate

- (1AA) This section has effect for the purposes of Division 4 of this Part or any other provision of this Act where the question of whether or not a person is a fit and proper person to hold a local practising certificate is relevant.
- (1) The Board, in considering whether or not the 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 this Act or a corresponding law or the regulations or legal profession rules under this Act or a corresponding law;
 - (d) whether the person has contravened—
 - (i) an order of the Tribunal; or
 - (ii) an order of a corresponding disciplinary body or of another court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a corresponding disciplinary body;
 - (e) without limiting any other paragraph—
 - (i) whether the person has failed to pay a required contribution or levy to the Fidelity Fund; or

S. 2.4.4(1AA)
inserted by
No. 12/2007
s. 10(3).

S. 2.4.4(1)
amended by
No. 12/2007
s. 10(4)(a)(i).

S. 2.4.4(1)(c)
amended by
No. 12/2007
s. 10(4)(a)(ii).

s. 2.4.4

S. 2.4.4(1)(e)(ii)
substituted by
No. 12/2007
s. 10(4)(a)(iii).

(ii) whether the person has contravened a requirement imposed by the Board or the Liability Committee about professional indemnity insurance; or

(iii) whether the person has failed to pay other costs or expenses for which the person is liable under this Act or the regulations;

(f) any other matter the Board thinks appropriate.

(2) A person may be considered a fit and proper person to hold a local practising certificate even though the person is within any of the categories of the matters referred to in subsection (1), if the Board considers that the circumstances warrant the determination.

(3) If a matter was—

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

(b) determined by the Board of Examiners or the Supreme Court, or by a body in another jurisdiction having jurisdiction to do so, not to be sufficient for refusing admission—

the matter cannot be taken into account as a ground for refusing to grant or for cancelling a local practising certificate, unless later disclosures demonstrate that the matter is part of a course of conduct that may warrant refusal or cancellation.

S. 2.4.4(3)(b)
amended by
No. 12/2007
s. 10(4)(b).

Note

Section 2.4.7 provides that a local practising certificate must not be granted unless the Board is satisfied that the applicant is a fit and proper person to hold the certificate, and must not be renewed if it is satisfied that the applicant is not a fit and proper person to continue to hold the certificate.

2.4.5 Duration of local practising certificate

- (1) A local practising certificate granted under this Act is in force from the date specified in it until the end of the financial year in which it is granted, unless 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 has not been finally determined before 1 July in the year in which it was made, the certificate remains in force, unless suspended or cancelled sooner, until the application has been finally determined.
- (4) For the purposes of subsection (3), an application is finally determined—
 - (a) by the renewal of the certificate; or
 - (b) by the exhaustion of all rights of review in relation to a decision to refuse to renew the certificate.

2.4.6 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

2.4.7 Criteria for grant or renewal of local practising certificate

- (1) The Board must not grant a local practising certificate unless it is satisfied that the applicant—
 - (a) was eligible to apply for the grant when the application was made; and
 - (b) is a fit and proper person to hold the certificate.
- (2) The Board must not renew a local practising certificate if it is satisfied that the applicant—
 - (a) was not eligible to apply for the renewal when the application was made; or
 - (b) is not a fit and proper person to continue to hold the certificate.

2.4.8 Application for grant or renewal of local practising certificate

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

S. 2.4.8(2)
substituted by
No. 12/2007
s. 10(5).

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- (ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practicable to determine whether it applies to the lawyer—the lawyer's place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia; or
 - (b) in the case of a lawyer who is an Australian legal practitioner at the time of making the application—
 - (i) the jurisdiction in which the lawyer engages in legal practice solely or principally is this jurisdiction; or
 - (ii) the lawyer holds a current local practising certificate and engages in legal practice in another jurisdiction under an arrangement that is of a temporary nature; or
 - (iii) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or
 - (iv) if subparagraph (i), (ii) or (iii) does not apply to the lawyer or it is not reasonably practicable to determine whether subparagraph (i), (ii) or (iii) applies to the lawyer—the lawyer's place of residence in Australia is this jurisdiction or the lawyer does not have a place of residence in Australia.
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s. 2.4.8

- (3) For the purposes of subsection (2)(b), the jurisdiction in which an Australian lawyer engages in legal practice principally is to be decided by reference to the lawyer's legal practice during the certificate period current at the time—
- (a) the application is made; or
 - (b) in the case of a late application—the application should have been made.

S. 2.4.8(3A)
inserted by
No. 12/2007
s. 10(6).

- (3A) An Australian lawyer is not eligible to apply for the grant or renewal of a local practising certificate in respect of a financial year if the lawyer would also be the holder of another Australian practising certificate for that year, but this subsection does not limit the factors determining ineligibility to apply for the grant or renewal of a local practising certificate.

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

S. 2.4.8(5)
substituted by
No. 12/2007
s. 10(7).

- (5) 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 respect of the following financial year.

(6) Subsection (5) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that the practitioner reasonably expected to engage in legal practice solely or principally in this jurisdiction under an arrangement that is of a temporary nature.

S. 2.4.8(6)
substituted by
No. 12/2007
s. 10(7).

(7) A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia. 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.

S. 2.4.8(7)
substituted by
No. 12/2007
s. 10(7).

Note

The purpose of this subsection 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 determined by reference only to the person's practice in Australia.

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S. 2.4.8(8)
repealed by
No. 12/2007
s. 10(7).

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S. 2.4.8(9)
repealed by
No. 18/2005
s. 5.

2.4.9 Manner of application and fees

- (1) An application for the grant or renewal of a local practising certificate—
- (a) must be in a form approved by the Board;
and

s. 2.4.9

S. 2.4.9(1)
(b)(iii)
amended by
No. 1/2011
s. 11.

- (b) must be accompanied by—
- (i) the prescribed fee for the certificate;
and
 - (ii) the required contribution to the Fidelity Fund (if any) under section 6.7.26; and
 - (iii) a declaration in the form approved by the Board; and
 - (iv) satisfactory evidence, in a form approved by the Board, that the applicant is, or will be at the time of commencing to engage in legal practice, covered by professional indemnity insurance as required by this Act; and
- (c) if the application is for the grant or renewal of a certificate that authorises the receipt of trust money, must also be accompanied by satisfactory evidence that the applicant has completed a course of study (if any) approved by the Board for the purposes of this Division.

- (2) A person—
- (a) who applies for the grant of a practising certificate during the first 3 months of a financial year; and
 - (b) who was a local legal practitioner immediately before the end of the previous financial year—

must pay a surcharge of 200% of the prescribed fee for the certificate.

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- (3) Subsection (2) does not apply if the application is accompanied by a statutory declaration from the applicant stating—
- (a) that the applicant has not engaged in legal practice since the end of the previous financial year; and
 - (b) that, as at the end of the previous financial year, the applicant did not intend to engage in legal practice for at least the first 3 months of the current financial year; and
 - (c) the reasons why the intention referred to in paragraph (b) has changed.
- (4) The Board may refund all or part of a surcharge paid under subsection (2) if it considers that there are special circumstances.
- (4A) A fee or surcharge is not payable for a local practising certificate that authorises the holder to engage in legal practice only as a volunteer at a community legal centre.
- (5) An applicant for renewal of a local practising certificate must, on or before 31 May, give the Board satisfactory evidence, in a form approved by the Board, that the applicant has professional indemnity insurance as required by this Act in respect of the year for which renewal of the practising certificate is sought.
- (6) If, as at 31 May, an applicant for renewal of a local practising certificate—
- (a) has not complied with subsection (5); or
 - (b) has not complied with section 3.3.54 in relation to the preceding audit year; or

S. 2.4.9(4A)
inserted by
No. 18/2005
s. 6,
substituted by
No. 79/2006
s. 33(2).

s. 2.4.10

(c) has not restored a deficiency in a trust account of the applicant as revealed by the examination report in relation to that account—

the Board must give notice to the applicant on or before 15 June of the failure to comply or to restore the deficiency.

(7) Renewal of a local practising certificate does not take effect—

(a) in the circumstances referred to in subsection (6)(a) or (b)—until the applicant has remedied the failure to comply to the satisfaction of the Board; or

(b) in the circumstances referred to in subsection (6)(c)—until the deficiency has been restored to the satisfaction of the Board.

(8) If the renewal of a local practising certificate does not take effect because of subsection (7), the Australian lawyer must surrender the certificate to the Board within 14 days after being requested to do so by the Board, unless the renewal has taken effect in the meantime.

Penalty: 20 penalty units.

2.4.10 Timing of application for renewal of local practising certificate

An application for renewal of a local practising certificate must be made on or before 30 April (except as provided by section 2.4.11) or, in the case of a person who is not an Australian legal practitioner on 30 April, on or before 30 June.

2.4.11 Late application for renewal of practising certificate

- (1) A local legal practitioner may apply for renewal of a local practising certificate after 30 April in any year on payment of a surcharge of—
 - (a) if the application is made on or before 31 May—25% of the prescribed fee for renewal of the certificate;
 - (b) if the application is made after 31 May—50% of the prescribed fee for renewal of the certificate.
- (2) The Board may refund all or part of a surcharge paid under subsection (1) if it considers that there are special circumstances.
- (3) This section does not apply to a person who was not a local legal practitioner on 30 April in the relevant year.

2.4.12 Grant or renewal of local practising certificate

- (1) Within 30 days after receiving an application for the grant of a local practising certificate, the Board must—
 - (a) grant the certificate; or
 - (b) refuse to grant the certificate.

Note

The criteria to be applied by the Board in making this decision are set out in section 2.4.7.

- (2) Within 60 days after receiving an application for renewal of a local practising certificate, the Board must—
 - (a) renew the certificate; or
 - (b) refuse to renew the certificate.

Note

The criteria to be applied by the Board in making this decision are set out in section 2.4.7.

- (3) If the Board refuses to grant or renew a local practising certificate, it must give an information notice about the decision to the applicant.

Note

Section 2.4.37 provides a right to apply for review of the decision.

Division 5—Additional conditions on local practising certificates

2.4.13 Conditions generally

- (1) A local practising certificate is subject to—
- (a) any conditions determined by the Board under section 2.4.3(3); and
 - (b) any conditions imposed by the Board under section 2.4.14; and
 - (c) any conditions imposed by this or any other Act; and
 - (d) any conditions imposed or varied by the Tribunal under section 2.4.16; and
 - (da) any conditions imposed or varied by the Board under section 2.4.21, 2.4.24 or 2.4.28; and
 - (e) any conditions imposed under Chapter 4.
- (2) If a condition is determined, imposed, varied or revoked under this Act (other than a statutory condition) during the currency of the local practising certificate concerned, the certificate is to be amended by the Board, or a new certificate is to be issued by the Board, to reflect on its face the imposition, variation or revocation.

S. 2.4.13
(1)(da)
inserted by
No. 12/2007
s. 10(8).

(3) Within 14 days after a request from the Board, a local legal practitioner must give his or her local practising certificate to the Board if, under subsection (2)—

- (a) the Board requires the certificate for the purposes of amending it; or
- (b) the Board intends to issue a new certificate.

Penalty: 20 penalty units.

(4) A condition imposed by the Board or Tribunal must be reasonable and relevant.

S. 2.4.13(4)
inserted by
No. 12/2007
s. 10(9).

(5) A condition imposed by the Board or the Tribunal may include any of the following—

S. 2.4.13(5)
inserted by
No. 12/2007
s. 10(9).

- (a) requiring the holder of the practising certificate to undertake and complete an academic or training course;
- (b) controlling or restricting the operation of a trust account;
- (c) restricting the holder to particular conditions concerning employment or supervision;
- (d) a matter agreed by the holder.

(6) Subsection (5) does not limit the matters about which a condition may be imposed on a practising certificate by the Board or the Tribunal.

S. 2.4.13(6)
inserted by
No. 12/2007
s. 10(9).

(7) If the Board or the Tribunal imposes, varies or revokes a condition during the currency of a local practising certificate, the condition, variation or revocation takes effect when the holder has been notified of it or at a later time specified by the Board or Tribunal (as the case requires).

S. 2.4.13(7)
inserted by
No. 12/2007
s. 10(9).

s. 2.4.14

S. 2.4.14
amended by
No. 18/2005
s. 7,
substituted by
No. 12/2007
s. 11.

2.4.14 Conditions imposed by the Board on grant or renewal

- (1) The Board may impose conditions on a local practising certificate when it is granted or renewed.

Note

The Board may also impose conditions on a local practising certificate, or vary or revoke conditions, during the currency of the certificate—see sections 2.4.21, 2.4.24 and 2.4.28.

- (2) If the Board decides to impose a condition on a local practising certificate under this section, it must give the applicant or holder an information notice about the decision.

Note

Section 2.4.37 provides a right to apply for review of the decision.

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S. 2.4.15
repealed by
No. 12/2007
s. 12.

2.4.16 Imposition or variation of conditions pending criminal proceedings

- (1) If a local legal practitioner has been charged with a relevant offence but the charge has not been determined, the Board may apply to the Tribunal for an order under this section.
- (2) On an application under subsection (1), the Tribunal may make either or both of the following orders—
 - (a) an order varying the conditions on the practitioner's local practising certificate;
 - (b) an order imposing further conditions on the practitioner's local practising certificate.

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- (3) The Tribunal may make an order under this section only if the Tribunal considers it appropriate to do so, having regard to—
- (a) the seriousness of the relevant offence; and
 - (b) the public interest.
- (4) An order under this section has effect until the sooner of—
- (a) the period specified by the Tribunal; or
 - (b) if the practitioner is convicted of the relevant offence—28 days after the day of the finding of guilt; or
 - (c) if the charge is dismissed or the practitioner is found guilty without the recording of a conviction—the day of the dismissal or the decision not to record a conviction; or
 - (d) if the finding of guilt is quashed or set aside on appeal—the day the finding of guilt is quashed or set aside.
- (5) The Tribunal, on application by any party, may vary or revoke an order under this section at any time.
- (6) In this section—
- relevant offence* means—
- (a) an offence against Division 2 of Part I of the **Crimes Act 1958**; or
 - (b) an offence against the law of another jurisdiction, the Commonwealth or a foreign country that, in the opinion of the Tribunal, is equivalent to an offence against Division 2 of Part I of the **Crimes Act 1958**.

S. 2.4.16(4)(d)
amended by
No. 68/2009
s. 97(Sch.
item 77.2).

2.4.17 Statutory condition regarding conditions imposed on interstate admission

It is a statutory condition of a local practising certificate that the holder must not contravene a condition that was imposed on the admission of the person to the legal profession under a corresponding law (with any variations of the condition made from time to time) and that is still in force.

2.4.18 Statutory condition regarding supervised legal practice

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

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

a period or periods equivalent to 18 months' supervised legal practice, worked out under relevant regulations, 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'

S. 2.4.18(1)(a) substituted by No. 79/2006 s. 34(1).

supervised legal practice, worked out under relevant regulations, 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 after a period or periods referred to in that subsection.
- (3) The Board may exempt a person or class of persons from the requirement for supervised legal practice under subsection (1) or may reduce a period referred to in that subsection for a person or class of persons, if satisfied that the person or persons do not need to be supervised or need to be supervised only for a shorter period, having regard to—
- (a) the length and nature of any legal practice previously engaged in by the person or persons; and
 - (b) the length and nature of any legal practice engaged in by the supervisors (if any) who previously supervised the legal practice engaged in by the person or persons.
- (4) An exemption under subsection (3) may be given unconditionally or subject to any conditions that the Board thinks appropriate.
- (5) This section does not apply to—
- (a) the holder of a local practising certificate who is a barrister; or
 - (b) a person who held an Australian practising certificate at any time before 12 December 2005.

S. 2.4.18(3)
substituted by
No. 79/2006
s. 34(2).

S. 2.4.18(4)
inserted by
No. 79/2006
s. 34(2).

S. 2.4.18(5)
inserted by
No. 79/2006
s. 34(2).

s. 2.4.19

S. 2.4.18(6)
inserted by
No. 79/2006
s. 34(2).

- (6) Nothing in subsection (5) prevents the Board or the Tribunal imposing a condition regarding supervised legal practice in relation to a person referred to in subsection (5)(b).

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

2.4.19 Application of Division

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

2.4.20 Grounds for amending, suspending or cancelling local practising certificate

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

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

S. 2.4.20(c)
amended by
No. 12/2007
s. 13(1).

2.4.21 Amending, suspending or cancelling local practising certificate

S. 2.4.21(1)
amended by
No. 12/2007
s. 13(2)(a)(i).

- (1) If the Board believes a ground exists to amend, suspend or cancel a local practising certificate (the *proposed action*), the Board must give the holder a notice that—

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- (a) states the proposed action and—
- (i) if the proposed action is to amend the certificate—states the proposed amendment; or
 - (ii) if the proposed action is to suspend the certificate—states the proposed suspension period; and
- (b) states the grounds for proposing to take the proposed action; and
- (c) outlines the facts and circumstances that form the basis for the Board's belief; and
- (d) invites the holder to make written representations to the Board, within a specified time of not less than 7 days and not more than 28 days, as to why the proposed action should not be taken.
- (2) The Board—
- (a) must consider all written representations made within the specified time; and
 - (b) may consider written representations made after the specified time.
- (3) If, after complying with subsection (2), the Board still believes that a ground exists to take the proposed action, the Board may—
- (a) if the notice under subsection (1) stated that the proposed action was to amend the practising certificate—amend the certificate in the way stated or in a less onerous way the Board considers appropriate because of the representations; or

S. 2.4.21(1)(d)
amended by
No. 12/2007
s. 13(2)(a)(ii).

S. 2.4.21(3)(a)
amended by
No. 12/2007
s. 13(2)(b)(i).

s. 2.4.22

S. 2.4.21(3)(b)
amended by
No. 12/2007
s. 13(2)(b)(ii).

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

- (i) suspend the certificate for a period no longer than the specified period; or
- (ii) amend the certificate in a less onerous way the Board considers appropriate because of the representations; or

S. 2.4.21(3)(c)
substituted by
No. 12/2007
s. 13(2)(c).

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

- (i) cancel the certificate; or
- (ii) suspend the certificate for a period; or
- (iii) amend the certificate in a less onerous way the Board considers appropriate because of the representations.

Note to
s. 2.4.21(3)
inserted by
No. 12/2007
s. 13(2)(d).

Note

Amending a local practising certificate includes imposing a condition on it, or varying or revoking a condition—see the definition of *amend* in section 1.2.1.

(4) If the Board decides to amend, suspend or cancel the practising certificate the Board must give the holder an information notice about the decision.

Note to
s. 2.4.21(4)
inserted by
No. 12/2007
s. 13(2)(e).

Note

Section 2.4.37 provides a right to apply for review of the decision.

2.4.22 Immediate suspension of local practising certificate

(1) This section applies if the Board considers it necessary in the public interest to suspend a local practising certificate immediately on any of the grounds set out in section 2.4.20.

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- (2) This section applies despite section 2.4.21 or Division 7 and whether or not any action has been taken or commenced under section 2.4.21 or Division 7 in relation to the holder.
 - (3) The Board, by written notice given to the holder, may immediately suspend the practising certificate until the earlier of the following—
 - (a) the time at which the Board informs the holder of the Board's decision by notice under section 2.4.21; or
 - (b) the end of the period of 56 days after the notice is given to the holder under this section.
 - (4) The notice under this section must—
 - (a) include an information notice about the suspension; and
 - (b) state that the holder may make written representations to the Board about the suspension.
 - (5) The holder may make written representations to the Board about the suspension, and the Board must consider any representations made.

Note

Section 2.4.37 provides a right to apply for review of a decision under this section to suspend a local practising certificate.

2.4.23 Effect of suspension

- (1) A person whose local practising certificate is suspended is deemed not to hold a local practising certificate during the period of suspension.
- (2) Subject to subsection (3), the Board may lift a suspension at any time, whether or not in response to any representations made to it by the person.

- (3) If the Board is satisfied that the grounds for a suspension do not or no longer exist, the Board must lift the suspension immediately by giving written notice to the person.

S. 2.4.24
substituted by
No. 12/2007
s. 14.

2.4.24 Other ways of amending or cancelling local practising certificates

- (1) The Board may amend or cancel a local practising certificate if the holder requests the Board to do so.

Note

Amending a local practising certificate includes imposing a condition on it, or varying or revoking a condition—see the definition of *amend* in section 1.2.1.

- (2) The Board may amend a local practising certificate—
- (a) for a formal or clerical reason; or
 - (b) in another way that does not adversely affect the holder's interests.
- (3) The Board must cancel a local practising certificate if the holder's name has been removed from the local roll or the holder ceases to be an Australian lawyer.
- (4) The amendment or cancellation of a local practising certificate under this section is effected by written notice given to the holder.
- (5) Section 2.4.21 does not apply in a case to which this section applies.
- (6) If the Board decides to refuse a request referred to in subsection (1), the Board must give the holder an information notice about the decision.

Note

Section 2.4.37 provides a right to apply for review of the decision.

2.4.25 Relationship of this Division with disciplinary provisions

S. 2.4.25
amended by
No. 12/2007
s. 15.

Nothing in this Division prevents a complaint from being made under Chapter 4 about a matter to which this Division relates.

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

2.4.26 Applicant for local practising certificate—show cause event

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

S. 2.4.26(2)
amended by
No. 12/2007
s. 16(1).

S. 2.4.26(3)
substituted by
No. 12/2007
s. 16(2).

s. 2.4.27

(b) a notice and statement under section 2.4.27—

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

S. 2.4.26(4)
repealed by
No. 18/2005
s. 8.

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2.4.27 Holder of local practising certificate—show cause event

- (1) This section applies to a show cause event that happens in relation to the holder of a local practising certificate.
- (2) The holder must provide to the Board both of the following—

S. 2.4.27(2)(a)
amended by
No. 12/2007
s. 16(3).

- (a) within 7 days after the happening of the event—notice, in the form approved by the Board, that the event happened;
- (b) within 28 days after the happening of the event—a written statement explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to hold a local practising certificate.

S. 2.4.27(3)
repealed by
No. 18/2005
s. 8.

* * * * *

- (4) If a written statement is provided after the period of 28 days referred to in subsection (2)(b), the Board may accept the statement and take it into consideration.

2.4.28 Refusal, amendment, suspension or cancellation of local practising certificate—failure to show cause

- (1) The Board may refuse to grant or renew, or may amend, suspend or cancel, a local practising certificate if the applicant or holder—
 - (a) is required by section 2.4.26 or 2.4.27 to provide a written statement relating to a matter and has failed to provide a written statement in accordance with that requirement; or
 - (b) has provided a written statement in accordance with section 2.4.26 or 2.4.27, but the Board does not consider that the applicant or holder has shown in the statement that, despite the show cause event concerned, he or she is a fit and proper person to hold a local practising certificate.
- (2) For the purposes of this section only, a written statement accepted by the Board under section 2.4.27(4) is taken to have been provided in accordance with section 2.4.27.
- (3) The Board must give the applicant or holder an information notice about the decision to refuse to grant or renew, or to amend, suspend or cancel, the certificate.

S. 2.4.28(2)
amended by
No. 18/2005
s. 19(c).

Note

Section 2.4.37 provides a right to apply for review of the decision.

2.4.29 Restriction on making further applications

- (1) This section applies if the Board decides under section 2.4.12 or 2.4.28 to refuse to grant or renew a local practising certificate or to cancel a person's local practising certificate.

- (2) The Board may also decide that the person is not entitled to apply for the grant of a local practising certificate for a specified period ending on or before the end of the current financial year.
- (3) If the Board makes a decision under subsection (2), the Board must include the decision in the information notice required under section 2.4.12(3) or 2.4.28(3).
- (4) A person in respect of whom a decision has been made under this section, or under a provision of a corresponding law, is not entitled to apply for the grant of a local practising certificate during the period specified in the decision.

Division 8—Further provisions relating to local practising certificates

2.4.30 Surrender and cancellation of local practising certificate

- (1) The holder of a local practising certificate may surrender the certificate to the Board.
- (2) The Board may cancel the certificate.

2.4.31 Return of local practising certificate

- (1) This section applies if a local practising certificate granted to an Australian legal practitioner—
 - (a) is amended, suspended or cancelled by the Board; or
 - (b) is replaced by another certificate.
- (2) The Board may give the practitioner a notice requiring the practitioner to return the certificate to the Board in the way specified in the notice within a specified period of not less than 14 days.
- (3) The practitioner must comply with a notice, unless the practitioner has a reasonable excuse.

Penalty: 10 penalty units.

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

Division 9—Interstate legal practitioners

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

- (1) This Part does not authorise an interstate legal practitioner to engage in legal practice in this jurisdiction to a greater extent than a local legal practitioner could be authorised under a local practising certificate.
- (2) Also, an interstate legal practitioner's right to engage in legal practice in this jurisdiction—
- (a) is subject to—
 - (i) any conditions imposed by the Board under section 2.4.33; and
 - (ii) any conditions imposed by or under the legal profession rules as referred to in that section; and
 - (b) is, to the greatest practicable extent and with all necessary changes—
 - (i) the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and
 - (ii) subject to any condition on the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on his or her

s. 2.4.33

admission to the legal profession in this or another jurisdiction.

- (3) If there is an inconsistency between conditions mentioned in subsection (2)(a) and conditions mentioned in subsection (2)(b), the conditions that are, in the opinion of the Board, more onerous prevail to the extent of the inconsistency.
- (4) An interstate lawyer must not engage in legal practice in this jurisdiction in a manner not authorised by this Act or in contravention of any condition referred to in this section.

S. 2.4.32(5)
repealed by
No. 18/2005
s. 8.

* * * * *

2.4.33 Additional conditions on practice of interstate legal practitioners

- (1) The Board may, by written notice to an interstate legal practitioner engaged in legal practice in this jurisdiction, impose any condition on the practitioner's practice that it may impose under this Act on a local practising certificate.
- (2) Also, an interstate legal practitioner's right to engage in legal practice in this jurisdiction is subject to any condition imposed by or under an applicable legal profession rule.
- (3) Conditions imposed under or referred to in this section must not be more onerous than conditions applying to local legal practitioners.
- (4) A notice under this section must include an information notice about the decision to impose a condition.

Note

Section 2.4.37 provides a right to apply for review of the decision.

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

S. 2.4.33(5)
inserted by
No. 12/2007
s. 16(4).

2.4.34 Notification by interstate legal practitioner becoming authorised to withdraw from local trust account

S. 2.4.34
substituted by
No. 12/2007
s. 17.

- (1) An interstate legal practitioner must notify the Board if the practitioner (whether alone or with a co-signatory) becomes authorised to withdraw money from a local trust account.
- (2) The Board may determine the manner in which the notification is to be made and the information or material that is to be included in or to accompany the notification.

Note

The practitioner may also need to pay a contribution to the Fidelity Fund—see section 6.7.27.

2.4.35 Special provisions 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, to qualify for admission to the legal profession, the interstate legal practitioner completed practical legal training—
- (i) principally under the supervision of an Australian legal practitioner, whether involving articles of clerkship or otherwise; or
- (ii) involving articles of clerkship principally under the supervision of a person other than an Australian legal practitioner in accordance with the admission rules—

S. 2.4.35(1)(a)
substituted by
No. 79/2006
s. 35(1)(a).

s. 2.4.36

the interstate legal practitioner has undertaken a period or periods equivalent to 18 months' supervised legal practice, worked out under relevant regulations, after the day the practitioner's first practising certificate was granted; or

S. 2.4.35(1)(b)
amended by
No. 79/2006
s. 35(1)(b).

- (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 interstate legal practitioner has undertaken a period or periods equivalent to 2 years' supervised legal practice, worked out under relevant regulations, after the day the practitioner's first practising certificate was granted.

S. 2.4.35(2)
substituted by
No. 79/2006
s. 35(2).

(2) Subsection (1)—

- (a) does not apply—
- (i) to an interstate legal practitioner who engages in legal practice in this jurisdiction solely as a barrister; or
 - (ii) if the interstate legal practitioner is exempt from the requirement for supervised legal practice in the practitioner's home jurisdiction;
- (b) applies 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.

2.4.36 Interstate legal practitioner is officer of Supreme Court

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

Division 10—Reviews

2.4.37 Review of decisions about local practising certificates

- (1) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision of the Board—
 - (a) refusing to grant or renew a local practising certificate under section 2.4.12 or 2.4.28; or
 - (ab) imposing a condition on a local practising certificate under section 2.4.14; or
 - (b) amending, suspending or cancelling a local practising certificate under section 2.4.21 or 2.4.28; or
 - (c) suspending a local practising certificate under section 2.4.22; or
 - (d) refusing a request to amend a local practising certificate under section 2.4.24.
- (2) An application for review must be made within 28 days after the day on which the information notice about the decision was given to the person.
- (3) On a review under this section, in addition to having all the powers of the Board in respect of the decision, the Tribunal may make any order the Tribunal could make under section 4.4.17 or 4.4.19 (except paragraph (a)).

S. 2.4.37(1)(ab)
inserted by
No. 12/2007
s. 18.

2.4.38 Review of decisions about interstate legal practitioners

- (1) An interstate legal practitioner may apply to the Tribunal for review of a decision of the Board to impose a condition on the practitioner's practice under section 2.4.33.

-
- (2) An application for review must be made within 28 days after the day on which the information notice about the decision was given to the practitioner.

Division 11—Miscellaneous

2.4.39 Protocols

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

2.4.40 Consideration and investigation of applicants or holders

For the purpose of considering an application for the grant or renewal of a local practising certificate, or a request for amendment of a local practising certificate, the Board may require the applicant or holder to provide any further information or documents, and to verify the information or documents by statutory declaration or another manner, specified by the Board.

2.4.41 Government lawyers of other jurisdictions

S. 2.4.41
inserted by
No. 12/2007
s. 19.

(1) A government lawyer of another jurisdiction is not subject to—

(a) any prohibition under this Act about—

(i) engaging in legal practice in this jurisdiction; or

(ii) making representations about engaging in legal practice in this jurisdiction; or

(b) conditions imposed on a local practising certificate; or

(c) requirements of legal profession rules; or

(d) professional discipline—

in respect of the performance of his or her official duties or functions as a government lawyer of the other jurisdiction to the extent that he or she is exempt from matters of the same kind under a law of the other jurisdiction.

(2) Contributions and levies are not payable to the Fidelity Fund by or in respect of a government lawyer of another jurisdiction in his or her capacity as a government lawyer.

(3) Without affecting subsections (1) and (2), nothing in this section prevents a government lawyer of another jurisdiction from being granted or holding a local practising certificate.

(4) In this section—

another jurisdiction means—

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

government agency of another jurisdiction means—

- (a) a government department of that jurisdiction; or
- (b) a body or organisation that is established by or under the law of that jurisdiction for a public purpose or to exercise governmental functions—

and includes a body or organisation (or bodies or organisations of a class) prescribed by the regulations as being within this definition;

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

S. 2.4.42
inserted by
No. 46/2007
s. 20.

2.4.42 Show cause procedure for removal of lawyer's name from local roll following cancellation of interstate practising certificate or guilty finding

- (1) This section applies if the Board is satisfied that—
- (a) a local lawyer's interstate practising certificate has been cancelled; or

(b) a local lawyer has been found guilty, in Victoria or elsewhere in Australia, of an offence—

whether before or after the commencement of this section.

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

PART 2.5—SUITABILITY REPORTS

Division 1—Preliminary

S. 2.5.1
substituted by
No. 46/2007
s. 6.

2.5.1 Purpose

The purpose of this Part is—

- (a) to provide for—
 - (i) criminal record checks of applicants for the grant or renewal of practising certificates; and
 - (ii) health assessments of applicants for and holders of local practising certificates and reports on those assessments—
to assist the Board in determining whether the applicant or holder is a fit and proper person to engage in legal practice in this jurisdiction; and
- (b) to provide for health assessments of applicants for admission to the legal profession under this Act and reports on those assessments to assist the Board of Examiners in deciding whether to recommend that the applicant is a fit and proper person to be admitted to the legal profession.

2.5.2 Definitions

In this Part—

S. 2.5.2 def. of
appropriate authority
inserted by
No. 46/2007
s. 7(1)(a).

appropriate authority, in relation to a health assessment and health assessment report, means—

- (a) the Board, in the case of an assessment and report in relation to—
 - (i) an applicant for the grant or renewal of a local practising certificate; or

- (ii) a local legal practitioner; or
- (b) the Board of Examiners, in the case of an assessment and report in relation to an applicant for admission to the legal profession under this Act;

health assessment report means a report on a health assessment prepared under section 2.5.6;

health assessor means a person appointed by the Board or the Board of Examiners under section 2.5.5;

S. 2.5.2 def. of *health assessor* amended by No. 46/2007 s. 7(1)(b).

police report means a report on the criminal record of a person under section 2.5.3(3)(b);

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 2.5.2 def. of *registered medical practitioner* substituted by Nos 97/2005 s. 182(Sch. 4 item 32), 13/2010 s. 51(Sch. item 33).

subject person means—

- (a) in relation to a criminal record check and police report—an applicant for the grant or renewal of a local practising certificate;
- (b) in relation to a health assessment and health assessment report required or to be required by the Board—
 - (i) an applicant for the grant or renewal of a local practising certificate; or
 - (ii) a local legal practitioner;

S. 2.5.2 def. of *subject person* amended by No. 46/2007 s. 7(1)(c).

- (c) in relation to a health assessment and health assessment report required or to be required by the Board of Examiners—an applicant for admission to the legal profession under this Act;

suitability report means a police report or health assessment report prepared under this Part or under provisions of a corresponding law, and includes a copy of a report or part of a report or copy.

Division 2—Police reports

2.5.3 Criminal record checks and police reports

- (1) This section applies if the Board believes on reasonable grounds that a subject person has been found guilty of an offence that may result in him or her not being a fit and proper person to engage in legal practice in this jurisdiction.
- (2) The Board may ask the Chief Commissioner of Police to conduct a check of the subject person's criminal record.
- (3) The Chief Commissioner of Police must—
 - (a) conduct a check of the criminal record of the subject person; and
 - (b) give the Board a report on the person's criminal record (if any).
- (4) The Chief Commissioner of Police is not required to comply with subsection (3) until the reasonable costs of the check and report are paid by the Board.

Division 3—Health assessments

2.5.4 Health assessments

- (1) This section applies if—
- (a) the Board believes on reasonable grounds that a subject person may have a mental impairment that may result in him or her not being a fit and proper person to engage in legal practice in this jurisdiction; or
 - (b) the Board of Examiners believes on reasonable grounds that a subject person may have a mental impairment that may result in him or her not being a fit and proper person to be admitted to the legal profession under this Act.
- (2) The appropriate authority may require the subject person to undergo a health assessment by a health assessor.
- (3) If the appropriate authority decides to require a health assessment, the appropriate authority must give the subject person an information notice about the decision to require the assessment that includes—
- (a) the name and qualifications of the health assessor; and
 - (b) the date, time and place for the assessment, that must be reasonable having regard to the circumstances of the subject person as known to the appropriate authority.
- (4) The date for the assessment must be no sooner than 28 days after the information notice is given to the subject person.

S. 2.5.4(1)
amended by
No. 46/2007
s. 21,
substituted by
No. 46/2007
s. 7(2).

S. 2.5.4(2)
amended by
No. 46/2007
s. 7(3)(a).

S. 2.5.4(3)
amended by
No. 46/2007
s. 7(3)(a).

S. 2.5.4(3)(b)
amended by
No. 46/2007
s. 7(3)(a).

s. 2.5.5

S. 2.5.4(5)
amended by
No. 46/2007
s. 7(3)(a).

- (5) The subject person may apply to the Tribunal for review of a decision of the appropriate authority under this section within 28 days after the day on which the information notice is given to the subject person.

2.5.5 Appointment of health assessor

S. 2.5.5(1)
amended by
No. 46/2007
s. 7(3)(b).

- (1) The appropriate authority may appoint one or more appropriately qualified persons to conduct all or part of a health assessment of a subject person under this Division.

- (2) At least one health assessor must be a registered medical practitioner.

S. 2.5.5(3)
amended by
No. 46/2007
s. 7(3)(c).

- (3) The appropriate authority may disclose to the health assessor any information in the appropriate authority's possession that the appropriate authority considers relevant to the health assessment, including, in the case of the Board, any police report on the subject person.

S. 2.5.5(4)
amended by
No. 46/2007
s. 7(3)(d).

- (4) Before appointing a person as a health assessor, the appropriate authority must be satisfied that 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.

- (5) 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.

2.5.6 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.

(2) The health assessment report must include—

- (a) the health assessor's findings as to any material mental impairment of the subject person and the extent, if any, to which the impairment may result in the person not being a fit and proper person to engage in legal practice or to be admitted to the legal profession (as the case requires); and
- (b) in the case of a health assessment required by the Board, if the health assessor finds that the person has a material mental impairment that may result in the person not being a fit and proper person to engage in legal practice—the health assessor's recommendations, if any, as to a condition the Board could impose on the person's practising certificate that would result in, or would be likely to result in, the person being a fit and proper person to engage in legal practice, despite the impairment.
- (3) The health assessor must give the health assessment report to the appropriate authority and a copy to the subject person.
- (4) Despite subsection (3), if the health assessment contains information of a medical or psychiatric nature concerning the subject person and it appears to the health assessor that the disclosure of that information to the subject person might be prejudicial to the subject person's mental health or well being, the health assessor may decide not to give that information to the subject person but to give it instead to a registered medical practitioner nominated by the subject person.

S. 2.5.6(2)(a)
amended by
No. 46/2007
ss 21,
7(3)(e)(i).

S. 2.5.6(2)(b)
amended by
No. 46/2007
ss 21,
7(3)(e)(ii).

S. 2.5.6(3)
amended by
No. 46/2007
s. 7(3)(e)(iii).

s. 2.5.7

s. 2.5.7
amended by
No. 46/2007
s. 7(3)(f).

2.5.7 Payment for health assessment and report

The Board is liable for the cost of a health assessment and health assessment report, whether required by the Board or by the Board of Examiners.

2.5.8 Use of health assessment report

S. 2.5.8(2)
substituted by
No. 46/2007
s. 7(4).

- (1) A health assessment report about a subject person is not admissible in any proceeding, and a person cannot be compelled to produce the report or to give evidence about the report or its contents in any proceeding.
- (2) Subsection (1) does not apply in relation to a proceeding—
 - (a) on a review or appeal by the subject person against a decision of the Board, or of a corresponding authority in another jurisdiction—
 - (i) refusing to grant or renew a practising certificate; or
 - (ii) imposing conditions on a practising certificate; or
 - (iii) amending, suspending or cancelling a practising certificate; or
 - (b) on an appeal under section 2.3.11 against a decision of the Board of Examiners with respect to the subject person's application for admission to the legal profession.
- (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 the subject person to whom the report relates.

(4) In this section—

report means a health assessment report prepared under this Division or under provisions of a corresponding law, and includes a copy of a report or a part of a report or copy.

Division 4—General

2.5.9 Confidentiality of suitability reports to the Board

S. 2.5.9
(Heading)
substituted by
No. 46/2007
s. 7(5).

(1) A member, member of staff or agent of the Board must not, directly or indirectly, disclose to anyone else a suitability report, or information in a suitability report, given to the Board.

Penalty: 60 penalty units.

(2) A member, member of staff 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 under this Act in relation to—
 - (i) an application for the grant or renewal of a local practising certificate; or
 - (ii) the imposition or proposed imposition of conditions on a local practising certificate; or
 - (iii) the amendment, suspension or cancellation, or proposed amendment, suspension or cancellation of a local practising certificate; or
- (b) disclosure of the suitability report or information in it is made to the regulatory authority of another jurisdiction when the person to whom it relates is an applicant for the grant or renewal of a practising certificate, or the holder of an interstate

practising certificate, under a corresponding law of the other jurisdiction; or

- (c) the disclosure is made with the consent of the person to whom it relates; or
- (d) the disclosure is otherwise required or permitted by law.

S. 2.5.10
inserted by
No. 46/2007
s. 8.

2.5.10 Confidentiality of health assessment reports to the Board of Examiners

- (1) A member, member of staff or agent of the Board of Examiners must not, directly or indirectly, disclose to anyone else a health assessment report or information in a health assessment report, given to the Board of Examiners.

Penalty: 60 penalty units.

- (2) A member, member of staff or agent of the Board of Examiners does not contravene subsection (1) if—
 - (a) disclosure of the report or information in it to someone else is authorised by the Board of Examiners to the extent necessary to perform a function under this Act in relation to an application for admission to the legal profession under this Act; or
 - (b) the disclosure is made with the consent of the person to whom it relates; or
 - (c) the disclosure is otherwise required or permitted by law.

**PART 2.6—INTER-JURISDICTIONAL PROVISIONS
REGARDING ADMISSION AND PRACTISING
CERTIFICATES**

Division 1—Preliminary

2.6.1 Purpose

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

2.6.1A Definition

In this Part—

foreign regulatory action taken in relation to a person means—

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

S. 2.6.1A
inserted by
No. 12/2007
s. 20.

2.6.2 Other requirements not affected

This Part does not affect any functions under Chapter 4.

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

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

- (1) This section applies if an application for admission to the legal profession is made under this Act.

s. 2.6.4

- (2) The Board of Examiners may give the corresponding authority for another jurisdiction written notice of any of the following (as relevant)—
 - (a) the making of the application;
 - (b) the refusal to certify that the applicant is eligible for admission, or is a fit and proper person to be admitted;
 - (c) the withdrawal of the application after an inquiry is proposed or commenced in relation to the application;
 - (d) the refusal of the Supreme Court to admit the applicant to the legal profession under this Act.
- (3) The notice must state the applicant's name and address as last known to the Board of Examiners and may contain other relevant information.

2.6.4 Official notification to other jurisdictions of removals from local roll

S. 2.6.4(1)
amended by
No. 12/2007
s. 21(1)(a).

- (1) This section applies if a person's name is removed from the local roll, except where the removal occurs under section 2.6.9.
- (2) The prothonotary must, as soon as practicable, give written notice of the removal to—
 - (a) the corresponding authority of every other jurisdiction; and
 - (b) the registrar or other proper officer of the High Court of Australia.

S. 2.6.4(3)(a)
amended by
No. 12/2007
s. 21(1)(b).

- (3) The notice must state—
 - (a) the person's name and address as last known to the prothonotary; and

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

S. 2.6.4(3)(b)
amended by
No. 12/2007
s. 21(1)(b).

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

S. 2.6.4(3)(c)
amended by
No. 12/2007
s. 21(1)(b).

(4) The notice may contain other relevant information.

2.6.5 Board to notify other jurisdictions of certain matters

(1) This section applies if—

(a) the Board takes any of the following actions—

- (i) refuses to grant an Australian lawyer a local practising certificate; or
- (ii) suspends, cancels or refuses to renew an Australian lawyer's local practising certificate; or

(b) the lawyer successfully appeals against the action taken.

(2) The Board must, as soon as practicable, give the corresponding authorities of other jurisdictions written notice of the action taken or the result of the appeal.

(3) The notice must state—

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

(b) particulars of—

(i) the action taken and the reasons for it;
or

(ii) the result of the appeal.

- (4) The notice may contain other relevant information.
- (5) The Board may give corresponding authorities written notice of a condition imposed on an Australian lawyer's local practising certificate.

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

2.6.6 Lawyer to give notice of removal in another jurisdiction

S. 2.6.6(1)
amended by
No. 12/2007
s. 21(2).

- (1) If a local lawyer's name has been removed from an interstate roll, the lawyer must, as soon as practicable after becoming aware of the removal, give the prothonotary a written notice of the removal.

Penalty: 10 penalty units.

S. 2.6.6(2)
amended by
No. 12/2007
s. 21(2).

- (2) If a local legal practitioner's name has been removed from an interstate roll, the practitioner must, as soon as practicable after becoming aware of the removal, give the Board a written notice of the removal.

Penalty: 60 penalty units.

- (3) This section does not apply if the name has been removed from an interstate roll under a provision that corresponds to section 2.6.9.

S. 2.6.6A
inserted by
No. 12/2007
s. 22.

2.6.6A Lawyer to give notice of interstate orders

- (1) If an order is made under a corresponding law recommending that the name of a local lawyer be removed from the local roll, the lawyer must, as soon as practicable after becoming aware of the order, give the prothonotary written notice of the order.

Penalty: 10 penalty units.

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

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

Penalty: 60 penalty units.

2.6.7 Lawyer to give notice of foreign regulatory action

S. 2.6.7
substituted by
No. 12/2007
s. 23.

- (1) If foreign regulatory action has been taken in relation to a local lawyer, the lawyer must, as soon as practicable after becoming aware of the action, give the prothonotary a written notice of the action taken.

Penalty: 10 penalty units.

- (2) If foreign regulatory action has been taken in relation to a local legal practitioner, the practitioner must, as soon as practicable after becoming aware of the action, give the Board a written notice of the action taken.

Penalty: 60 penalty units.

2.6.8 Provisions relating to requirement to notify

S. 2.6.8
amended by
No. 18/2005
s. 8,
substituted by
No. 12/2007
s. 23.

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 provided to him or her in connection with that action.

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

2.6.9 Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction

- (1) This section applies if the prothonotary is satisfied that—
- (a) a local lawyer's name has been removed from an interstate roll; and
 - (b) no order referred to in section 2.6.11(1)(a) is, at the time of that removal, in force in relation to it.
- (2) The prothonotary must remove the lawyer's name from the local roll.
- (3) The prothonotary may, but need not, give the lawyer notice of the date on which the prothonotary proposes to remove the name from the local roll.
- (4) The prothonotary must, as soon as practicable, give the former local lawyer notice of the removal of the name from the local roll, unless notice of the date of the proposed removal was previously given.
- (5) The name of the former local lawyer is, on his or her application to the prothonotary or on the prothonotary's own initiative, to be restored to the local roll if the name is restored to the interstate roll.
- (6) Nothing in this section prevents the former local lawyer from afterwards applying for admission under Part 2.3.

2.6.10 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) he or she is the holder of a local practising certificate; and
 - (c) no order referred to in section 2.6.11(1)(b) is, at the time of that removal, in force in relation to it.
- (2) The Board must cancel the local practising certificate as soon as practicable after receiving official written notification of the removal.
- (3) The Board may, but need not, give the person notice of the date on which the Board proposes to cancel the local practising certificate.
- (4) The Board must, as soon as practicable, give the person notice of the cancellation, unless notice of the date of the proposed cancellation was previously given.
- (5) Nothing in this section prevents the former local lawyer from afterwards applying for a local practising certificate.

S. 2.6.10(1)(a)
substituted by
No. 12/2007
s. 24.

2.6.10A Show cause procedure for removal of lawyer's name from local roll following foreign regulatory action

- (1) This section applies if the Board is satisfied that—
- (a) foreign regulatory action has been taken in relation to a local lawyer, whether before or after the commencement of this section; and
 - (b) no order referred to in section 2.6.11(1)(a) is in force in relation to the action taken.

S. 2.6.10A
inserted by
No. 12/2007
s. 25.

s. 2.6.10B

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

S. 2.6.10B
inserted by
No. 12/2007
s. 25.

2.6.10B Show cause procedure for cancellation of local practising certificate following foreign regulatory action

- (1) This section applies if the Board is satisfied that—
 - (a) foreign regulatory action has been taken in relation to a local legal practitioner, whether before or after the commencement of this section; and
 - (b) no order referred to in section 2.6.11(1)(b) is in force in relation to the action taken.

- (2) The Board may serve on the practitioner a notice stating that the Board proposes to cancel his or her local practising certificate unless the practitioner shows cause to the Board why his or her practising certificate should not be cancelled.
- (3) The Board must afford the practitioner a reasonable opportunity to show cause why his or her practising certificate should not be cancelled.
- (4) If the practitioner does not satisfy the Board that the practising certificate should not be cancelled, the Board may cancel the certificate.
- (5) The Board must, as soon as practicable, give the practitioner an information notice about its decision to cancel the practising certificate.
- (6) The practitioner may apply to the Tribunal for review of a decision of the Board to cancel the practising certificate.
- (7) An application for review must be made within 28 days after the day on which the information notice about the decision was given to the practitioner.

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

- (1) If an Australian lawyer reasonably expects that his or her name will be removed from an interstate roll or that foreign regulatory action will be taken against the lawyer, the lawyer may apply to the Supreme Court for either or both of the following—
 - (a) an order that his or her name not be removed from the local roll under section 2.6.9 or 2.6.10A;

S. 2.6.11(1)
substituted by
No. 12/2007
s. 26(1).

s. 2.6.11

(b) an order that his or her local practising certificate not be cancelled under section 2.6.10 or 2.6.10B.

S. 2.6.11(2)
substituted by
No. 12/2007
s. 26(1).

(2) The Supreme Court may make the order or orders applied for if satisfied that—

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

(b) the reason for the removal of the name or the taking of the foreign regulatory action will not involve disciplinary action or the possibility of disciplinary action—

or may refuse to make an order.

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

S. 2.6.11(4)
substituted by
No. 12/2007
s. 26(2).

(4) The Supreme Court may revoke an order made under this section, and sections 2.6.9, 2.6.10, 2.6.10A and 2.6.10B (as relevant) then apply as if the lawyer's name were removed from the interstate roll or the foreign regulatory action were taken when the revocation takes effect.

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

S. 2.6.12
repealed by
No. 12/2007
s. 26(3).

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**2.6.13 Local authority may give information to other local
authorities**

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

**PART 2.7—INCORPORATED LEGAL PRACTICES AND
MULTI-DISCIPLINARY PARTNERSHIPS**

Division 1—Preliminary

2.7.1 Purposes

The purposes of this Part are—

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

2.7.2 Definitions

In this Part—

corporation means—

- (a) a company within the meaning of the Corporations Act; or
- (b) any other body corporate, or body corporate of a kind, prescribed by the regulations;

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 any other body corporate, or body corporate of a kind, prescribed by the regulations—a person specified or described in the regulations;

* * * * *

S. 2.7.2 def. of *disqualified person* repealed by No. 12/2007 s. 27(1).

legal practitioner director means a director of an incorporated legal practice who is an Australian legal practitioner holding a practising certificate 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 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 body corporate of a kind, prescribed by the regulations—a person specified or described in the regulations;

professional obligations of an Australian legal practitioner include—

- (a) duties to the Supreme Court; and
- (b) obligations in connection with conflicts of interest; and
- (c) duties to clients, including disclosure; and
- (d) ethical rules required to be observed by the practitioner;

related body corporate means—

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

2.7.3 Part does not apply to community legal centres

Nothing in this Part applies to a corporation that is a community legal centre.

Division 2—Incorporated legal practices

2.7.4 Nature of incorporated legal practice

- (1) An incorporated legal practice is a corporation that engages in legal practice in this jurisdiction, whether or not it also provides services that are not legal services.
- (2) However, a corporation is not an incorporated legal practice if—
 - (a) the only legal services that the corporation provides are any or all of the following services—
 - (i) in-house legal services, namely, legal services provided to the corporation concerning a proceeding or transaction to which the corporation (or a related body corporate) is a party;

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- (ii) services that are not legally required to be provided by an Australian legal practitioner and that are provided by an officer or an employee who is not an Australian legal practitioner; or
 - (b) this Part or the regulations so provide.
 - (3) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act to corporations that are not incorporated legal practices because of the operation of subsection (2).
 - (4) Nothing in this Part affects or applies to the provision by an incorporated legal practice of legal services in one or more other jurisdictions.

2.7.5 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) must not conduct a managed investment scheme.
- (3) The regulations may prohibit an incorporated legal practice (or a related body corporate) from providing a service or conducting a business of a kind specified by the regulations.

Note

Contravention of this section or these regulations is a ground for banning an incorporated legal practice.

2.7.6 Corporations eligible to be incorporated legal practice

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

2.7.7 Notice of intention to start providing legal services

- (1) Before a corporation starts to engage in legal practice in this jurisdiction, the corporation must give the Board written notice, in the form approved by the Board, of its intention to do so.
- (2) A corporation must not engage in legal practice in this jurisdiction if it is in default of this section.
Penalty: 60 penalty units.
- (3) A corporation that starts to engage in legal practice in this jurisdiction without giving notice under subsection (1) is in default of this section until it gives the Board written notice, in the form approved by the Board, of its failure to comply with that subsection and the fact that it has started to engage in legal practice.
- (4) The giving of a notice under subsection (3) does not affect a corporation's liability under subsection (1) or (2).
- (5) This section does not apply to a corporation referred to in section 2.7.4(2)(a).

S. 2.7.7(5)
inserted by
No. 12/2007
s. 27(2).

2.7.8 Prohibition on representations that corporation is incorporated legal practice

- (1) A corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under section 2.7.7.

Penalty: 60 penalty units.

- (2) A director, officer, employee or agent of a corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under section 2.7.7.

Penalty: 60 penalty units.

- (3) A reference in this section to a person, being—
- (a) a corporation—representing or advertising that the corporation is an incorporated legal practice; or
 - (b) a director, officer, employee or agent of a corporation—representing or advertising that the corporation is an incorporated legal practice—

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

2.7.9 Notice of termination of provision of legal services

- (1) A corporation must, within the prescribed period after it ceases to engage in legal practice in this jurisdiction as an incorporated legal practice, give the Board a written notice, in the form approved by the Board, of that fact.

Penalty: 10 penalty units.

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- (2) The regulations may make provision for or with respect to determining whether and when a corporation ceases to engage in legal practice in this jurisdiction.

2.7.10 Incorporated legal practice must have legal practitioner director

- (1) An incorporated legal practice is required to have at least one legal practitioner director.
- (2) Each legal practitioner director of an incorporated legal practice is, for the purposes of this Act only, responsible for the management of the legal services provided in this jurisdiction by the incorporated legal practice.
- (3) Each legal practitioner director of an incorporated legal practice must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the incorporated legal practice—
- (a) in accordance with the professional obligations of Australian legal practitioners and other obligations imposed by or under this Act, the regulations or the legal profession rules; and
 - (b) so that those obligations of Australian legal practitioners who are officers or employees of the practice are not affected by other officers or employees of the practice.
- (4) If it ought reasonably to be apparent to a legal practitioner director of an incorporated legal practice that the provision of legal services by the practice will result in breaches of the professional obligations of Australian legal practitioners or other obligations imposed by or under this Act, the regulations or the legal profession rules, the director must take all reasonable action available to the director to ensure that—

- (a) the breaches do not occur; and
- (b) appropriate remedial action is taken in respect of breaches that do occur.

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S. 2.7.10(5)
repealed by
No. 18/2005
s. 8.

- (6) Nothing in this Part derogates from the obligations or liabilities of a director of an incorporated legal practice under any other law.
- (7) 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.

S. 2.7.10(6)
amended by
No. 12/2007
s. 27(3).

2.7.11 Obligations of legal practitioner director relating to misconduct

- (1) Each of the following is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director—
 - (a) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner employed by the incorporated legal practice;
 - (b) conduct of any other director (not being an Australian legal practitioner) of the incorporated legal practice that adversely affects the provision of legal services by the practice;

s. 2.7.11

(c) the unsuitability of any other director (not being an Australian legal practitioner) of the incorporated legal practice to be a director of a corporation that provides legal services.

S. 2.7.11(1A)
inserted by
No. 12/2007
s. 27(4).

- (1A) 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 that—
- (a) Australian legal practitioners employed by the incorporated legal practice did not engage in conduct or misconduct referred to in subsection (1)(a); or
 - (b) directors (not being Australian legal practitioners) of the incorporated legal practice did not engage in conduct referred to in subsection (1)(b); or
 - (c) unsuitable directors (not being Australian legal practitioners) of the incorporated legal practice were not appointed or holding office as referred to in subsection (1)(c)—

as the case requires.

- (2) 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.

S. 2.7.11(3)
repealed by
No. 18/2005
s. 8.

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2.7.12 Incorporated legal practice without legal practitioner director

- (1) An incorporated legal practice contravenes this subsection if it does not have any legal practitioner directors for a period exceeding 7 days.

Penalty: 60 penalty units.

- (2) If an incorporated legal practice ceases to have any legal practitioner directors, the incorporated legal practice must notify the Board as soon as possible.

Penalty: 60 penalty units.

- (3) An incorporated legal practice must not provide legal services in this jurisdiction during any period it is in default of director requirements under this section.

Penalty: 240 penalty units.

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

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

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

- (5) The Board may, if it thinks it appropriate, appoint an Australian legal practitioner who is an employee of the incorporated legal practice or another Australian legal practitioner nominated by the Board, in the absence of a legal practitioner director, to perform the functions or duties conferred or imposed on a legal practitioner director under this Part.

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

2.7.13 Obligations and privileges of practitioners who are officers or employees

- (1) An Australian legal practitioner who provides legal services on behalf of an incorporated legal practice in the capacity of an officer or employee of the practice—
 - (a) is not excused from compliance with professional obligations as an Australian legal practitioner, or any obligations as an Australian legal practitioner under any law; and
 - (b) does not lose the professional privileges of an Australian legal practitioner.

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- (2) For the purposes only of subsection (1), the professional obligations and professional privileges of an Australian legal practitioner apply as if—
- (a) where there are 2 or more legal practitioner directors of an incorporated legal practice—the practice were a partnership of the legal practitioner directors and the employees of the practice were employees of the legal practitioner directors; or
 - (b) where there is only one legal practitioner director of an incorporated legal practice—the practice were a sole practitioner and the employees of the practice were employees of the legal practitioner director.
- (3) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of an officer or employee of an incorporated legal practice.
- (4) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by an Australian legal practitioner employed by the practice.

2.7.14 Conflicts of interest

- (1) For the purposes of the application of any law (including the common law) or 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 with respect to additional duties and obligations in connection with conflicts of interest arising out of the conduct of an incorporated legal practice.

2.7.15 Disclosure obligations

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

Penalty: 60 penalty units.

- (3) The disclosure must be made by giving the person a notice in writing—
 - (a) setting out the services to be provided; and
 - (b) stating whether or not all the legal services to be provided will be provided by an Australian legal practitioner; and

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

2.7.16 Effect of non-disclosure of provision of certain services

- (1) This section applies if—
- (a) section 2.7.15 applies in relation to a service that is provided to a person who has engaged an incorporated legal practice to provide the service and that the person might reasonably assume to be a legal service; and

(b) a disclosure has not been made under that section in relation to the service.

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

2.7.17 Application of legal profession rules

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

2.7.18 Requirements relating to advertising

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

S. 2.7.18(2)
amended by
No. 12/2007
s. 27(5)(a).

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

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

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

s. 2.7.20

2.7.20 Sharing of receipts, revenue or other income

S. 2.7.20
(Heading)
amended by
No. 12/2007
s. 27(5)(b).

(1) Nothing in this Act, the regulations or the legal profession rules 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.

S. 2.7.20(1)
amended by
No. 12/2007
s. 27(5)(b).

(2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 2.7.21 or any legal profession rules made under section 3.2.6(d).

S. 2.7.20(2)
amended by
No. 12/2007
s. 27(5)(b).

2.7.21 Disqualified persons

(1) An incorporated legal practice is guilty of an offence if a person who is a disqualified person—

(a) is an officer or employee of the incorporated legal practice (whether or not the person provides legal services) or is an officer or employee of a related body corporate; or

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

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

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

S. 2.7.21(1)(c)
amended by
No. 12/2007
s. 27(5)(c).

Penalty: 120 penalty units.

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

2.7.22 Audit of incorporated legal practice

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

Note

Section 2.7.10(3) requires legal practitioner directors to ensure that appropriate management systems are implemented and maintained.

- (1A) The Board may, in writing, appoint a suitably qualified person to conduct an audit under this section. S. 2.7.22(1A)
inserted by
No. 12/2007
s. 27(6).
- (1B) The appointment may be made generally, or in relation to a particular incorporated legal practice, or in relation to a particular audit. S. 2.7.22(1B)
inserted by
No. 12/2007
s. 27(6).
- (2) An audit may be conducted whether or not a complaint has been made against an Australian lawyer with respect to the provision of legal services by the incorporated legal practice.

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- (3) A report of an audit—
- (a) is to be provided to the incorporated legal practice concerned; and
 - (b) may be provided by the Board to a corresponding authority; and
 - (c) may be taken into account in connection with any disciplinary proceedings taken against legal practitioner directors or other persons or in connection with the grant, amendment, suspension or cancellation of Australian practising certificates.

2.7.23 Investigative powers relating to audits and other matters

- (1) The Board may require an incorporated legal practice subject to an audit under section 2.7.22, or an associate or former associate of the practice, to provide—
 - (a) a full written explanation of the practice's, associate's or former associate's conduct; and
 - (b) any other information or documents—and to verify the explanation, information or documents by statutory declaration or another manner specified by the Board.
- (2) For the purpose of an audit under section 2.7.22, the Board may require any other person (including, for example, an ADI, auditor or liquidator) having control of documents relating to the affairs of the practice to give the Board—
 - (a) access to the documents relating to the practice's affairs that the Board reasonably requires; and

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- (b) information relating to the practice's affairs that the Board reasonably requires (verified by statutory declaration or in another manner if the requirement so states).
- (3) A requirement under subsection (1) or (2) must be in writing and must allow the incorporated legal practice, law practice or associate at least 14 days to comply.
- (4) A person who is subject to a requirement under subsection (1) or (2) must comply with the requirement.
- Penalty: 60 penalty units.
- (5) A person may not refuse to comply with subsection (1) or (2)—
- (a) on the ground of any duty of confidence, including any duty of confidence owed by a law practice or legal practitioner to a client; or
- (b) on the ground that the production of the record or giving of the information may tend to incriminate the incorporated legal practice, law practice or associate.
- (6) If an incorporated legal practice, law practice or associate, before producing a document or giving an explanation or information, objects to the Board on the ground that the production of the document or giving of the explanation or information may tend to incriminate the incorporated legal practice, law practice or associate, the document, explanation or information is inadmissible in evidence in any proceeding against them for an offence, other than—

- (a) an offence against this Act; or
 - (b) an offence against section 314(1) of the **Crimes Act 1958** (perjury).
- (7) The Board may make and retain a copy of any information or document provided to it under this section.

2.7.24 Banning of incorporated legal practices

- (1) The Supreme Court may, on the application of the Board, make an order disqualifying a corporation from providing legal services in this jurisdiction for the period the Court considers appropriate if satisfied that—
- (a) a ground for disqualifying the corporation under this section has been established; and
 - (b) the disqualification is justified.
- (2) An order under this section may, if the Supreme Court thinks it appropriate, be made—
- (a) subject to conditions as to the conduct of the incorporated legal practice; or
 - (b) subject to conditions as to when or in what circumstances the order is to take effect; or
 - (c) together with orders to safeguard the interests of clients or employees of the incorporated legal practice.
- (3) Action may be taken against an incorporated legal practice on any of the following grounds—
- (a) that a legal practitioner director or an Australian legal practitioner who is an officer or employee of the corporation is found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction;

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- (b) that the Board is satisfied, after conducting an audit of the incorporated legal practice, that the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services;
 - (c) that the incorporated legal practice (or a related body corporate) has contravened section 2.7.5 or the regulations made under that section;
 - (d) that the incorporated legal practice has contravened section 2.7.21;
 - (e) that a person is acting in the management of the incorporated legal practice who is the subject of an order under—
 - (i) section 2.7.25 or under provisions of a corresponding law that correspond to that section; or
 - (ii) section 2.7.50 or under provisions of a corresponding law that correspond to that section.
- (4) If a corporation is disqualified under this section, the Board must, as soon as practicable, notify the corresponding authority of every other jurisdiction.
- (5) If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the Board may determine that the corporation is taken to be disqualified from providing legal services in this jurisdiction for the same period, but nothing in this subsection prevents the Board from instead applying for an order under this section.

- (6) A corporation that provides legal services in contravention of a disqualification under this section is guilty of an offence.

Penalty: 240 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 constituting unsatisfactory professional conduct or professional misconduct if the practitioner ought reasonably to have known that the corporation is disqualified under this section.
- (9) The regulations may make provision for or with respect to the publication and notification of orders made under this section, including notification of corresponding authorities of other jurisdictions.

2.7.25 Disqualification from managing incorporated legal practice

- (1) The Supreme Court may, on the application of the Board, make an order disqualifying a person from managing a corporation that is an incorporated legal practice for the period the Court considers appropriate if satisfied that—
- (a) the person is a person who could be disqualified under section 206C, 206D, 206E or 206F of the Corporations Act from managing corporations; and
 - (b) the disqualification is justified.
- (2) The Supreme Court may, on the application of a person subject to a disqualification order under this section, revoke the order.

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- (3) A disqualification order made under this section has effect for the purposes only of this Act and does not affect the application or operation of the Corporations Act.
 - (4) The regulations may make provision for or with respect to the publication and notification of orders made under this section.
 - (5) A person who is disqualified from managing a corporation under provisions of a corresponding law that correspond to this section is taken to be disqualified from managing a corporation under this section.

2.7.26 Disclosure of information to Australian Securities and Investments Commission

- (1) This section applies if the Board, in connection with performing functions under this Act, acquired information concerning a corporation that is or was an incorporated legal practice.
- (2) The Board 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.

2.7.27 External administration proceedings under Corporations Act

- (1) This section applies to proceedings in any court under Chapter 5 (External administration) of the Corporations Act—
 - (a) relating to a corporation that is an externally-administered body corporate under that Act and that is or was an incorporated legal practice; or

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

Note

Section 5G of the Corporations Act 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.

2.7.28 External administration proceedings under other legislation

- (1) This section applies to proceedings for the external administration (however expressed) of an incorporated legal practice, but does not apply to proceedings to which section 2.7.27 applies.

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

2.7.29 Incorporated legal practice that is subject to receivership under this Act and external administration under the 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 where proceedings referred to in section 2.7.27 have been commenced.

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- (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 in accordance with the orders.
- (5) The Board is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) The provisions of subsections (3) and (4) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.
- (7) In this section—
- Chapter 5 receiver** means a receiver appointed under Chapter 5;
- 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, or of a class prescribed, by the regulations for the purposes of this definition.

2.7.30 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 in accordance with the orders.
- (5) The Board is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) In this section—

Chapter 5 receiver means a receiver appointed under Chapter 5;

external administrator means a person who is appointed to exercise powers under other legislation (whether or not of this

jurisdiction) and who is prescribed, or of a class prescribed, by the regulations for the purposes of this definition.

2.7.31 Co-operation between courts

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

2.7.32 Relationship of Act to constitution of incorporated legal practice

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

2.7.33 Relationship of Act to legislation establishing incorporated legal practice

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

2.7.34 Relationship of Act to Corporations legislation

- (1) The regulations may declare any provision of this Act or the regulations that relates to an incorporated legal practice to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

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

2.7.35 Undue influence

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

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

to contravene this Act, the regulations, the legal profession rules or his or her professional obligations as an Australian legal practitioner.

Penalty: 240 penalty units.

S. 2.7.35
amended by
No. 12/2007
s. 27(7)(a).

Division 3—Multi-disciplinary partnerships

2.7.36 Nature of multi-disciplinary partnership

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

2.7.37 Conduct of multi-disciplinary partnerships

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

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

S. 2.7.38
amended by
No. 12/2007
s. 27(7)(b).

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

Penalty: 10 penalty units.

2.7.39 General obligations of legal practitioner partners

- (1) Each legal practitioner partner of a multi-disciplinary partnership is, for the purposes only of this Act, responsible for the management of the legal services provided in this jurisdiction by the partnership.
- (2) Each legal practitioner partner must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the multi-disciplinary partnership—
 - (a) in accordance with the professional obligations of Australian legal practitioners and the other obligations imposed by this Act, the regulations and the legal profession rules; and
 - (b) so that the professional obligations of legal practitioner partners and employees who are Australian legal practitioners are not affected by other partners and employees of the partnership.

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S. 2.7.39(3)
repealed by
No. 18/2005
s. 8.

2.7.40 Obligations of legal practitioner partner relating to misconduct

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

S. 2.7.40(3)
repealed by
No. 18/2005
s. 8.

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2.7.41 Actions of partner who is not an Australian legal practitioner

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

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

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

2.7.42 Obligations and privileges of practitioners who are partners or employees

- (1) An Australian legal practitioner who provides legal services in the capacity of a partner or an employee of a multi-disciplinary partnership—
 - (a) is not excused from compliance with professional obligations as an Australian legal practitioner, or any other obligations as an Australian legal practitioner under any law; and

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

- (2) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of a partner or an employee of a multi-disciplinary partnership.

2.7.43 Conflicts of interest

- (1) For the purposes of the application of any law (including the common law) or 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 those of the practitioner concerned (in addition to any interests that the practitioner has apart from this subsection).

- (2) Legal profession rules may be made for or with respect to additional duties and obligations in connection with conflicts of interest arising out of the conduct of a multi-disciplinary partnership.

Note

Under section 2.7.42, an Australian legal practitioner who is a partner or employee of a multi-disciplinary partnership must comply with the same professional obligations as other practitioners.

2.7.44 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, complying with the requirements of this section, and the regulations made for the purposes of this section, is made to the person in connection with the provision of the services.

Penalty: 60 penalty units.

- (3) The disclosure must be made by giving the person a notice in writing—
 - (a) setting out the services to be provided; and
 - (b) stating whether or not all the legal services to be provided will be provided by an Australian legal practitioner; and
 - (c) if some or all of the legal services 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 services; and
 - (d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.

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

2.7.45 Effect of non-disclosure of provision of certain services

- (1) This section applies if—
- (a) section 2.7.44 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 respect of the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

2.7.46 Application of legal profession rules

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

2.7.47 Requirements relating to advertising

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

s. 2.7.48

2.7.48
(Heading)
amended by
No. 12/2007
s. 27(7)(c).

2.7.48 Sharing of receipts, revenue or other income

2.7.48(1)
amended by
No. 12/2007
s. 27(7)(c).

(1) Nothing in this Act, the regulations or the legal profession rules prevents a legal practitioner partner, or an Australian legal practitioner who is an employee of a multi-disciplinary partnership, from sharing receipts, revenue or other income arising from the provision of legal services by the partner or practitioner with a partner or partners who are not Australian legal practitioners.

2.7.48(2)
amended by
No. 12/2007
s. 27(7)(c).

(2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 2.7.49 or any legal profession rules referred to in section 3.2.6(d).

2.7.49 Disqualified persons

2.7.49(1)(b)
amended by
No. 12/2007
s. 27(7)(d).

- (1) 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.

S. 2.7.49(2)
repealed by
No. 18/2005
s. 8.

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2.7.50 Prohibition on partnerships with certain partners who are not Australian legal practitioners

- (1) This section applies to a person who—
 - (a) is not an Australian legal practitioner; and
 - (b) is or was a partner of an Australian legal practitioner.
- (2) On application by the Board, the Supreme Court may make an order prohibiting any Australian legal practitioner from being a partner, in a business that includes the provision of legal services, of a specified person to whom this section applies if—
 - (a) the Court is satisfied that the person is not a fit and proper person to be a partner; or
 - (b) the Court is satisfied that the person has been guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct; or
 - (c) in the case of a corporation, if the Court is satisfied that the corporation has been disqualified from providing legal services in this jurisdiction or there are grounds for disqualifying the corporation from providing legal services in this jurisdiction.
- (3) An order made under this section may be revoked by the Supreme Court on application by the Board or by the person against whom the order was made.
- (4) The death of an Australian legal practitioner does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the practitioner.

- (5) The regulations may make provision for or with respect to the publication and notification of orders made under this section.

2.7.51 Undue influence

S. 2.7.51
amended by
No. 12/2007
s. 27(7)(e).

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

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

to contravene this Act, the regulations, the legal profession rules or his or her professional obligations as an Australian legal practitioner.

Penalty: 240 penalty units.

Division 4—Miscellaneous

2.7.52 Obligations of individual practitioners not affected

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

- (a) a legal practitioner director or an Australian legal practitioner who is an employee of an incorporated legal practice; or
- (b) a legal practitioner partner or an Australian legal practitioner who is an employee of a multi-disciplinary partnership—

under this or any other Act, the regulations or the legal profession rules in his or her capacity as an Australian legal practitioner.

2.7.53 Regulations

- (1) The regulations may make provision for or with respect to the following matters—
 - (a) the legal services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships;
 - (b) other services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships in circumstances 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 contravention of the regulations is capable of constituting unsatisfactory professional conduct or professional misconduct—
 - (a) in the case of an incorporated legal practice—by a legal practitioner director, or by an Australian legal practitioner responsible for the contravention, or both; or
 - (b) in the case of a multi-disciplinary partnership—by a legal practitioner partner, or by an Australian legal practitioner responsible for the contravention, or both.
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PART 2.8—LEGAL PRACTICE BY FOREIGN LAWYERS

Division 1—Preliminary

2.8.1 Purpose

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

2.8.2 Definitions

In this Part—

Australia includes the external Territories;

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

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S. 2.8.2 def. of *commercial legal presence* repealed by No. 12/2007 s. 28(1).

foreign law means law of a foreign country;

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

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

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

S. 2.8.2 def. of *local registration certificate* amended by No. 18/2005 s. 9(1).

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

practise foreign law means 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 by or under legislation for engaging in legal practice in that country.

Note

The terms *Australian-registered foreign lawyer*, *foreign country*, *interstate-registered foreign lawyer* and *locally registered foreign lawyer* are defined in section 1.2.1.

2.8.3 This Part does not apply to Australian legal practitioners

- (1) This Part does not apply to 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 Part in order to practise foreign law in this jurisdiction.

Division 2—Practice of foreign law

2.8.4 Requirement for registration

(1) A person must not practise foreign law in this jurisdiction unless the person is—

- (a) an Australian-registered foreign lawyer; or
- (b) an Australian legal practitioner.

Penalty: 240 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 one or more periods that do not in aggregate exceed 90 days in any period of 12 months; or
 - (ii) is subject to a restriction imposed under the Migration Act 1958 of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person; and
- (b) who—
 - (i) does not maintain an office for the purpose of practising foreign law in this jurisdiction; or
 - (ii) does not become a partner or director of a law practice.

S. 2.8.4(2)
substituted by
No. 12/2007
s. 28(2).

2.8.5 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.

2.8.6 Scope of practice

- (1) An Australian-registered foreign lawyer may provide only the following legal services in this jurisdiction—
 - (a) doing work, or transacting business, concerning the law of a foreign country where the lawyer is registered by the foreign registration authority for the country;
 - (b) legal services (including appearances) in relation to arbitration proceedings of a kind prescribed under the regulations;
 - (c) legal services (including appearances) in relation to proceedings before bodies other than courts, being proceedings in which the body concerned is not required to apply the rules of evidence and in which knowledge of the foreign law of a country referred to in paragraph (a) is essential;
 - (d) legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed under the regulations.
- (2) Nothing in this Act authorises an Australian-registered foreign lawyer to appear in any court (except on the lawyer's own behalf) or to practise Australian law in this jurisdiction.
- (3) Despite subsection (2), an Australian-registered foreign lawyer may advise on the effect of an Australian law if—

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- (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.

2.8.7 Form of practice

- (1) An Australian-registered foreign lawyer may (subject to any conditions attaching to the foreign lawyer's registration) practise foreign law—
 - (a) on the foreign lawyer's own account; or
 - (b) in partnership with one or more Australian-registered foreign lawyers or one or more Australian legal practitioners, or both, in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under a law of this jurisdiction; or
 - (c) as a director or employee of an incorporated legal practice or a partner or employee of a multi-disciplinary partnership that is permitted by a law of this jurisdiction; or
 - (d) as an employee of an Australian legal practitioner or law firm in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the employment would be permitted under a law of this jurisdiction; or
 - (e) as an employee of an Australian-registered foreign lawyer.
- (2) An affiliation referred to in subsection (1)(b) to (e) does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

2.8.8 Application of Australian professional ethical and practice standards

- (1) An Australian-registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by an Australian legal practitioner in practising Australian law in this jurisdiction, be capable of constituting professional misconduct or unsatisfactory professional conduct.
- (2) 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 occurred, 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 that Part to an Australian legal practitioner were references to a person of that kind.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of Chapter 4 for the purposes of this section.
- (4) Without limiting the matters that may be taken into account in determining 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;

S. 2.8.8(1)
amended by
No. 12/2007
s. 28(3)(a).

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- (b) whether the person contravened the subsection wilfully or without reasonable excuse.
- (5) Without limiting any other provision of this section or the orders that may be made under Chapter 4 as applied by this section, the following orders may be made under that Part as applied by this section—
- (a) an order that a person's registration under this Act as a foreign lawyer be cancelled;
 - (b) an order that a person's registration under a corresponding law as a foreign lawyer be cancelled.

2.8.9 Designation

- (1) An Australian-registered foreign lawyer may use only the following designations—
- (a) the lawyer's own name;
 - (b) a title or business name the lawyer is authorised by law to use in a foreign country where the lawyer is registered by a foreign registration authority;
 - (c) subject to this section, the name of a foreign law practice with which the lawyer is affiliated or associated (whether as a partner, director, employee or otherwise);
 - (d) if the lawyer is a principal of any law practice in Australia whose principals include both one or more Australian-registered foreign lawyers and one or more Australian legal practitioners—a description of the practice that includes reference to both Australian legal practitioners and Australian-registered foreign lawyers (for example, "Solicitors and locally registered foreign

lawyers" or "Australian solicitors and US attorneys").

- (2) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the practice's name in or in connection with practising foreign law in this jurisdiction only if—
 - (a) the lawyer indicates, on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as an overseas-registered foreign lawyer, that the foreign law practice practises only foreign law in this jurisdiction; and
 - (b) the lawyer has provided the Board with acceptable evidence that the lawyer is a principal of the foreign law practice.
- (3) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the name of the practice as referred to 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.

2.8.10 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.

s. 2.8.11

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- (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 or with which the lawyer is affiliated or associated, in any of the ways designated in section 2.8.9.
- (4) In this section—
- public document* includes any business letter, statement of account, invoice, business card, and promotional and advertising material.

2.8.11 Advertising

S. 2.8.11(1)
amended by
No. 12/2007
s. 28(3)(b).

- (1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the Board or by law on the legal practice engaged in by an Australian legal practitioner that are relevant to the practice of law in this jurisdiction.
- (2) Without limiting subsection (1), an Australian-registered foreign lawyer must not advertise (or use any description on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as a lawyer) in any way that—

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- (a) might reasonably be regarded as—
 - (i) false, misleading or deceptive; or
 - (ii) suggesting that the Australian-registered foreign lawyer is an Australian legal practitioner; or
 - (b) contravenes any requirements of the regulations.

2.8.12 Foreign lawyer employing Australian legal practitioner

- (1) An Australian-registered foreign lawyer may employ one or more Australian legal practitioners.
- (2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign lawyer to practise Australian law in this jurisdiction.
- (3) An Australian legal practitioner employed by an Australian-registered foreign lawyer may practise foreign law.
- (4) An Australian legal practitioner employed by an Australian-registered foreign lawyer must not—
 - (a) provide advice on Australian law to, or for use by, the Australian-registered foreign lawyer; or
 - (b) otherwise practise Australian law in this jurisdiction in the course of that employment.
- (5) Subsection (4) does not apply to an Australian legal practitioner employed by a law firm a partner of which is an Australian-registered foreign lawyer, if at least one other partner is an Australian legal practitioner.

s. 2.8.13

- (6) Any period of employment of an Australian legal practitioner by an Australian-registered foreign lawyer cannot be used to satisfy a requirement imposed by a condition on a local practising certificate to complete a period of supervised legal practice.

2.8.13 Trust money and trust accounts

S. 2.8.13(1)
amended by
No. 12/2007
s. 28(3)(c)(i).

- (1) The provisions of Part 3.3, and any other provisions of this Act or any legal profession rule relating to requirements for trust money and trust accounts, apply (subject to this section) to Australian-registered foreign lawyers in the same way as they apply to law practices and Australian legal practitioners.

- (2) In this section, a reference to money is not limited to a reference to money in this jurisdiction.

S. 2.8.13(3)
amended by
No. 12/2007
s. 28(3)(c)(ii).

- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts for the purposes of this section.

S. 2.8.14
amended by
No. 18/2005
s. 9(2) (ILA
s. 39B(1)).

2.8.14 Fidelity cover

- (1) The regulations may provide that provisions of Part 3.6 apply to prescribed classes of Australian-registered foreign lawyers and so apply with any modifications specified in the regulations.

- (2) The regulations may also provide for the Board to determine from time to time—

(a) classes of Australian-registered foreign lawyers required to contribute to the Fidelity Fund;

(b) the contributions payable by members of those classes and the time and manner of payment of contributions;

S. 2.8.14(2)
inserted by
No. 18/2005
s. 9(2).

- (c) levies payable by members of those classes and the time and manner of payment of levies.
- (3) If the Board determines a contribution or levy payable by members of a class of Australian-registered foreign lawyers in accordance with regulations made under subsection (2), sections 6.7.32, 6.7.33(2), 6.7.34 and 6.7.35 apply as if the members of the class were members of a contributor class and as if the contribution or levy were imposed under Division 3 of Part 6.7.

S. 2.8.14(3)
inserted by
No. 18/2005
s. 9(2).

Division 3—Local registration of foreign lawyers generally

2.8.15 Local registration of foreign lawyers

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

2.8.16 Duration of registration

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

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

2.8.17 Locally registered foreign lawyer is not officer of Supreme Court

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

Division 4—Application for grant or renewal of local registration

2.8.18 Application for grant or renewal of registration

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

2.8.19 Manner of application

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

S. 2.8.19(4)
amended by
No. 18/2005
s. 9(3)(a)(i).

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

S. 2.8.19(6)(a)
amended by
No. 18/2005
s. 9(3)(a)(ii).

2.8.20 Requirements regarding applications for grant or renewal of registration

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

s. 2.8.20

disciplinary proceedings) 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 found guilty of an offence in Australia or a foreign country, and if so—
- (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the applicant's age when the offence was committed; and
- (e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country; and
- (f) state—
- (i) that the applicant is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to engage in legal practice in any place; and
 - (ii) whether or not the applicant is subject to any special conditions in engaging in legal practice in any place—
- as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country; and

S. 2.8.20(2)(d)
substituted by
No. 12/2007
s. 28(4)(a).

S. 2.8.20(2)(f)
substituted by
No. 12/2007
s. 28(4)(b).

- (g) specify 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 the Board considers appropriate regarding the applicant's activities in engaging in legal practice in the places concerned or otherwise regarding matters relevant to the application; and
 - (i) provide the information or be accompanied by the other information or documents (or both) that is specified in the application form or in material accompanying the application form as provided by the Board.
- (3) The application must (if the Board so requires) be accompanied by an original instrument, or a copy of an original instrument, from each foreign registration authority specified in the application that—
- (a) verifies the applicant's educational and professional qualifications; and
 - (b) verifies the applicant's registration by the authority to engage in legal practice in the foreign country concerned, and the date of registration; and
 - (c) describes anything done by the applicant in engaging in legal practice in that foreign country of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place.

S. 2.8.20(2)(g)
amended by
No. 12/2007
s. 28(4)(c).

s. 2.8.21

- (4) The applicant must (if the Board so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.
- (5) The Board may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the Board.
- (6) If the accompanying instrument is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the Board.

Division 5—Grant or renewal of registration

2.8.21 Grant or renewal of registration

- (1) The Board must consider an application that has been made for the grant or renewal of registration as a foreign lawyer and may—
 - (a) grant or refuse to grant the registration; or
 - (b) renew or refuse to renew the registration.

S. 2.8.21(2)
substituted by
No. 12/2007
s. 28(5).

- (2) The Board may, when granting or renewing registration, impose conditions as referred to in section 2.8.40.

S. 2.8.21(2A)
inserted by
No. 12/2007
s. 28(5).

- (2A) If the Board grants or renews registration, the Board must, as soon as practicable, give the applicant a registration certificate or a notice of renewal.

S. 2.8.21(2B)
inserted by
No. 12/2007
s. 28(5).

- (2B) If the Board—
 - (a) refuses to grant or renew registration; or
 - (b) imposes a condition on the registration and the applicant does not agree to the condition—

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

- (3) A notice of renewal may be in the form of a new registration certificate or any other form the Board considers appropriate.

2.8.22 Requirement to grant or renew registration if criteria satisfied

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

S. 2.8.22(1)(b)
amended by
No. 12/2007
s. 28(6)(a).

S. 2.8.22(1)(c)(i)
amended by
No. 12/2007
s. 28(6)(b)(i).

S. 2.8.22(1)(c)(ii)
amended by
No. 12/2007
s. 28(6)(b)(ii).

S. 2.8.22(1)(d)
substituted by
No. 12/2007
s. 28(6)(c).

unless the Board refuses the application under this Part.

- (2) The Board must grant an application for renewal of a person's registration, unless the Board refuses 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.

2.8.23 Refusal to grant or renew registration

- (1) The Board may refuse to consider an application if it is not made in accordance with this Act or the regulations.
- (2) The Board may refuse to grant or renew registration if—
- (a) the application is not accompanied by, or does not contain, the information required by this Part or prescribed by the regulations; or
 - (b) the applicant has contravened this Act or a corresponding law; or
 - (c) the applicant has contravened an order of the Tribunal 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 of or made under this Act about professional indemnity insurance; or
 - (g) the applicant has failed to pay any expenses of receivership payable under this Act; or
 - (h) the applicant's foreign legal practice is in receivership (however described).

S. 2.8.23(2)(g)
amended by
No. 12/2007
s. 28(7)(a).

S. 2.8.23(2)(h)
inserted by
No. 12/2007
s. 28(7)(b).

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- (3) The Board may refuse to grant or renew registration if an authority of another jurisdiction has under a corresponding law—
- (a) refused to grant or renew registration for the applicant; or
 - (b) suspended or cancelled the applicant's registration.
- (4) The Board may refuse to grant registration if the Board is satisfied that the applicant is not a fit and proper person to be registered after considering—
- (a) the nature of any offence of which the applicant has been found guilty in Australia or a foreign country, whether before or after the commencement of this section; and
 - (b) how long ago the offence was committed; and
 - (c) the person's age when the offence was committed.
- (5) The Board may refuse to renew registration if the Board is satisfied that the applicant is not a fit and proper person to continue to be registered after considering—
- (a) the nature of any offence of which the applicant has been found guilty in Australia or a foreign country, whether before or after the commencement of this section, other than an offence disclosed in a previous application to the Board; and
 - (b) how long ago the offence was committed; and
 - (c) the person's age when the offence was committed.

- (6) The Board may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.
- (7) If the Board refuses to grant or renew registration, the Board must, as soon as practicable, give the applicant an information notice.

Note

Section 2.8.51 provides a right to apply for review of a decision refusing to grant or renew registration.

- (8) Nothing in this section affects the operation of Division 7.

Division 6—Amendment, suspension or cancellation of local registration

2.8.24 Application of this Division

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

2.8.25 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 in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in his or her capacity as—

S. 2.8.25
(Heading)
amended by
No. 46/2007
s. 27.
S. 2.8.25
substituted by
No. 12/2007
s. 29.

- (i) an overseas-registered foreign lawyer;
or
 - (ii) an Australian-registered foreign lawyer;
or
 - (iii) an Australian lawyer;
 - (e) the person has been found guilty 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 3.5.3;
 - (h) another ground the Board considers sufficient.
- (2) Subsection (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under section 2.8.40.

2.8.26 Amending, suspending or cancelling registration

- (1) If the Board considers reasonable grounds exist to amend, suspend or cancel a person's registration by it as a foreign lawyer (the *action*), the Board must give the person a notice that—
- (a) states the action proposed and—
 - (i) if the proposed action is to amend the registration in any way—states the proposed amendment; and
 - (ii) if the proposed action is to suspend the registration—states the proposed suspension period; and
 - (b) states the grounds for proposing to take the action; and

S. 2.8.26(1)
amended by
No. 12/2007
s. 30(1)(a)(i).

Legal Profession Act 2004
No. 99 of 2004
Part 2.8—Legal Practice by Foreign Lawyers

s. 2.8.26

S. 2.8.26(1)(d)
amended by
No. 12/2007
s. 30(1)(a)(ii).

- (c) outlines the facts and circumstances that form the basis for the Board's belief; and
- (d) invites the person to make written representations to the Board, within a specified time not less than 7 days and not more than 28 days, why the action proposed should not be taken.

(2) If, after considering all written representations made within the specified time, the Board still believes grounds exist to take the action, the Board may—

S. 2.8.26(2)(a)
amended by
No. 12/2007
s. 30(1)(b)(i).

- (a) if the notice under subsection (1) stated the action proposed was to amend the registration—amend the registration in the way specified or in another way the Board considers appropriate in the light of the representations; or

S. 2.8.26(2)(b)
amended by
No. 12/2007
s. 30(1)(b)(ii).

- (b) if the notice stated the action proposed was to suspend the registration for a specified period—suspend the registration for a period no longer than the specified period; or

S. 2.8.26(2)(c)
substituted by
No. 12/2007
s. 30(1)(c).

- (c) if the notice stated the action proposed was to cancel the registration—
 - (i) cancel the registration; or
 - (ii) suspend the registration for a period; or
 - (iii) amend the registration in a less onerous way the Board considers appropriate because of the representations.

(3) The Board may, at its discretion, consider representations made after the specified time.

(4) The Board must give the person notice of the Board's decision.

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- (5) If the Board amends, suspends or cancels the registration, the Board must give the person an information notice.

Note

Section 2.8.51 provides a right to apply for review of a decision to amend, suspend or cancel registration.

- (6) In this section, *amend* registration means amend the registration under section 2.8.40 during its currency, otherwise than at the request of the foreign lawyer concerned.

S. 2.8.26(6)
inserted by
No. 12/2007
s. 30(2).

2.8.27 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 2.8.26.
- (2) Subject to subsections (3) and (4), the amendment, suspension or cancellation of the registration takes effect on the later of the following—
- (a) the day notice of the decision is given to the person;
 - (b) the day stated in the notice.
- (3) If the registration is amended, suspended or cancelled because the person has been found guilty of an offence—
- (a) the Supreme Court may, on the application of the person, order that the operation of the amendment, suspension or cancellation of the registration be stayed until—
 - (i) the end of the time to appeal against the finding of guilt; and
 - (ii) if an appeal is made against the finding of guilt—the appeal is finally decided, lapses or otherwise ends; and

s. 2.8.28

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- (b) the amendment, suspension or cancellation does not have effect during any period in respect of which the stay is in force.
- S. 2.8.27(4) amended by No. 68/2009 s. 97(Sch. item 77.3).
- (4) If the registration is amended, suspended or cancelled because the person has been found guilty of an offence and the finding of guilt is quashed or set aside—
- S. 2.8.27(4)(a) amended by No. 68/2009 s. 97(Sch. item 77.3).
- (a) the amendment or suspension ceases to have effect when the finding is quashed or set aside; or
- S. 2.8.27(4)(b) amended by No. 68/2009 s. 97(Sch. item 77.3).
- (b) the cancellation ceases to have effect when the finding is quashed or set aside and the registration is restored as if it had merely been suspended.

2.8.28 Other ways of amending or cancelling registration

- (1) This section applies if—
- (a) a locally registered foreign lawyer requests the Board to amend or cancel the registration and the Board proposes to give effect to the request; or
- (b) the Board proposes to amend a locally registered foreign lawyer's registration only—
- (i) for a formal or clerical reason; or
- (ii) in another way that does not adversely affect the lawyer's interests.
- (2) The Board may amend or cancel the registration as referred to in subsection (1) by written notice given to the lawyer, and section 2.7.26 does not apply in that case.

2.8.29 Relationship of Division to Chapter 4

Nothing in this Division prevents a complaint from being made under Chapter 4 about a matter to which this Division relates.

S. 2.8.29
amended by
No. 12/2007
s. 30(3)(a).

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

2.8.30 Applicant for local registration—show cause event

- (1) This section applies if—
 - (a) a person is applying for registration as a foreign lawyer under this Act; and
 - (b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person first became an overseas-registered foreign lawyer.
- (2) As part of the application, the person must provide to the Board a written statement, in accordance with the regulations—
 - (a) about the show cause event; and
 - (b) explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally registered foreign lawyer.
- (3) However, a person need not provide a statement under subsection (2) if the person has previously provided to the Board a statement under this section, or a notice and statement under section 2.8.31 explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally registered foreign lawyer.

s. 2.8.31

S. 2.8.30(4)
repealed by
No. 18/2005
s. 9(3)(b).

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2.8.31 Locally registered foreign lawyer—show cause event

(1) This section applies to a show cause event that happens in relation to a locally registered foreign lawyer.

(2) The locally registered foreign lawyer must provide to the Board both of the following—

S. 2.8.31(2)(a)
amended by
No. 12/2007
s. 30(3)(b).

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

(b) within 28 days after the happening of the event—a written statement explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally registered foreign lawyer.

S. 2.8.31(3)
repealed by
No. 18/2005
s. 9(3)(b).

* * * * *

(4) If a written statement is provided after the period of 28 days referred to in subsection (2)(b), the Board may accept the statement and take it into consideration.

2.8.32 Refusal, amendment, suspension or cancellation of local registration—failure to show cause

(1) The Board may refuse to grant or renew, or may amend, suspend or cancel, local registration if the applicant for registration or the locally registered foreign lawyer—

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- (a) is required by section 2.8.30 or 2.8.31 to provide a written statement relating to a matter and has failed to provide a written statement in accordance with that requirement; or
 - (b) has provided a written statement in accordance with section 2.8.30 or 2.8.31, but the Board does not consider that the applicant or foreign lawyer has shown in the statement that, despite the show cause event concerned, he or she is a fit and proper person to be a locally registered foreign lawyer.
- (2) For the purposes of this section only, a written statement accepted by the Board under section 2.8.31(4) is taken to have been provided in accordance with section 2.8.31.
 - (3) The Board must give the applicant or foreign lawyer an information notice about the decision to refuse to grant or renew, or to amend, suspend or cancel, the local registration.

Note

Section 2.8.51 provides a right to apply for review of a decision to refuse to grant or renew registration, or to amend, suspend or cancel registration.

2.8.33 Restriction on making further applications

- (1) If the Board determines under this Division to cancel a person's registration, the Board may also decide that the person is not entitled to apply for registration under this Part for a specified period not exceeding 5 years.
- (2) A person in respect of whom a 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 specified in the decision.

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- (3) If the Board makes a decision under this section, the Board must, as soon as practicable, give the person an information notice.

Note

Section 2.8.51 provides a right to apply for review of a decision under this section.

Division 8—Further provisions relating to local registration

2.8.34 Immediate suspension of registration

- (1) This section applies, despite sections 2.8.26 and 2.8.27, if the Board considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer.
- (2) The Board may, by written notice given to the person, immediately suspend the registration until the earlier of the following—
- (a) the time at which the Board informs the person of the Board's decision by notice under section 2.8.26;
 - (b) the end of the period of 56 days after the notice is given to the person under this section.
- (3) The notice under this section must state—
- (a) the reasons for the suspension; and
 - (b) the findings on material questions of fact that led to the suspension, referring to the evidence or other material on which those findings were based; and
 - (c) that the person may make written representations to the Board about the suspension; and
 - (d) the review rights of the person under section 2.8.51.

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- (4) The person may make written representations to the Board about the suspension, and the Board must consider the representations.
 - (5) The Board may revoke the suspension at any time, whether or not in response to any representations made to it by the person.

2.8.35 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 to the Board.
- (2) The Board may cancel the registration.

2.8.36 Automatic cancellation of registration on grant of practising certificate

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

2.8.37 Suspension or cancellation of registration not to affect disciplinary processes

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

2.8.38 Return of local registration certificate on amendment, suspension or cancellation of registration

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

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- (3) The person must comply with the notice, unless the person has a reasonable excuse.

Penalty: 20 penalty units.

- (4) If the certificate is amended, the Board must return the certificate to the person as soon as practicable after amending it.

Division 9—Conditions on registration

2.8.39 Conditions generally

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

- (a) any conditions imposed by the Board; and
- (b) any statutory conditions imposed by this or any other Act; and
- (c) any conditions imposed by or under the legal profession rules; and
- (d) any conditions imposed under Chapter 4 or under provisions of a corresponding law that correspond to Chapter 4.

2.8.40 Conditions imposed by the Board

- (1) The Board may impose conditions on registration as a foreign lawyer—
 - (a) when it is granted or renewed; or
 - (b) during its currency.
 - (2) A condition imposed under this section must be reasonable and relevant.
 - (3) A condition imposed under this section may be about any of the following—
 - (a) any matter in respect of which a condition could be imposed on a local practising certificate;
 - (b) a matter agreed to by the foreign lawyer.
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- (4) The Board must not impose a condition under subsection (3)(a) that is more onerous than a condition that it would impose on a local practising certificate of a local legal practitioner in the same or similar circumstances.
 - (5) The Board may revoke or vary conditions imposed by it under this section.
 - (6) If the Board imposes a condition on registration during its currency, the Board must, as soon as practicable, give the foreign lawyer an information notice (unless the foreign lawyer agrees to the condition).

Note

Section 2.8.51 provides a right to apply for review of a decision to impose a condition on registration. Section 2.8.21(2)(b) requires the Board to give an information notice to an applicant for registration if it imposes conditions on the registration when it is granted or renewed.

2.8.41 Statutory condition regarding notification of offence

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

2.8.42 Conditions imposed by legal profession rules

The legal profession rules may—

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

2.8.43 Compliance with conditions

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

Penalty: 60 penalty units.

Division 10—Interstate-registered foreign lawyers

2.8.44 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—
 - (i) any conditions imposed by the Board under section 2.8.45; and
 - (ii) any conditions imposed by or under the legal profession rules as referred to in that section; and

- (b) is, to the greatest practicable extent and with all necessary changes—
- (i) the same as the 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 more onerous conditions prevail to the extent of the inconsistency.
- (4) An interstate-registered foreign lawyer must not practise foreign law in this jurisdiction in a manner not authorised by this Act or in contravention of any condition referred to in this section.

* * * * *

S. 2.8.44(5)
repealed by
No. 18/2005
s. 9(3)(b).

2.8.45 Additional conditions on practice of interstate-registered foreign lawyers

- (1) The Board may, by written notice to an interstate-registered foreign lawyer practising foreign law in this jurisdiction, impose any condition on the interstate-registered foreign lawyer's practice that it may impose under this Act in relation to a locally registered foreign lawyer.
- (2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction is subject to any condition imposed by or under an applicable legal profession rule.

- (3) Conditions imposed under or referred to in this section must not be more onerous than conditions applying to locally registered foreign lawyers in the same or similar circumstances.
- (4) A notice under this section must include an information notice about the decision to impose a condition.

Note

Section 2.8.51 provides a right to apply for review of a decision to impose conditions under this section.

Division 11—Miscellaneous

S. 2.8.46
amended by
No. 18/2005
s. 9(3)(c)(d),
substituted by
No. 12/2007
s. 31.

2.8.46 Consideration and investigation of applicants and locally registered foreign lawyers

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

2.8.47 Publication of information about locally registered foreign lawyers

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

2.8.48 Supreme Court orders about conditions

- (1) The Board 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 on the application.

2.8.49 Exemption by Board

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

2.8.50 Membership of professional association

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

2.8.51 Review by Tribunal

- (1) A foreign lawyer may apply to the Tribunal for review of a decision by the Board—
 - (a) to refuse to grant or renew registration under section 2.8.23 or 2.8.32; or
 - (b) to impose a condition on registration under section 2.8.40; or
 - (c) to amend, suspend or cancel registration under section 2.8.26 or 2.8.32; or

s. 2.8.51

- (d) to suspend registration under section 2.8.34;
or
 - (e) to impose a period under section 2.8.33
during which the lawyer is not entitled to
apply for registration.
- (2) An application for review must be made within
28 days after the day on which the information
notice about the decision, or the notice referred to
in section 2.8.34(2), was given to the foreign
lawyer.
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PART 2.9—COMMUNITY LEGAL CENTRES

2.9.1 Definitions

In this Part—

board of management, of a community legal centre, means the board, committee or other controlling body of the centre (by whatever name called);

employ means employ under a contract of employment or service;

engage means use the services of, whether or not for reward or remuneration.

2.9.2 Supervising legal practitioner

- (1) A community legal centre must, subject to subsection (2), employ one or more supervising legal practitioners to be responsible for the provision of legal services at the community legal centre.
- (2) The board of management of a community legal centre may temporarily engage one or more supervising legal practitioners, for a period not exceeding 12 weeks, to be responsible for the provision of legal services at the community legal centre during that temporary engagement.
- (3) The board of management of a community legal centre may extend a temporary engagement under subsection (2) from time to time for a period not exceeding 12 months on each occasion.
- (4) An engagement or extension under subsection (2) or (3) must be made in writing.
- (5) A supervising legal practitioner (whether employed or temporarily engaged)—

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- (a) must be an Australian legal practitioner who holds a practising certificate as a principal of a law practice; and
 - (b) may be a person referred to in paragraph (a) who is—
 - (i) on the board of management of the community legal centre; or
 - (ii) involved in the management of the community legal centre.
 - (6) This Act applies in relation to a supervising legal practitioner temporarily engaged by the board of management of a community legal centre as if he or she were employed by the community legal centre.

2.9.3 Notification of temporary engagement of supervising legal practitioner

- (1) If the board of management of a community legal centre temporarily engages a supervising legal practitioner under section 2.9.2(2), or extends a temporary engagement, the board of management must give the Board written notice of the engagement or extension within 14 days after the date of the engagement or extension.
- (2) A notice under this section must include—
 - (a) the name, date of birth and date of admission to the legal profession of the supervising legal practitioner; and
 - (b) the name of any law practice (other than the community legal centre) of which the supervising legal practitioner is an associate; and
 - (c) details of any condition to which the supervising legal practitioner is subject in connection with his or her legal practice.

2.9.4 Entitlement to recover legal costs

For the avoidance of doubt a community legal centre is entitled, subject to Part 3.4, to recover legal costs in respect of legal services that it provides.

2.9.5 Regulations

- (1) The regulations may provide for—
 - (a) the employment or temporary engagement of supervising legal practitioners and the employment of other Australian legal practitioners by community legal centres;
 - (b) the duties, obligations and liabilities of supervising legal practitioners and other Australian legal practitioners employed or engaged by community legal centres;
 - (c) the information to be included in notices under this Part.
- (2) The regulations may provide that other provisions of this Act do not apply to community legal centres or supervising legal practitioners and other Australian legal practitioners employed or engaged by community legal centres, or apply to them subject to any modifications specified in the regulations.

CHAPTER 3—GETTING THINGS RIGHT

PART 3.1—INTRODUCTION AND OVERVIEW

3.1.1 Simplified outline of Chapter

- (1) This Chapter contains provisions regulating various aspects of the legal profession with the aim of ensuring that law practices and legal practitioners 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—
 - Part 3.2 sets out certain requirements in relation to the manner of legal practice in this jurisdiction, provides for the making of legal profession rules and deals with matters relating to competition;
 - Part 3.3 regulates the receipt, handling of and accounting for clients' money by law practices and approved barristers' clerks;
 - Part 3.4 requires law practices to disclose matters relating to legal costs to their clients, provides for the charging of legal costs and the making and setting aside of costs agreements and for the review of legal costs by the Costs Court;
 - Part 3.5 requires law practices and foreign lawyers to obtain professional indemnity insurance covering their legal practice in this jurisdiction;
 - Part 3.6 establishes a system for compensating clients who suffer loss because of a default of a law practice or an approved clerk.

S. 3.1.1(2)
amended by
No. 78/2008
s. 10(1).

(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

3.2.1 Purposes

The purposes of this Part are—

- (a) to make provision for certain matters generally in relation to engaging in legal practice in this jurisdiction;
- (b) to promote the maintenance of high standards of professional conduct by Australian legal practitioners and locally registered foreign lawyers by providing for the making and enforcement of rules of professional conduct that apply to them when they practise in this jurisdiction;
- (c) to provide for the investigation of matters relating to competition in a market for legal services.

Division 2—Legal practice generally

3.2.2 Co-advocacy

- (1) In any proceeding, 2 or more Australian legal practitioners may appear together as co-advocates.
- (2) The legal profession rules may reasonably limit the application of subsection (1).

3.2.3 Client access

- (1) A law practice may accept instructions in a matter from a client whether or not the client has retained any other law practice in that matter.
- (2) The legal profession rules may reasonably limit the application of subsection (1).

3.2.4 Compulsory clerking prohibited

- (1) A professional association must not require, as a condition of membership or eligibility for membership, that a member of the association employ or engage as a clerk any person licensed or approved by the association or any other person or body.
- (2) The legal profession rules must not require a legal practitioner to employ or engage as a clerk any person licensed or approved by a professional association or any other person or body.
- (3) Nothing in this section affects—
 - (a) any requirements as to the qualification for employment or engagement as an articled clerk or a managing clerk; or
 - (b) the approval of clerks under Division 7 of Part 3.3.

3.2.5 Compulsory chambers prohibited

- (1) A professional association must not require, as a condition of membership or eligibility for membership, that a member of the association engage in legal practice in premises—
 - (a) obtained from a specified person or body or a person or body approved by the association or by any other person or body; or
 - (b) situated in a specified location.
- (2) The legal profession rules must not require a local legal practitioner to engage in legal practice in premises—
 - (a) obtained from a specified person or body or a person or body approved by a professional association or by any other person or body; or
 - (b) situated in a specified location.

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- (3) Nothing in this section allows a law practice or local legal practitioner to avoid the obligations of any lease or contract of sale.

3.2.6 Sole practice by barristers

The legal profession rules may require that a local legal practitioner—

- (a) must practise as a barrister;
- (b) must not carry on, engage in or practise any business, profession or occupation that is inconsistent with practice as a barrister;
- (c) must not practise as a barrister in partnership with any person or as an employee of any person;
- (d) must not share the income from practice as a barrister with any person—

except to the extent, if any, permitted by the rules.

3.2.7 Robing not compulsory

- (1) Despite any rule of practice or custom to the contrary, it is not necessary for an Australian legal practitioner to robe to appear before any court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.
- (2) A professional association must not require, as a condition of membership or eligibility for membership, that a member of the association appear robed before a court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.
- (3) The legal profession rules must not require an Australian legal practitioner to appear robed before a court or tribunal in any civil proceeding not involving a jury or in any summary criminal proceeding.

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- (4) Nothing in this section prevents an Australian legal practitioner from robing voluntarily in any proceeding in which robes were customarily worn immediately before the commencement of this section.

3.2.8 Regulation of other businesses carried on by legal practitioners

- (1) The Governor in Council, on the recommendation of the Board, may make regulations for or with respect to—
- (a) prohibiting local legal practitioners from carrying on, engaging in or practising any business, profession or occupation; or
 - (b) regulating the manner in which a local legal practitioner carries on, engages in or practises any business, profession or occupation—

that is inconsistent with legal practice or that may cause a conflict of interest between the practitioner and a client.

- (2) Regulations made under this section must not be inconsistent with anything in Part 2.7.

Division 3—Rules for Australian legal practitioners and locally-registered foreign lawyers

3.2.9 Rules for Australian legal practitioners

- (1) The Board may make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners.
- (2) The Victorian Bar, with the approval of the Board, may make rules about legal practice in this jurisdiction engaged in by barristers.

s. 3.2.10

- (3) The Law Institute, with the approval of the Board, may make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners other than barristers.
- (4) Legal profession rules made by the Board prevail to the extent of any inconsistency with legal profession rules made by the Victorian Bar or the Law Institute.

S. 3.2.10
amended by
Nos 18/2005
s. 9(3)(e),
12/2007
s. 32(1)(a).

3.2.10 Rules for foreign lawyers

The Board may make rules about engaging in legal practice in this jurisdiction as an Australian-registered foreign lawyer.

3.2.11 Subject-matter of legal profession rules

- (1) Legal profession rules for Australian legal practitioners or locally registered foreign practitioners may make provision about any aspect of legal practice, including standards of conduct expected of practitioners or lawyers to whom the rules apply.
- (2) The power to make rules is not limited to any matters for which this Act specifically authorises the making of legal profession rules.

3.2.12 Prior consultation with professional associations

If the Board proposes to make a legal profession rule under section 3.2.9(1), it must consult each professional association before publishing notice of the proposed rule under section 3.2.13.

3.2.13 Public notice of proposed legal profession rules

- (1) If the Board proposes to make or approve a legal profession rule under this Division, it must ensure that a notice is published in a publication determined by the Board—

S. 3.2.13(1)
amended by
No. 46/2007
s. 22(a).

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- (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
specified period of not less than 21 days after
the date of first publication of the notice.
- (2) The Board must ensure that a copy of the
proposed rule is given to the Attorney-General
before the notice is published.
 - (3) The Board must not make or approve the rule
before the end of the period specified in the notice
for making comments and submissions and must
ensure that any comments and submissions
received within that period are appropriately
considered.
 - (4) However, the Board may make or approve the rule
before the end of the period specified in the notice
for making comments and submissions if—
 - (a) the Board considers that the urgency of the
case warrants immediate action; and
 - (b) the notice indicates that the Board is of that
view and intends to act immediately.
 - (5) Subsections (1) to (4) do not apply to a proposed
rule that the Board considers does not warrant
publication because of its minor or technical
nature.

**S. 3.2.13(5)
amended by
No. 46/2007
s. 22(b).**

* * * * *

**S. 3.2.13(6)
repealed by
No. 46/2007
s. 22(c).**

**Division 4—Rules for incorporated legal practices and
multi-disciplinary partnerships**

3.2.14 Rules

- (1) The Board may make legal profession rules for or with respect to the following matters—
 - (a) the provision of legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, and in particular the provision of legal services by—
 - (i) officers or employees of incorporated legal practices; or
 - (ii) partners or employees of multi-disciplinary partnerships;
 - (b) the provision of services that are not legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, but only if the provision of those services by—
 - (i) officers or employees of incorporated legal practices; or
 - (ii) partners or employees of multi-disciplinary partnerships—may give rise to a conflict of interest relating to the provision of legal services.
- (2) Without limiting subsection (1), legal profession rules may be made for or with respect to professional obligations relating to legal services provided by or in connection with incorporated legal practices or multi-disciplinary partnerships.

S. 3.2.14(1)(b)
substituted by
No. 12/2007
s. 32(1)(b).

- (3) However, the legal profession rules cannot—
- (a) regulate any services that an incorporated legal practice may provide or conduct (other than the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or
 - (b) regulate or prohibit the conduct of officers or employees of an incorporated legal practice (other than in connection with the provision of legal services or other services that may give rise to a conflict of interest relating to the provision of legal services); or
 - (c) regulate any services that a multi-disciplinary partnership 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.

S. 3.2.14(3)
substituted by
No. 12/2007
s. 32(2).

3.2.15 Rule-making procedures

The regulations may make provision for or with respect to the making of legal profession rules under this Division.

Division 5—Rules for approved clerks

3.2.16 Rules

The Victorian Bar may make legal profession rules for the receipt and handling of trust money and the keeping of trust records by approved clerks.

Division 6—General provisions for legal profession rules

3.2.17 Binding nature of legal profession rules

- (1) Legal profession rules are binding on Australian legal practitioners, incorporated legal practices, multi-disciplinary partnerships, and locally registered foreign lawyers to whom they apply.
- (2) Failure to comply with legal profession rules by an Australian legal practitioner or locally registered foreign lawyer is capable of constituting unsatisfactory professional conduct or professional misconduct.

Note

Section 3.3.70 requires approved clerks to comply with legal profession rules that apply to them.

3.2.18 Legal profession rules inconsistent with Act or regulations

Legal profession rules do not have effect to the extent that they are inconsistent with this Act or the regulations.

3.2.19 Availability of rules

- (1) The Board must ensure that the legal profession rules are available for public inspection (including on its Internet site, if any, or on any other Internet site specified by the Board) and that amendments are incorporated as soon as possible.

S. 3.2.19(1)
amended by
No. 12/2007
s. 32(3).

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- (2) The Board must give a copy of legal profession rules to each local legal practitioner, locally registered foreign lawyer or approved clerk to whom the rules apply.

Division 7—Competition

3.2.20 Board to investigate matters relating to competition

- (1) The Board may investigate the effect on competition in a market for legal services and the effect on consumers of those services of—
- (a) any Act, subordinate instrument or rule of law relating to legal practice;
 - (b) the legal profession rules;
 - (c) any agreements, arrangements or understandings made by or involving a law practice or an Australian legal practitioner in the course of, or in relation to, engaging in legal practice.
- (2) An investigation under this section may be initiated in response to a consumer dispute or complaint under Chapter 4 or on the Board's own initiative.
- (3) The Attorney-General may refer anything referred to in subsection (1)(a), (b) or (c) to the Board for investigation under this section and if so, the Board must investigate it.
- (4) A reference under subsection (3) may specify a period of time within which the Board must submit a report of the investigation.
- (5) The conduct of an investigation is at the discretion of the Board.

3.2.21 Law practice or practitioner must provide information and documents

- (1) For the purposes of an investigation under this Division, the Board may require a law practice or an Australian legal practitioner to provide any information or documents and to verify the information or documents by statutory declaration or another manner specified by the Board.
- (2) A requirement under subsection (1) must be in writing and must allow the law practice or practitioner at least 21 days to comply.
- (3) A law practice or an Australian legal practitioner may not refuse to comply with subsection (1)—
 - (a) on the ground of any duty of confidence, including any duty of confidence owed by a law practice or legal practitioner to a client; or
 - (b) on the ground that the production of the document or giving of the information may tend to incriminate the practice or practitioner.
- (4) If a law practice or an Australian legal practitioner, before producing a document or giving information, objects to the Board on the ground that the production of the document or giving of the information may tend to incriminate the practice or practitioner, the document or information is inadmissible in evidence in any proceeding against them for an offence, other than perjury or an offence in relation to the giving of false or misleading information.

3.2.22 Consultation and comment

If, in the course of an investigation under this Division, it appears to the Board that there may be grounds for making a report adverse to a law practice or an Australian legal practitioner, the Board must, before making the report, give an opportunity to the practice or practitioner to comment on the matter.

3.2.23 Report of investigation

- (1) The Board must submit a written report of an investigation under this Division to the Attorney-General.
- (2) If a period of time for submitting a report is specified under section 3.2.20(4), the report must be submitted within that period.
- (3) The report—
 - (a) must contain reasons for the findings contained in it; and
 - (b) must fairly set out any comments made under section 3.2.22 by a law practice or Australian legal practitioner; and
 - (c) may contain any recommendations the Board thinks fit.
- (4) In considering whether to make recommendations, and if so, the content of those recommendations, the Board must take into account—
 - (a) whether, in its opinion, the subject-matter of the investigation has the effect of lessening competition in a market for legal services; and
 - (b) if it does, whether there is any public benefit that outweighs the lessening of competition and, if so, the nature of that benefit.

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- (5) In the case of an investigation referred to in section 3.2.20(1)(c), the Board must give a copy of the report to the law practice or Australian legal practitioner concerned at the same time, or as soon as practicable after, the report is given to the Attorney-General under subsection (1).

3.2.24 Tabling in Parliament and government response

- (1) The Attorney-General must cause the report of an investigation under this Division to be laid before each House of Parliament within 7 sitting days of that House after receiving the report.
- (2) If a report contains a recommendation that the government take any action, the Attorney-General, within 6 months after receiving the report, must report to Parliament as to the action (if any) proposed to be taken by the government with respect to the recommendation.
- (3) If the government does not propose to implement a recommendation of the Board, the report under subsection (2) must contain a full statement of the reasons.
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PART 3.3—TRUST MONEY AND TRUST ACCOUNTS

Division 1—Preliminary

3.3.1 Purposes

The purposes of this Part are—

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

3.3.2 Definitions

(1) In this Part—

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S. 3.3.2(1)
def. of
affairs
repealed by
No. 12/2007
s. 33(1)(a).

approved ADI means an ADI that has an arrangement with the Board under section 3.3.59;

approved clerk means a person approved under section 3.3.70;

s. 3.3.2

S. 3.3.2(1)
def. of
*controlled
money*
amended by
No. 12/2007
s. 33(1)(b).

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

Note

See section 3.3.15, which prevents pooling of controlled money.

S. 3.3.2(1)
def. of
*controlled
money
account*
amended by
No. 12/2007
s. 33(1)(c).

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

S. 3.3.2(1)
def. of
*deposit
record*
inserted by
No. 12/2007
s. 33(1)(d).

deposit record includes a deposit slip or duplicate deposit slip;

external examination means an external examination under Division 4 of a law practice's or approved clerk's trust records;

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

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

inspector means a person holding an appointment as an inspector under Division 3;

investigation means an investigation under Division 3 of a law practice or an approved clerk;

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

power includes authority;

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

trust account means an account maintained by a law practice or an approved clerk with an approved ADI to hold trust money;

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

S. 3.3.2(1)
def. of
trust money
substituted by
No. 12/2007
s. 33(1)(e).

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

s. 3.3.2

trust money in relation to an approved clerk,
means money received by an approved clerk
on account of the legal costs of one or more
barristers in advance of the provision of the
legal services to which those costs relate;

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 as required to be
furnished under the regulations;
- (l) registers required to be kept under the
regulations;
- (m) monthly statements required to be kept
under the regulations;
- (n) files relating to trust transactions or
bills of costs or both;
- (o) written directions, authorities or other
documents required to be kept under
this Act or the regulations;

S. 3.3.2(1)
def. of
trust records
amended by
No. 12/2007
s. 33(1)(f).

-
- (p) supporting information required to be kept under the regulations in relation to powers to deal with trust money.
- (2) A reference in this Part to a law practice's trust account or trust records includes a reference to an associate's trust account or trust records.
- (3) A reference in this Part to a power given to a law practice or an associate of the practice to deal with money for or on behalf of another person is a reference to a power given to the practice or associate that is exercisable by—
- (a) the practice alone; or
 - (b) an associate of the practice alone (otherwise than in a private 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) one or more associates of the practice;
 - (ii) the person, or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

S. 3.3.2(3)
inserted by
No. 12/2007
s. 33(2).

3.3.3 Money involved in financial services or investments

- (1) Money that is entrusted to or held by a law practice for or in connection with—
- (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not such a licence is held at any relevant time); or

s. 3.3.3

- (b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time)—

is not trust money for the purposes of this Act.

S. 3.3.3(2)
substituted by
No. 12/2007
s. 33(3).

- (2) Without limiting subsection (1), money that is entrusted to or held by a law practice for or in connection with—

- (a) a managed investment scheme; or
(b) mortgage financing—

undertaken by the practice is not trust money for the purposes of this Act.

- (3) Without limiting subsection (1) or (2), money that is entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money for the purposes of this Act, unless—

- (a) the money was entrusted to or held by the practice—
(i) in the ordinary course of legal practice; and
(ii) primarily in connection with the provision of legal services to or at the direction of the client; and

- (b) the investment is or is to be made—
(i) in the ordinary course of legal practice; and
(ii) for the ancillary purpose of maintaining or enhancing the value of the money 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.

- (4) In this section *Australian financial services licence, authorised representative, financial services* and *financial services business* have the same meanings as in Chapter 7 of the Corporations Act.

3.3.4 Determinations about status of money

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

3.3.5 Application of Part to law practices and trust money

- (1) This Part applies to the following law practices in respect of trust money received by them in this jurisdiction—

s. 3.3.5

-
- (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 that has an office in another jurisdiction, must deal with the money in accordance with the corresponding law of the other jurisdiction.

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

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- (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 2.8.13 (Trust money and trust accounts) applies this Part to Australian-registered foreign lawyers.

3.3.6 Protocols for determining where trust money is received

- (1) The Board may enter into arrangements (referred to in this Part as *protocols*) with corresponding authorities about any or all of the following—
- (a) determining the jurisdiction where a law practice receives trust money;
 - (b) sharing information about whether, and (if so) how, trust money is being dealt with under this Act or a corresponding law.
- (2) For the purposes of this Act, to the extent that the protocols are relevant, the jurisdiction where a law practice receives trust money is to be determined in accordance with the protocols.
- (3) The Board may enter into arrangements that amend, revoke or replace a protocol.
- (4) A protocol does not have effect in this jurisdiction unless it is embodied or identified in the regulations.

3.3.7 When money is received

- (1) For the purposes of this Act, a law practice receives money when—
- (a) the practice obtains possession or control of it directly; or
 - (b) the practice obtains possession or control of it indirectly as a result of its delivery to an associate of the practice; or

s. 3.3.8

S. 3.3.7(1)(c)
substituted by
No. 12/2007
s. 33(4).

(c) the practice, or an associate of the practice (otherwise than in a private and personal capacity), is given a power to deal with the money for or on behalf of another person.

S. 3.3.7(1)(d)
repealed by
No. 12/2007
s. 33(4).

* * * * *

- (2) For the purposes of this Act, a law practice or associate is taken to have received trust 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.
- (3) For the purposes of this Act, an approved clerk receives money when the clerk obtains possession or control of it directly.

S. 3.3.8
(Heading)
amended by
No. 18/2005
s. 19(d).

3.3.8 Discharge by legal practitioner associate of obligations of law practice

- (1) The following actions, if taken by a legal practitioner associate of a law practice on behalf of the practice in relation to trust money received by the practice, discharge the corresponding obligations of the practice in relation to the money—
- (a) the establishment of a trust account;
 - (b) the maintenance of a trust account;
 - (c) the payment of trust money into and out of a trust account and other dealings with trust money;
 - (d) the maintenance of trust records;
 - (e) engaging an external examiner to examine trust records;

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- (f) the payment of an amount under Division 6;
 - (g) an action of a kind prescribed by the regulations.
- (2) If the legal practitioner associate maintains a trust account in relation to trust money received by the law practice, the provisions of this Part and the regulations made for the purposes of this Part apply to the associate in the same way as they apply to a law practice.
 - (3) Subsection (1) does not apply to the extent that the associate is prevented by the regulations from taking any action referred to in that subsection.

Note

Section 3.3.11(3) provides that a law practice that, or an approved clerk who, receives only controlled money or transit money (or both) except in the form of cash is not required to maintain a general trust account.

3.3.9 Liability of principals of law practice

S. 3.3.9
substituted by
No. 12/2007
s. 34.

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

3.3.10 Former practices, principals, associates and approved clerks

This Part applies in relation to former law practices, former principals and associates of law practices and former approved clerks in relation to conduct occurring while they were respectively law practices, principals, associates or approved clerks, in the same way as it applies to law practices, principals, associates and approved clerks, and so applies with any necessary modifications.

Division 2—Trust accounts and trust money

3.3.11 Maintenance of general trust account

- (1) A law practice that, or an approved clerk who, receives trust money to which this Part applies must maintain a general trust account in this jurisdiction.

Penalty: 120 penalty units.

- (2) A law practice that, or an approved clerk who, is required to maintain a general trust account in this jurisdiction must establish and maintain the account in accordance with the regulations.

Penalty: 60 penalty units.

- (3) Subsection (1) does not apply to a law practice in respect of any period during which the practice receives or holds only either or both of the following—

- (a) controlled money; or
- (b) transit money received in a form other than cash.

S. 3.3.11(3)
substituted by
No. 12/2007
s. 35(1).

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- (4) Subject to any requirements of the regulations, a requirement of this section for a law practice or an approved clerk to maintain, or establish and maintain, a general trust account in this jurisdiction does not prevent the practice or clerk from maintaining, or establishing and maintaining, more than one general trust account in this jurisdiction, whether during the same period or during different periods.
 - (5) Without limiting the other provisions of this section, the regulations may provide that a law practice or an approved clerk must not close a general trust account except as permitted by the regulations, either generally or in any prescribed circumstances.

3.3.12 Trust account details to be notified to Board

- (1) Within 14 days after establishing a trust account in this jurisdiction, a law practice or an approved clerk must notify the Board of the number of the account and the name and address of the branch of the ADI at which the account is maintained.
Penalty: 60 penalty units.
- (2) A law practice or an approved clerk must notify the Board of any changes to the information notified to the Board under subsection (1) within 14 days after becoming aware of the change.
Penalty: 60 penalty units.
- (3) Within 14 days after closing a trust account in this jurisdiction, a law practice or an approved clerk must notify the Board of the closure.
Penalty: 60 penalty units.
- (4) Nothing in this section applies to a separate trust account kept by a law practice on the instructions of any single client for the exclusive use of that client.

s. 3.3.13

3.3.13 Certain trust money to be deposited in general trust account

S. 3.3.13(1)
amended by
No. 12/2007
s. 35(2)(a).

- (1) Subject to section 3.3.17A, as soon as practicable after receiving trust money, a law practice or an approved clerk must deposit the money in a general trust account of the practice or clerk unless—
- (a) the practice or clerk has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or
 - (b) the money is controlled money; or
 - (c) the money is transit money; or
 - (d) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

Penalty: 120 penalty units.

S. 3.3.13(1)(d)
substituted by
No. 12/2007
s. 35(2)(b).

S. 3.3.13(2)
amended by
No. 12/2007
s. 35(3)(a).

- (2) Subject to section 3.3.17A, a law practice that, or an approved clerk who, 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) specified in the direction; or
 - (b) subject to paragraph (a), as soon as practicable after it is received.

Penalty: 120 penalty units.

- (3) A law practice or an approved clerk must keep a written direction mentioned in subsection (1)(a) for the period prescribed by the regulations.

Penalty: 60 penalty units.

* * * * *

S. 3.3.13(4)
repealed by
No. 12/2007
s. 35(3)(b).

(5) In this section—

appropriate person means a person legally entitled to give the law practice or approved clerk directions in respect of dealings with the trust money.

3.3.14 Holding, disbursing and accounting for trust money

(1) A law practice or an approved clerk must—

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

Penalty: 120 penalty units.

(2) Subsection (1) applies subject to an order of a court of competent jurisdiction or as authorised by law.

(3) A law practice or an approved clerk must account for the trust money as required by the regulations.

Penalty: 60 penalty units.

3.3.14A Manner of withdrawal of trust money from general trust account

S. 3.3.14A
inserted by
No. 12/2007
s. 36.

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

Penalty: 120 penalty units.

s. 3.3.15

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- (2) Without limiting subsection (1), the following are specifically prohibited—
- (a) cash withdrawals;
 - (b) ATM withdrawals or transfers;
 - (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (4) This section has effect despite anything to the contrary in any directions given to the law practice or approved clerk concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice or approved clerk directions in respect of dealings with trust money.

3.3.15 Controlled money

- (1) As soon as practicable after receiving controlled money, a law practice must deposit the money in the account specified in the written direction relating to the money.
- Penalty: 120 penalty units.
- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subsection (1) exclusively for the person on whose behalf it was received.
- Penalty: 120 penalty units.
- (3) The law practice that holds controlled money deposited in a controlled money account in accordance with subsection (1) must not disburse the money except in accordance with—
- (a) the written direction mentioned in that subsection; or

(b) a later written direction given by or on behalf of the person on whose behalf the money was received.

Penalty: 120 penalty units.

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

Penalty: 60 penalty units.

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

Penalty: 60 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 referred to in subsection (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent that the regulations otherwise permit.

Penalty: 120 penalty units.

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

3.3.15A Manner of withdrawal of controlled money from controlled money account

**S. 3.3.15A
inserted by
No. 12/2007
s. 37.**

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

Penalty: 120 penalty units.

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

(a) cash withdrawals;

s. 3.3.16

- (b) ATM withdrawals or transfers;
- (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (4) This section has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with trust money.

3.3.16 Transit money

S. 3.3.16(1)
amended by
No. 12/2007
s. 38(1).

- (1) Subject to section 3.3.17A, a law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money—
 - (a) within the period (if any) specified in the instructions; or
 - (b) subject to paragraph (a), as soon as practicable after it is received.

Penalty: 120 penalty units.

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

Penalty: 60 penalty units.

3.3.17 Trust money subject to specific powers

S. 3.3.17(1)
substituted by
No. 12/2007
s. 38(2).

- (1) Subject to section 3.3.17A—
 - (a) a law practice must ensure that trust money that is the subject of a power given to the practice or an associate of the practice is dealt with by the practice or associate only in accordance with the power relating to the money;

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- (b) an approved clerk must ensure that trust money that is the subject of a power given to the clerk is dealt with by the clerk only in accordance with the power relating to the money.

Penalty: 120 penalty units.

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

S. 3.3.17(2)
amended by
No. 12/2007
s. 38(3).

Penalty: 60 penalty units.

3.3.17A Trust money received in the form of cash

S. 3.3.17A
inserted by
No. 12/2007
s. 39.

- (1) A law practice or an approved clerk must deposit general trust money received in the form of cash in a general trust account of the practice or approved clerk.

Penalty: 120 penalty units.

- (2) If the law practice or approved clerk 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 or clerk—
- (a) the money must nevertheless be deposited in a general trust account of the practice or clerk in accordance with subsection (1); and
- (b) the money is thereafter to be dealt with in accordance with any applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).
- (3) Controlled money received in the form of cash must be deposited in a controlled money account in accordance with section 3.3.15.

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- (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 in accordance with the instructions relating to the money.

Penalty: 120 penalty units.

- (5) A law practice or an approved clerk 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 or clerk before the money is otherwise dealt with in accordance with the power.

Penalty: 120 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 or approved clerk concerned directions in respect of 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.

3.3.18 Protection of trust money

- (1) Money standing to the credit of a trust account maintained by a law practice or an approved clerk is not available for the payment of debts of the practice or any of its associates or the approved clerk.

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- (2) Money standing to the credit of a trust account maintained by a law practice or an approved clerk is not liable to be attached or taken in execution for satisfying a judgment against the practice or any of its associates or the approved clerk.
 - (3) This section does not apply to money to which a law practice, an associate of a law practice or an approved clerk is entitled.

3.3.19 Intermixing money

S. 3.3.19
amended by
No. 12/2007
s. 40(1)(2) (ILA
s. 39B(1)).

- (1) A law practice or an approved clerk must not, otherwise than as permitted by subsection (2), mix trust money with other money.

Penalty: 120 penalty units.

- (2) A law practice or an approved clerk is permitted to mix trust money with other money to the extent only that is authorised by the Board and in accordance with any conditions imposed by the Board in relation to the authorisation.

S. 3.3.19(2)
inserted by
No. 12/2007
s. 40(2).

3.3.20 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 for a person—
 - (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;
 - (b) withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements prescribed by this Act and the regulations are complied with;

S. 3.3.20(1)(b)
amended by
No. 12/2007
s. 40(3)(a).

s. 3.3.21

- (c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under the **Unclaimed Moneys Act 1962**.
- (2) An approved clerk may do any of the following, in relation to trust money held in a general trust account—
- (a) withdraw money for payment to a barrister for whom the clerk acts in respect of the barrister's account for legal costs owing to the barrister if the relevant procedures or requirements prescribed by this Act and the regulations are complied with;
- (b) withdraw money in accordance with the instructions of the client or as otherwise authorised by law;
- (c) deal with the balance as unclaimed money under the **Unclaimed Moneys Act 1962**.
- (3) Subsections (1) and (2) apply despite any other provision of this Part but have effect subject to Part 3.4.

S. 3.3.20(2)(a)
amended by
No. 12/2007
s. 40(3)(a).

3.3.21 Deficiency in trust account

- (1) An Australian legal practitioner or an approved clerk is guilty of an offence if he or she, without reasonable excuse, causes—
- (a) a deficiency in any trust account or trust ledger account; or
- (b) a failure to pay or deliver any trust money.

Penalty: Level 4 imprisonment (15 years maximum).

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- (2) A reference in subsection (1) to an account includes, in the case of an Australian legal practitioner, 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.

3.3.22 Reporting certain irregularities and suspected irregularities—legal practitioners

- (1) As soon as practicable after a legal practitioner associate of a law practice becomes aware that there is an irregularity in any of the practice's trust accounts or trust ledger accounts, the associate must give written notice of the irregularity to—
- (a) the Board; and
 - (b) if a corresponding authority is responsible for the regulation of the accounts concerned—the corresponding authority.

Penalty: 60 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 Board; and

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

Penalty: 60 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).

3.3.23 Reporting irregularities—approved clerks

- (1) As soon as practicable after an approved clerk becomes aware that there is an irregularity in any of his or her trust accounts or trust ledger accounts, the clerk must give written notice of the irregularity to the Board.

Penalty: 60 penalty units.

- (2) An approved clerk who believes on reasonable grounds that there is a deficiency in a trust account of another approved clerk must report it to the Board as soon as practicable after forming the belief.

Penalty: 60 penalty units.

- (3) An approved clerk who believes on reasonable grounds that there is an irregularity in a trust account or a trust ledger account of a law practice must report the irregularity to the Board as soon as practicable after forming the belief.

Penalty: 60 penalty units.

- (4) An approved clerk is not liable for any loss or damage suffered by another person as a result of the clerk's compliance with subsection (1), (2) or (3).

(5) In this section—

deficiency has the same meaning as in section 3.3.21.

3.3.24 Application of privileges

- (1) The validity of a requirement imposed on an Australian legal practitioner under section 3.3.22(1) or (2) or on an approved clerk under section 3.3.23(1) or (2) is not affected, and the practitioner or clerk is not excused from complying with the relevant section—
 - (a) on the ground of any duty of confidence, including any duty of confidence owed by a law practice or legal practitioner to a client; or
 - (b) on the ground that giving the notice may tend to incriminate the practitioner or clerk.
- (2) If an Australian legal practitioner or approved clerk, before giving the notice, objects to the Board on the ground that the giving of the notice may tend to incriminate them, the notice is inadmissible in evidence in any proceeding against them for an offence, other than—
 - (a) an offence in relation to the keeping of trust accounts or the receipt of trust money; or
 - (b) an offence in relation to the giving of false or misleading information.

3.3.25 Keeping trust records

- (1) A law practice or an approved clerk must keep in permanent form trust records in relation to trust money received by the practice or clerk.

Penalty: 60 penalty units.

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

Penalty: 60 penalty units.

3.3.26 False names

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

Penalty: 120 penalty units.

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

3.3.27 Reporting trust balances to the Board

A law practice or an approved clerk must, at the request of the Board, inform the Board of the balance of any trust account maintained by the practice or clerk.

Division 3—Investigations

3.3.28 When may an investigation be conducted?

- (1) An investigation may be conducted under this Division for the purpose of—
 - (a) monitoring compliance by a law practice or an approved clerk with this Part or the regulations made for the purposes of this Part; or
 - (b) determining whether or not a law practice or person has contravened this Part or the regulations made for the purposes of this Part.
- (2) An investigation may be conducted—
 - (a) as a result of a complaint under Chapter 4; or
 - (b) on the Board's own initiative.

3.3.29 Appointment of inspector

The Board may appoint a person—

- (a) who is an approved external examiner; or
- (b) who—
 - (i) in the opinion of the Board is an appropriate person to conduct an investigation under this Division; and
 - (ii) meets the requirements of the rules (if any) made by the Board under section 3.3.50—

to conduct an investigation of the trust accounts of, and the records relating to trust money received by, a law practice or an approved clerk.

3.3.30 Identity card

- (1) The Board must issue each inspector with an identity card in the form approved by the Board.
- (2) The identity card must bear a photograph and the signature of the inspector.
- (3) An inspector must produce his or her identity card for inspection—
 - (a) before exercising a power under this Division other than a requirement made by post, fax, e-mail or other electronic communication; and
 - (b) at any time during the exercise of a power under this Division, if asked to do so.

Penalty: 5 penalty units.

3.3.31 Production of records

- (1) For the purposes of an investigation in relation to a law practice, an inspector may require the law practice or an associate of the practice to—
 - (a) produce for inspection or copying by the inspector any accounting or other records relating to the affairs of the law practice; and
 - (b) provide a full written explanation of the conduct of the law practice or associate; and
 - (c) give the inspector any other information he or she reasonably requires.
- (2) For the purposes of an investigation in relation to an approved clerk, an inspector may require the approved clerk to—
 - (a) produce for inspection or copying by the inspector any accounting or other records relating to the business of the approved clerk; and

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- (b) provide a full written explanation of the conduct of the approved clerk; and
 - (c) give the inspector any other information he or she reasonably requires.
- (3) A law practice, associate or approved clerk must not, without reasonable excuse, fail to comply with a requirement under subsection (1) or (2) (as the case requires).
- (4) An inspector may retain for a reasonable period and may make copies of, or take extracts from, any documents produced or given to the inspector under this section.

3.3.32 Power to question associates

- (1) For the purposes of an investigation in relation to a law practice, an inspector may, by written notice, require an associate of the law practice—
- (a) to provide written answers to questions contained in the notice; or
 - (b) to attend the inspector at a specified time and place to answer questions put by the inspector.
- (2) An associate of a law practice must not, without reasonable excuse—
- (a) fail to provide written answers when required to do so under subsection (1)(a); or
 - (b) fail to attend an inspector when required to do so under subsection (1)(b); or
 - (c) having attended as required under subsection (1)(b), fail to answer any question put by the inspector.

3.3.33 Power to question approved clerks

- (1) For the purposes of an investigation in relation to an approved clerk, an inspector may, by written notice, require the approved clerk—
 - (a) to provide written answers to questions contained in the notice; or
 - (b) to attend the inspector at a specified time and place to answer questions put by the inspector.
- (2) An approved clerk must not, without reasonable excuse—
 - (a) fail to provide written answers when required to do so under subsection (1)(a); or
 - (b) fail to attend an inspector when required to do so under subsection (1)(b); or
 - (c) having attended as required under subsection (1)(b), fail to answer any question put by the inspector.

3.3.34 Information from external examiners

- (1) For the purposes of an investigation in relation to a law practice or an approved clerk, an inspector may require a person who conducted an examination of any of the trust accounts of the law practice or approved clerk under Division 4 to produce any document or provide any information to the inspector that is relevant to the investigation.
- (2) A person who conducted a trust account examination must not, without reasonable excuse, fail to comply with a requirement under subsection (1).

3.3.35 Entry for compliance purposes

An inspector may enter at any reasonable time any premises occupied by a law practice or an approved clerk for the purpose of ascertaining whether the provisions of this Part or the regulations made for the purposes of this Part are being complied with.

3.3.36 Entry or search regarding contraventions

- (1) If an inspector believes, on reasonable grounds, that a person has contravened this Part or the regulations made for the purposes of this Part, the inspector, with the consent of the occupier of the premises, may—
 - (a) enter and search any premises;
 - (b) seize anything found on the premises which the inspector believes on reasonable grounds, to be connected with the alleged contravention;
 - (c) inspect and make copies of, or take extracts from, any document found on the premises.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector has—
 - (a) produced his or her identity card for inspection; and
 - (b) informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and

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- (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
 - (3) If an occupier consents to an entry and search, the inspector who requested consent must before entering the premises ask the occupier to sign an acknowledgment stating—
 - (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of anything or to the taking of any copy or extract; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
 - (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
 - (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
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- (5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.
 - (6) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

3.3.37 Search warrants

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises, if the inspector believes on reasonable grounds that there is on the premises evidence that a person or persons may have contravened this Part or the regulations made for the purposes of this Part.
- (2) If a magistrate is satisfied, by the evidence, on oath or by affidavit, of the inspector that there are reasonable grounds to believe that there is a thing or things of a particular kind connected with a contravention of this Part or the regulations made for the purposes of this Part on any premises, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
 - (a) to enter the premises specified in the warrant, if necessary by force; and
 - (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;

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- (iv) inspect and make copies of, or take extracts from—
a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with the alleged contravention.
- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required and the nature of the alleged contravention; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

3.3.38 Announcement before entry

- (1) On executing a search warrant, the inspector executing the warrant—
- (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

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- (2) An inspector need not comply with subsection (1) if he or she believes, on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

3.3.39 Details of warrant to be given to occupier

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to a person at the premises; and
 - (b) give to the person a copy of the warrant.

3.3.40 Seizure of things not mentioned in the warrant

A search warrant under section 3.3.37 authorises an inspector executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

- (a) the inspector believes, on reasonable grounds, that the thing is of a kind which could have been included in a search warrant issued under this Division; and

- (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Part or the regulations made for the purposes of this Part.

3.3.41 Retention and return of things seized under a search warrant

- (1) Subject to this section, an inspector may retain a document or other thing seized under a search warrant if, and for so long as, the inspector considers that retention of the document or thing is reasonably necessary—
 - (a) for the purposes of the investigation of an alleged contravention of this Part or the regulations made for the purposes of this Part; or
 - (b) to enable evidence of the alleged contravention to be obtained for the purposes of any proceeding in relation to it.
- (2) If an inspector retains a document or other thing seized under a search warrant for a period exceeding 7 days, he or she must, as soon as practicable, bring the document or thing before the Magistrates' Court so that the matter may be dealt with according to law.
- (3) A thing that is bulky or cumbersome may be brought before the Magistrates' Court by giving evidence on oath to the Court as to the present whereabouts of the thing and by producing a photograph of it.
- (4) If an inspector retains a document or thing under this section, he or she must take reasonable steps to return it to the person from whom it was seized when the reason for its retention no longer exists.

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- (5) If the document or thing retained is not returned to the person from whom it was seized, the person may apply to the Magistrates' Court at any time for its return.
 - (6) Nothing in this section prevents an inspector from retaining a copy of a document or other thing seized, or making a copy and retaining it.

3.3.42 Copies of seized documents

- (1) If an inspector retains possession of a document seized from a person under this Division, the inspector must give the person, within 21 days of the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

3.3.43 Power to obtain information from other Australian legal practitioners and approved clerks

- (1) For the purposes of an investigation in relation to a law practice, an inspector may, by written notice, require—
 - (a) an Australian legal practitioner who is not an associate of the law practice; or
 - (b) an approved clerk—to produce to the inspector any document or other information the inspector reasonably believes to be relevant to the investigation.
- (2) For the purposes of an investigation in relation to an approved clerk, an inspector may, by written notice, require—
 - (a) any Australian legal practitioner; or

(b) any other approved clerk—

to produce to the inspector any document or other information the inspector reasonably believes to be relevant to the investigation.

- (3) A notice under subsection (1) or (2) must give the practitioner or clerk a reasonable period, not less than 5 days, in which to produce the document or information.
- (4) An inspector may retain for a reasonable period and may make copies of, or take extracts from, any documents produced or given to the inspector under this section.

3.3.44 Power to obtain information from financial institutions and other specified bodies

- (1) For the purposes of an investigation, an inspector, by written notice, may require a specified body to—
- (a) produce for inspection or copying by the inspector any documents or other information specified in the notice that the inspector reasonably believes to be relevant to the investigation; and
- (b) provide the inspector with full details of any transactions relating to trust accounts or trust money.
- (2) A specified body must, without charge, comply with a notice under subsection (1) despite any duty of confidence, or any law relating to confidentiality, to the contrary.
- (3) In this section—
- specified body*** means—
- (a) a financial institution;
- (b) the Commissioner of State Revenue;

- (c) the Appeal Costs Board;
- (d) the Commissioner;
- (e) the Liability Committee;
- (f) a council within the meaning of the **Local Government Act 1989**;
- (g) a body prescribed by the regulations for the purposes of this section.

3.3.45 Failure to comply with inspector

- (1) A person must not, without reasonable excuse, fail to comply with a requirement of an inspector under this Division.

Penalty: 60 penalty units.

- (2) It is not an offence under subsection (1) if the inspector did not, at the time of making the requirement or as soon as practicable afterwards—
- (a) clearly identify himself or herself as an inspector; and
 - (b) advise the person that failure to comply with the requirement could constitute an offence against this Act.
- (3) Despite subsection (1), a person or body referred to in paragraph (b), (c), (d), (e) or (f) of the definition of "specified body" in section 3.3.44 does not commit an offence if the person or body fails to comply with a requirement of an inspector under section 3.3.44.

3.3.46 Application of privileges

- (1) It is not a reasonable excuse for a person not to produce a document, give information, answer a question or do anything else he or she is required to do under this Division—

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- (a) on the ground of any duty of confidence, including any duty of confidence owed by a law practice or legal practitioner to a client; or
 - (b) on the ground that the production of the document, the giving of the information, the answering of the question or the doing of the thing may tend to incriminate them.
- (2) If a person, before producing the document, giving the information, answering the question or doing the thing, objects to the inspector on the ground that the production of the record, giving the information, answering the question or doing the thing may tend to incriminate them, the document, information, answer or thing is inadmissible in evidence in any proceeding against them for an offence, other than—
- (a) an offence in relation to the keeping of trust accounts or the receipt of trust money; or
 - (b) an offence in relation to the giving of false or misleading information.

3.3.47 Inspector must report on investigation

As soon as practicable after completing an investigation under this Division, an inspector must give a written report on the investigation to the Board.

3.3.48 Cost of investigation

- (1) The Board may decide that the whole or part of the costs of conducting an investigation is payable to the Board and may specify the amount payable.
- (2) The amount specified by the Board is a debt owing to the Board by the law practice or approved clerk whose affairs are under investigation, if—

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- (a) the inspector states in his or her report that there is evidence that a contravention of this Part, the regulations made for the purposes of this Part or any legal profession rules relating to trust accounts or trust money has been committed or that fraud or defalcation has been detected; and
 - (b) the Board is satisfied that the contravention is wilful or of a substantial nature.
- (3) Before seeking to recover the amount payable, the Board must give the law practice or approved clerk an information notice about the Board's decision and the amount specified as being payable.
 - (4) Within 28 days after receiving the information notice, the law practice or approved clerk may apply to the Tribunal for review of a decision of the Board under this section.

3.3.49 Secrecy

- (1) An inspector must not disclose information acquired in the course of an investigation under this Division except—
 - (a) as is necessary for the purpose of conducting the investigation and making the report of the investigation; or
 - (b) as is permitted by subsection (2); or
 - (c) with the consent of the person to whom the information relates.
- Penalty: 60 penalty units.
- (2) An inspector may disclose information acquired in the course of an investigation—
 - (a) to a member of the police force, if the inspector reasonably suspects that an offence has been committed;

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- (b) to the Board, in connection with any proceedings arising out of the investigation or concerning the law practice that, or approved clerk who, was the subject of the investigation;
- (c) to the Commissioner, in connection with any function of the Commissioner arising out of the investigation or concerning the law practice that, or approved clerk who, was the subject of the investigation;
- (d) to an external intervener of the legal practice of the law practice that was the subject of the investigation;
- (e) to a trustee in bankruptcy or other administrator of the estate of the approved clerk who was the subject of the investigation;
- (f) to any officer, employee, agent or delegate of a person referred to in paragraph (b), (c), (d) or (e);
- (g) to CPA Australia, the Institute of Public Accountants or the Institute of Chartered Accountants in Australia, if the information relates to the conduct of a member of that body who examined the trust account the subject of the investigation;
- (h) to a court or tribunal;
- (i) to the Australian Securities and Investments Commission;
- (j) to an external examiner of the law practice or approved clerk, in connection with the performance of any function of the external examiner under Division 4.

S. 3.3.49(2)(g)
amended by
Nos 12/2007
s. 40(3)(b),
36/2011 s. 37.

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- (3) In addition to any penalty and any civil liability to the law practice or approved clerk, an inspector who contravenes subsection (1) is liable—
- (a) to a client of the law practice to the same extent (if any) that the law practice would have been liable had it disclosed the information;
 - (b) to a law practice that has employed or engaged the clerk, or to a client of that law practice, to the same extent (if any) that the clerk would have been liable to the law practice, or the law practice would have been liable to the client, had the clerk disclosed the information.

3.3.50 Rules for qualification of inspectors

- (1) The Board may make rules for the qualifications necessary for a person to be appointed as an inspector for the purposes of this Division.
- (2) Rules under this section are not statutory rules for the purposes of the **Subordinate Legislation Act 1994**.

Division 4—External examinations

3.3.51 Approval of external examiners

- (1) For the purposes of this Act, an approved external examiner is a person, other than a person to whom a direction under section 3.3.57(3) applies, who—
 - (a) is a member of CPA Australia, the Institute of Public Accountants or the Institute of Chartered Accountants in Australia; and
 - (b) either—
 - (i) meets the requirements of one of those bodies to practise as a public accountant; or

S. 3.3.51(1)(a)
amended by
Nos 12/2007
s. 40(3)(b),
36/2011 s. 37.

s. 3.3.52

(ii) is employed by the Board and meets the requirements of the rules (if any) made by the Board under section 3.3.50 for qualification as an inspector—

or both; and

- (c) has obtained a degree in commerce, accounting, business studies or a similar discipline from an Australian university or from a foreign university approved by the Board; and
- (d) has successfully completed any courses of education required by the Board under section 3.3.58(1)(a); and
- (e) subject to subsection (2), has completed or substantially assisted in carrying out the examination of the trust records of at least 2 (or such higher number as is prescribed) law practices or approved clerks in respect of any of the previous 3 audit years.

(2) The Board may exempt a person from the requirement of subsection (1)(e).

S. 3.3.52(1)
amended by
No. 29/2006
s. 3(Sch. 1
item 17.2).

3.3.52 Annual examination of trust records

- (1) A law practice that, or an approved clerk who, is required to keep trust records must have those records examined by an approved external examiner in respect of each audit year in accordance with the regulations and any legal profession rules that apply to the law practice or approved clerk.
- (2) For the purposes of an examination under this section, a law practice or an approved clerk must—

S. 3.3.52(2)
amended by
No. 79/2006
s. 36(1).

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- (a) produce for inspection by the examiner any accounting or other records relating to the affairs of the practice or the clerk's business; and
 - (b) give the examiner any other information the examiner reasonably requires.

Penalty: 60 penalty units.

- (3) For the purposes of an examination under this section, a financial institution, despite any duty of confidence to the contrary, must without charge—
 - (a) produce for inspection by the examiner any records held by the financial institution relating to a trust account of, or any trust money deposited with it by, a practitioner, a law practice or an approved clerk; and
 - (b) provide the examiner with full details of any transactions relating to a trust account or trust money.

Penalty: 60 penalty units.

- (4) An examiner may make copies of, or take extracts from, any records or other documents produced to the examiner in the course of an examination.
- (5) An examiner must not knowingly employ or engage a person to assist them in the conduct of an examination unless the person has satisfactorily completed a course required by the Board under section 3.3.58.

Penalty: 60 penalty units.

- (6) This section does not apply to a law practice in respect of an audit year in which the only trust money received by the law practice is transit money.

S. 3.3.52(6)
inserted by
No. 79/2006
s. 36(2).

3.3.53 Examination of affairs of law practice in connection with examination of trust records

- (1) An approved external examiner may examine the affairs of a law practice for the purposes of and in connection with an examination of the law practice's trust records.
- (2) If the law practice is an incorporated legal practice or multi-disciplinary partnership, the reference in subsection (1) to the affairs of the law practice extends to the affairs of the incorporated legal practice or multi-disciplinary partnership or of an associate, so far as they are relevant to trust money, trust records and associated matters.
- (3) A reference in this Division to trust records includes a reference to the affairs of a law practice that may be examined under this section for the purposes of and in connection with an examination of its trust records.

3.3.54 Annual report of trust records examination or statutory declaration

S. 3.3.54(1)
amended by
No. 79/2006
s. 36(3).

- (1) A law practice must lodge with the Board by 28 February each year, a report of the examination of its trust records for the audit year ending on the previous 31 October if the law practice is required under section 3.3.52 to have those records examined.

Penalty: 120 penalty units.

- (2) An approved clerk must lodge with the Board, by 28 February each year, a report of the examination of his or her trust records for the audit year ending on the previous 31 October.

Penalty: 120 penalty units.

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- (3) If an approved clerk, or a law practice that is authorised to receive trust money, does not hold any trust money in their trust account in an audit year, they must lodge with the Board a statutory declaration to that effect in the prescribed form by 30 November following that audit year.

3.3.55 Final examination of trust records

- (1) A law practice that, or an approved clerk who, ceases to be authorised to receive trust money must have their trust records examined by an approved external examiner—
- (a) in respect of the period from the end of the preceding audit year until the date of ceasing to be so authorised; and
 - (b) in respect of each completed period of 12 months thereafter during which the practice or clerk continued to hold trust money; and
 - (c) in respect of the period from the end of the last period referred to in paragraph (b) until the date on which the practice or clerk ceased to hold trust money.
- (2) Section 3.3.52(2), (3) and (4) applies to an examination under subsection (1).
- (3) A law practice or an approved clerk must lodge with the Board—
- (a) a report of each examination under subsection (1) within 60 days after the end of the period to which the examination relates; and
 - (b) a statutory declaration in the prescribed form within 60 days after ceasing to hold trust money.

Penalty: 120 penalty units.

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- (4) If a sole practitioner or an approved clerk dies, their personal representative must comply with this section as if the personal representative were the practitioner or clerk.

S. 3.3.56
amended by
No. 12/2007
s. 40(5) (ILA
s. 39B(1)).

3.3.56 Disclosure of information

- (1) An approved external examiner may disclose information acquired during the course of an examination under this Division—
- (a) as is necessary for properly conducting the examination and making a report; or
 - (b) to an inspector or a supervisor, manager or receiver appointed under this Act; or
 - (ba) to the Board; or
 - (c) to the law practice or approved clerk concerned or an associate of the law practice concerned.

S. 3.3.56(1)(ba)
inserted by
No. 12/2007
s. 40(4).

- (2) If an approved external examiner becomes aware of—
- (a) a deficiency in any trust account or trust ledger account of a law practice or an approved clerk; or
 - (b) a failure by a law practice or an approved clerk to pay or deliver any trust money; or
 - (c) any other failure by a law practice or an approved clerk to comply with this Act or the regulations—

S. 3.3.56(2)
inserted by
No. 12/2007
s. 40(5).

the examiner must report the deficiency or failure to the Board as soon as practicable after becoming aware of it.

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- (3) The regulations may provide for the manner in which a report under subsection (2) is to be made and the information or material that is to be included in or to accompany the report. **S. 3.3.56(3) inserted by No. 12/2007 s. 40(5).**
- (4) If an approved external examiner forms the opinion that the trust records of a law practice or an approved clerk are not being kept in a way that enables them to be conveniently and properly externally examined, the examiner must report that opinion to the Board as soon as practicable after forming the opinion. **S. 3.3.56(4) inserted by No. 12/2007 s. 40(5).**
- (5) In this section—
deficiency has the same meaning as in section 3.3.21. **S. 3.3.56(5) inserted by No. 12/2007 s. 40(5).**

3.3.57 Board's supervisory role in examinations

- (1) The Board may issue directions and guidelines in relation to the conduct of examinations under this Division.
- (2) An approved external examiner must comply with directions issued by the Board under subsection (1).
- (3) If the Board is satisfied that an approved external examiner has failed to comply with a direction issued under subsection (1), it may direct that he or she no longer examine the trust records of a law practice or an approved clerk.
- (4) The Board must give an approved external examiner a reasonable opportunity to make written or oral submissions or both before giving a direction under subsection (3) in relation to them.
- (5) A direction under subsection (3) must be published in the Government Gazette, and takes effect on the day it is so published.

3.3.58 Courses of education for examiners

- (1) The Board, by notice published in the Government Gazette, may prescribe courses of education required to be completed by a person wishing—
 - (a) to examine trust records; or
 - (b) to be employed or engaged to assist in the examination of trust records.
- (2) The Board must give a copy of a notice under subsection (1) to each professional association, CPA Australia, the Institute of Public Accountants and the Institute of Chartered Accountants in Australia as soon as practicable after it is published.

S. 3.3.58(2)
amended by
Nos 12/2007
s. 40(6),
36/2011 s. 37.

Division 5—Provisions relating to ADIs

3.3.59 Arrangements with ADIs

- (1) The Board may make an arrangement with an ADI for the keeping of trust accounts.
- (2) An arrangement may provide for any one or more of the following—
 - (a) the payment of interest to the Board on the whole or any part of deposits in the trust accounts;
 - (b) the manner in which the Board is informed of amounts held in the trust accounts;
 - (c) the auditing of balances in the trust accounts;
 - (d) any other relevant matter.
- (3) An arrangement may provide for the ADI to keep any trust accounts or only trust accounts of a particular class (for example, controlled money accounts).

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- (4) Interest received by the Board under an arrangement must be paid into the Public Purpose Fund.
 - (5) A law practice or an approved clerk must comply with an arrangement under this section.

3.3.60 ADIs to notify Board of trust accounts

- (1) Within 14 days after a law practice or an approved clerk opens a trust account with an ADI, the ADI must notify the Board of the following details—
 - (a) the name of the law practice or approved clerk; and
 - (b) the number of the account; and
 - (c) the name and address of the branch of the ADI where the account is maintained.
- (2) An ADI must notify the Board of any changes to the information notified to the Board under subsection (1) within 14 days after becoming aware of the change.
- (3) Nothing in this section applies to a separate trust account opened by a law practice on the instructions of any single client for the exclusive use of that client.

3.3.61 Reports, records and information

- (1) An ADI at which a trust account is maintained must report any deficiency in the account to the Board as soon as practicable after becoming aware of the deficiency.

Penalty: 60 penalty units.

- (2) An ADI at which a trust account is maintained must report a suspected offence in relation to the trust account to the Board as soon as practicable after forming the suspicion.

Penalty: 60 penalty units.

s. 3.3.61

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- (3) An ADI must give reports to the Board about trust accounts in accordance with the regulations.

Penalty: 60 penalty units.

- (4) An ADI at which a trust account is maintained must without charge—

(a) produce for inspection or copying by an approved external examiner any records relating to the trust account or trust money deposited in the trust account; and

(b) provide the approved external examiner with full details of any transactions relating to the trust account or trust money—

on demand by the approved external examiner and on production of evidence of his or her identity and appointment or engagement in relation to the law practice or approved clerk concerned.

Penalty: 60 penalty units.

- (5) Subsections (1) to (4) apply despite any duty of confidence to the contrary.

- (6) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of—

(a) reporting a deficiency in accordance with subsection (1); or

(b) making or giving a report in accordance with subsection (2) or (3); or

(c) producing records or providing details in accordance with subsection (4).

Division 6—Statutory deposits

3.3.62 Definitions

In this Division—

quarter means the period of 3 months ending on 31 January, 30 April, 31 July or 31 October in any year;

required deposit amount, for a law practice or an approved clerk in respect of a quarter, has the meaning given in section 3.3.63.

3.3.63 Required deposit amount

- (1) Subject to subsection (2), the required deposit amount under this Division for a law practice or an approved clerk in respect of a quarter is the amount calculated in accordance with the following formula—

$$0.7 (A + B)$$

where—

A is the lowest daily balance of the trust account of the law practice or approved clerk at any time during the previous quarter;

B is the amount held on deposit with the Board under this Division on account of the law practice or approved clerk on the last day of the previous quarter.

- (2) If the amount calculated in accordance with the formula in subsection (1) for a law practice or an approved clerk in respect of any quarter is less than \$10 000, the required deposit amount under this Division for the practice or clerk in respect of that quarter is zero.

3.3.64 Requirement to deposit with the Board

- (1) A law practice that, or an approved clerk who, is required to maintain a trust account must deposit the required deposit amount with the Board in respect of each quarter out of the trust money received by the practice or clerk.
- (2) The Board must pay amounts deposited with it under this section to the Public Purpose Fund.
- (3) Failure by a law practice to deposit the required deposit amount in accordance with this Division is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any principal of the law practice.

3.3.65 Determination of amount and timing of deposit

- (1) The Board is to determine the required deposit amount for a law practice or an approved clerk in respect of a quarter as soon as practicable after the end of the previous quarter.
- (2) The Board must notify the law practice or approved clerk of the required deposit amount as soon as practicable after determining it.
- (3) Subsection (2) does not apply if the required deposit amount is zero.
- (4) A law practice or an approved clerk must deposit the required deposit amount (if any) in respect of a quarter on or before the 21st day of the first month of the quarter.

3.3.66 Repayment by Board

- (1) Amounts deposited with the Board under this Division—
 - (a) are held on trust for the law practice or approved clerk that deposited them; and
 - (b) are repayable on demand.

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- (2) However, if—
- (a) an amount is repaid to a law practice or an approved clerk; and
 - (b) subsequently there is a sufficient amount in the practice's or clerk's trust accounts to cover the required deposit amount—
- the law practice or approved clerk must deposit the required deposit amount with the Board.
- (3) Amounts repaid under this section are to be deposited in the recipient's trust account.

3.3.67 Division does not apply to controlled money accounts

- (1) Nothing in this Division applies to—
- (a) a controlled money account kept by a law practice on the instructions of a single client for the exclusive use of that client; or
 - (b) if the Board so approves, a controlled money account kept by a law practice on the instructions of 2 or more clients for the exclusive use of those clients.
- (2) The Board may give approval for the purposes of subsection (1)(b) only if satisfied that the clients are joint owners of the account.

3.3.68 Exemption by Board

On application by a law practice or an approved clerk, the Board may exempt the practice or clerk from any of the provisions of this Division for the period and subject to the conditions (if any) determined by the Board.

3.3.69 Multiple trust accounts

If a law practice or an approved clerk has more than one trust account, this Division applies separately in respect of each trust account.

Division 7—Approval of clerks

3.3.70 Approved clerks

- (1) The Victorian Bar may approve a natural person to receive trust money on account of the legal costs of one or more barristers in advance of the provision of the legal services to which those costs relate.
- (2) An approval must be in writing and notified to the Board as soon as practicable after it is given.
- (3) An approved clerk must comply with the legal profession rules that apply to him or her.
Penalty: 60 penalty units.
- (4) An approved clerk must pay by the due date a contribution required to be paid under section 6.7.29 or a levy required to be paid under section 6.7.32.

Penalty: 120 penalty units.

Division 8—Miscellaneous

3.3.71 Restrictions on receipt of trust money

- (1) A law practice (other than an incorporated legal practice) must not receive trust money unless a principal holds an Australian practising certificate authorising the receipt of trust money.
Penalty: 240 penalty units.
- (2) Subsection (1) does not apply in the case of the receipt of money by a barrister if the barrister, as soon as practicable after the receipt, gives the money to an approved clerk and the clerk accepts the money.

S. 3.3.71
substituted by
No. 12/2007
s. 41.

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- (3) 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 2.7.12 in relation to the practice and the person holds an Australian practising certificate authorising the receipt of trust money; or
 - (c) the money is received during any period during which the practice—
 - (i) does not have any legal practitioner directors; and
 - (ii) is not in default of director requirements under section 2.7.12—so long as there was, immediately before the start of that period, at least one legal practitioner director of the practice who held an Australian practising certificate authorising the receipt of trust money.

3.3.72 Restrictions on receipt of trust money by interstate legal practitioners

An interstate legal practitioner must not receive trust money in this jurisdiction unless the practitioner—

- (a) is authorised to receive trust money in the practitioner's home jurisdiction; and
- (b) has paid the required contributions (if any) to the Fidelity Fund under section 6.7.27.

Penalty: 240 penalty units.

s. 3.3.73

s. 3.3.73
substituted by
No. 12/2007
s. 42.

3.3.73 Application of Part to incorporated legal practices and multi-disciplinary partnerships

- (1) The obligations imposed on law practices by this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts, apply to an incorporated legal practice or multi-disciplinary partnership only in connection with legal services provided by the practice or partnership.
- (2) The regulations may provide that specified provisions of this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts, do not apply to incorporated legal practices or multi-disciplinary partnerships or both or apply to them with specified modifications.

3.3.74 Legal profession rules

- (1) Legal profession rules may make provision for or with respect to requiring a law practice or an approved clerk to notify a client that money entrusted to the practice or clerk is not, or is no longer, trust money and that accordingly the money may not be money to which Part 3.6 or a corresponding law applies.
- (2) Rules referred to in subsection (1) cannot be inconsistent with section 3.3.3.

3.3.75 Regulations

The regulations may make provision for or with respect to—

- (a) providing exemptions, or the giving of exemptions, from all or any specified requirements of this Part in relation to trust money that is regulated by a corresponding law; or

(b) the creation and exercise of liens over trust money.

PART 3.4—COSTS DISCLOSURE AND REVIEW

Division 1—Preliminary

3.4.1 Purposes

The purposes of this Part are—

- (a) to provide for law practices to make disclosures to clients regarding legal costs;
- (b) to regulate the making of costs agreements in respect of legal services, including conditional costs agreements;
- (c) to regulate the billing of costs for legal services;
- (d) to provide a mechanism for the review of legal costs and the setting aside of certain costs agreements.

3.4.2 Definitions

In this Part—

business day means a day other than a Saturday, a Sunday or a public holiday within the meaning of the **Public Holidays Act 1993**;

* * * * *

S. 3.4.2 def. of *client* repealed by No. 12/2007 s. 43(b).

conditional costs agreement means a costs agreement that provides that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate, as referred to in section 3.4.27, but does not include a costs agreement to the extent to which section 3.4.29(1) applies;

costs agreement means an agreement about the payment of legal costs;

costs review means a review of legal costs under Division 7;

itemised bill means a bill that specifies in detail how the legal costs are made up in a way that would allow them to be reviewed 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 a 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;

practitioner remuneration order means an order made under section 3.4.22;

scale of costs means a scale of costs of a court or tribunal of this jurisdiction;

sophisticated client means a client to whom, because of section 3.4.12(1)(c) or (d), disclosure under section 3.4.9 or 3.4.10(1) is not or was not required;

S. 3.4.2 def. of *sophisticated client* inserted by No. 79/2006 s. 37(1).

* * * * *

S. 3.4.2 def. of *uplift fee* repealed by No. 12/2007 s. 43(c).

Legal Profession Act 2004
No. 99 of 2004
Part 3.4—Costs Disclosure and Review

s. 3.4.2A

S. 3.4.2 def. of *Taxing Master* amended by No. 12/2007 s. 43(d), substituted by No. 24/2008 s. 84, repealed by No. 78/2008 s. 10(2).

* * * * *

S. 3.4.2 def. of *third party payer* inserted by No. 12/2007 s. 43(a).

third party payer—see section 3.4.2A;

S. 3.4.2 def. of *uplift fee* inserted by No. 12/2007 s. 43(a).

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.

S. 3.4.2A inserted by No. 12/2007 s. 44.

3.4.2A Terms relating to third party payers

- (1) For the purposes of this Part—
- (a) a person is a *third party payer*, in relation to a client of a law practice, if the person is not the client and—
 - (i) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or
 - (ii) being under that obligation, has already paid all or a part of those legal costs; and
 - (b) a third party payer is an *associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person; and

-
- (c) a third party payer is a *non-associated third party payer* if the legal obligation referred to in paragraph (a) is owed to the client or another person but not the law practice.
- (2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.
- (3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.

Division 2—Application of this Part

3.4.3 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.

3.4.4 Part also applies by agreement or at client's election

- (1) This Part applies to a matter if—
- (a) either—
- (i) this Part does not currently apply to the matter; or
- (ii) it is not possible to determine the jurisdiction in which the client first instructs the law practice in relation to the matter; and
- (b) either or both of the following apply—
- (i) the legal services are or will be provided wholly or primarily in this jurisdiction; or
- (ii) the matter has a substantial connection with this jurisdiction; and

s. 3.4.4

S. 3.4.4(1)(c)(i)
substituted by
No. 12/2007
s. 45(1)(a).

(c) either—

- (i) the client accepts, in writing or by other conduct, a written offer to enter into an agreement under subsection (2)(a) in respect of the matter; or
- (ii) the client gives a notification under subsection (2)(b) in respect of the matter.

(2) For the purposes of subsection (1)(c), the client may—

S. 3.4.4(2)(a)
substituted by
No. 12/2007
s. 45(1)(b).

- (a) accept, in writing or by other conduct, a written offer that complies with subsection (2A) 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.

S. 3.4.4(2A)
inserted by
No. 12/2007
s. 45(2).

(2A) An offer referred to in subsection (2)(a) must clearly state—

- (a) that it is an offer to enter into an agreement that this Part is to apply to the matter; and
- (b) that the client may accept it in writing or by other conduct; and
- (c) the type of conduct that will constitute acceptance.

(3) A notification has no effect for the purposes of subsection (2)(b) if it is given after the period of 28 days after the law practice discloses to the client (under a corresponding law) information about the client's right to make a notification of that kind, but nothing in this subsection prevents an agreement referred to in subsection (2)(a) from coming into effect at any time.

3.4.5 Displacement of Part

- (1) This section applies if this Part applies to a matter by the operation of section 3.4.3 or 3.4.4.
- (2) This Part ceases to apply to a 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; or
 - (ii) the matter has a substantial connection with another jurisdiction; and
 - (b) either—
 - (i) the client enters under the corresponding law into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
 - (ii) the client notifies, under the corresponding law of the other jurisdiction (and within the time allowed by the corresponding law), the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.
- (3) Nothing in this section prevents the application of this Part to the matter by means of a later agreement or notification under section 3.4.4.

S. 3.4.5(2)(b)(i)
amended by
No. 12/2007
s. 45(3)(a).

3.4.6 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

S. 3.4.6
amended by
No. 12/2007
s. 45(3)(b).

jurisdiction, whether in person or by post, telephone, fax, e-mail or other form of communication.

3.4.7 When does a matter have a substantial connection with this jurisdiction?

The regulations may prescribe the circumstances in which, or the rules to be used to determine whether, a matter has or does not have substantial connection with this jurisdiction for the purposes of this Part.

3.4.8 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 respect of legal costs (if any) incurred while this Part applied to the matter.
- (3) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not apply in respect of legal costs (if any) incurred while the corresponding law applied to the matter, so long as the corresponding law continues to apply in respect of those costs.
- (4) However—
 - (a) the client may enter into a written agreement with the law practice that the cost review provisions of this Part are to apply in respect of all legal costs incurred in relation to the matter, and Division 7 accordingly applies in respect of those legal costs; or

S. 3.4.8(4)(a)
amended by
No. 12/2007
s. 45(3)(c)(i).

- (b) if the client enters into a written agreement with the law practice that the cost review provisions of a corresponding law are to apply in respect of all legal costs incurred in relation to the matter, Division 7 accordingly does not apply in respect of those legal costs. **S. 3.4.8(4)(b) amended by No. 12/2007 s. 45(3)(c)(ii).**
- (4A) A written agreement referred to in subsection (4) need not be signed by the client but in that case the client's acceptance must be communicated to the law practice by fax, email or some other written form. **S. 3.4.8(4A) inserted by No. 12/2007 s. 45(4).**
- (4B) 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. **S. 3.4.8(4B) inserted by No. 12/2007 s. 45(4).**
- (5) This section has effect despite any other provisions of this Part.

Division 3—Costs disclosure

3.4.9 Disclosure of costs to clients

- (1) A law practice must disclose to a client in accordance with this Division—
- (a) the basis on which legal costs will be calculated, including whether a practitioner remuneration order or 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
- (ia) receive a bill from the law practice; and **S. 3.4.9(1)(b)(ia) inserted by No. 12/2007 s. 45(5)(a).**

s. 3.4.9

S. 3.4.9(1)(c)
substituted by
No. 18/2005
s. 10(a).

- (ii) request an itemised bill within 30 days after receipt of a lump sum bill; and
- (iii) be notified under section 3.4.16 of any substantial change to the matters disclosed under this section; and
- (c) an estimate of the total legal costs or, if that is not reasonably practicable—
 - (i) a range of estimates of the total legal costs; and
 - (ii) an explanation of the major variables that will affect the calculation of those costs; and

S. 3.4.9(1)(d)
repealed by
No. 18/2005
s. 10(a).

* * * * *

S. 3.4.9(1)(f)
substituted by
No. 12/2007
s. 45(5)(b).

- (e) details of the intervals (if any) at which the client will be billed; and
- (f) the rate of interest (if any) that the law practice charges on overdue legal costs, whether that rate is a specific rate of interest or is a benchmark rate of interest (as referred to in subsection (1A)); and
- (g) 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
- (h) the client's right to progress reports in accordance with section 3.4.18; and

- (i) details of the person whom the client may contact to discuss the legal costs; and
- (j) the following avenues that are open to the client in the event of a dispute in relation to legal costs—
 - (i) costs review under Division 7;
 - (ii) the setting aside of a costs agreement under section 3.4.32;
 - (iii) making a complaint under Chapter 4; and
- (k) any time limits that apply to the taking of any action referred to in paragraph (j); and
- (l) that the law of this jurisdiction applies to legal costs in relation to the matter; and
- (m) 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 corresponding provisions of the corresponding law to apply to the matter.

S. 3.4.9(1)
(m)(i)
amended by
No. 12/2007
s. 45(5)(c).

Note

The client's right to enter into an agreement or give a notification as mentioned in paragraph (m) will be under provisions of the law of the other jurisdiction that correspond to section 3.4.4.

Note to
s. 3.4.9(1)
amended by
No. 12/2007
s. 45(5)(d).

s. 3.4.9

S. 3.4.9(1A)
inserted by
No. 12/2007
s. 45(6).

(1A) For the purposes of subsection (1)(f), a benchmark rate of interest is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is specified or determined from time to time by an ADI or another body or organisation, or by or under other legislation, and that is publicly available.

S. 3.4.9(1B)
inserted by
No. 12/2007
s. 45(6).

(1B) The regulations may make provision for or with respect to the use of benchmark rates of interest and, in particular, for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.

(2) For the purposes of subsection (1)(g), 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

S. 3.4.9(2)(b)
amended by
No. 12/2007
s. 45(7).

(b) if applicable, a statement that disbursements may be payable by the client even if the client enters into a conditional costs agreement.

S. 3.4.9(3)
inserted by
No. 12/2007
s. 45(8),
substituted by
No. 46/2007
s. 23(1).

(3) A law practice is taken to have complied with the requirement to disclose the details referred to in subsection (1)(b)(i), (ia) and (ii), (h), (j), (k) and (m) if it provides a written statement in or to the effect of a form prescribed by the regulations for the purposes of this subsection at the same time as the other details are disclosed as required by this section.

S. 3.4.9(4)
inserted by
No. 46/2007
s. 23(1).

(4) A regulation prescribing a form for the purposes of subsection (3) may provide for the form to refer to fact sheets or other documents (whether as current at the time the regulation commences or any earlier time or as in force for the time being)

that contain details of the kind referred to in that subsection.

- (5) The regulation may—
- (a) require the Commissioner to produce and maintain fact sheets or other documents that are referred to in the form and to make them available on the Internet; and
 - (b) require the fact sheets or other documents to be developed in consultation with the professional associations.

S. 3.4.9(5)
inserted by
No. 46/2007
s. 23(1).

3.4.10 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 the details specified in section 3.4.9(1)(a), (c) and (e) in relation to the other law practice, in addition to any information required to be disclosed to the client under section 3.4.9.
- (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 3.4.9, 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.

S. 3.4.10(1)
amended by
Nos 18/2005
s. 10(b),
12/2007
s. 45(9).

Note

An example of the operation of this section is where 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.

s. 3.4.11

S. 3.4.11
(Heading)
amended by
No. 12/2007
s. 45(10).

3.4.11 How and when must disclosure be made to a client?

- (1) Disclosure under section 3.4.9 must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.
- (2) Disclosure under section 3.4.10(1) must be made in writing before, or as soon as practicable after, the other law practice is retained.
- (3) Disclosure made to a person before the law practice is retained in a matter is taken to be disclosure to the person as a client for the purposes of sections 3.4.9 and 3.4.10.

S. 3.4.11(2)
substituted by
No. 12/2007
s. 45(11).

S. 3.4.11(3)
inserted by
No. 12/2007
s. 45(11).

3.4.12 Exceptions to requirement for disclosure

- (1) Disclosure under section 3.4.9 or 3.4.10(1) is not required to be made in any of the following circumstances—

S. 3.4.12(1)(a)
amended by
No. 46/2007
s. 23(2).

- (a) if the total legal costs in the matter, excluding disbursements, are not likely to exceed \$750 (exclusive of GST) or the prescribed amount (whichever is higher);
- (b) if—
 - (i) the client has received one or more disclosures under section 3.4.9 or 3.4.10(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 that Act); or
 - (iv) a liquidator, administrator or receiver (as respectively referred to in that 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 that Act) if it were a company; or
 - (vi) a proprietary company (within the meaning of that 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 any member of the group is a person to whom disclosure of costs is not required and if any other members of the group who are not such persons have indicated that they waive their right to disclosure; or

S. 3.4.12(1)(c)
substituted by
No. 79/2006
s. 37(2).

s. 3.4.12

- (viii) a Minister of the Crown in right of a jurisdiction or the Commonwealth acting in his or her capacity as such, or a government department or public authority of a jurisdiction or the Commonwealth;
- (d) if the legal costs or the basis on which they will be calculated have or has been agreed as a result of a tender process;
- (e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice;

Note

For instance, disclosure would not be required where the law practice acts in the matter on a pro bono basis.

- (f) in any circumstances prescribed by the regulations.
- (2) Despite subsection (1)(a), if a law practice becomes aware that the total legal costs are likely to exceed \$750 (exclusive of GST) or the prescribed amount (whichever is higher), the law practice must disclose the matters in section 3.4.9 or 3.4.10 (as the case requires) to the client as soon as practicable.
- (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 referred to in subsection (3) otherwise than on reasonable grounds is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of the principal.

S. 3.4.12(2)
amended by
No. 46/2007
s. 23(2).

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- (5) Nothing in this section affects or takes away from any client's right—
- (a) to progress reports in accordance with section 3.4.18;
 - (b) to obtain reasonable information from the law practice in relation to any of the matters specified in section 3.4.9;
 - (c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

3.4.13 Additional disclosure—settlement of litigious matters

- (1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is executed—
 - (a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
 - (b) a reasonable estimate of any contributions towards those costs likely to be received from another party.
- (2) A law practice retained on behalf of a client by another law practice is not required to make a disclosure to the client under subsection (1) if the other law practice makes the disclosure to the client before the settlement is executed.

s. 3.4.14

S. 3.4.14
amended by
No. 79/2006
s. 37(3) (ILA
s. 39B(1)).

3.4.14 Additional disclosure—uplift fees

S. 3.4.14(1)
amended by
No. 12/2007
s. 45(12).

- (1) If a costs agreement involves an uplift fee, the law practice must disclose to the client in writing, before entering the agreement, the law practice's usual fees, the uplift fee (or the basis of calculation of the uplift fee) and reasons why the uplift fee is warranted.

S. 3.4.14(2)
inserted by
No. 79/2006
s. 37(3).

- (2) A law practice is not required to make a disclosure under subsection (1) to a sophisticated client.

3.4.15 Form of disclosure

S. 3.4.15(1)
amended by
No. 12/2007
s. 45(13).

- (1) Written disclosures to a client under this Division—
 - (a) must be expressed in clear plain language; and
 - (b) may be in a language other than English if the client is more familiar with that language.
- (2) If the law practice is aware that the client is unable to read, the law practice must arrange for the information required to be given to a client under this Division to be conveyed orally to the client in addition to providing the written disclosure.

S. 3.4.16
substituted by
No. 12/2007
s. 46.

3.4.16 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.

3.4.17 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 reviewed under Division 7.

S. 3.4.17(1)
amended by
No. 12/2007
s. 47(1)(a).

Note

Under section 3.4.45, the costs of a review 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 reviewed under Division 7.

S. 3.4.17(2)
substituted by
No. 79/2006
s. 37(4),
amended by
No. 12/2007
s. 47(1)(a).

- (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 3.4.32 for the costs agreement to be set aside.

S. 3.4.17(3)
substituted by
No. 79/2006
s. 37(4),
amended by
No. 12/2007
s. 47(1)(b).

- (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 a review of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the Costs Court to be proportionate to the seriousness of the failure to disclose.

S. 3.4.17(4)
substituted by
No. 79/2006
s. 37(4),
amended by
Nos 12/2007
s. 47(1)(c),
78/2008
s. 10(3).

- (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

S. 3.4.17(5)
inserted by
No. 79/2006
s. 37(4).

s. 3.4.18

information to the first law practice as required by section 3.4.10(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.

S. 3.4.17(5A)
inserted by
No. 12/2007
s. 47(2).

- (5A) In a matter involving both a client and an associated third party payer where disclosure has been made to one of them but not the other—
 - (a) subsection (1) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
 - (b) subsection (2) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.

S. 3.4.17(6)
inserted by
No. 79/2006
s. 37(4).

- (6) 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.

S. 3.4.17(7)
inserted by
No. 79/2006
s. 37(4).

- (7) Subsections (1) and (2) do not apply if the legal costs are or have been the subject of a civil complaint under Chapter 4.

3.4.18 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

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- (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.

3.4.18A Disclosure to associated third party payers

S. 3.4.18A
inserted by
No. 12/2007
s. 48.

- (1) If a law practice is required to make a disclosure to a client of the practice under this Division, the practice must, in accordance with subsections (2) and (3), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.
- (2) A disclosure under subsection (1) must be made in writing—
- (a) at the time the disclosure to the client is required under this Division; or
- (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the practice became aware of the obligation.

- (3) Section 3.4.15 applies to a disclosure to an associated third party payer under subsection (1) in the same way as it applies to a client.
- (4) An associated third party payer for a client of a law practice has the same right as the client to obtain reports under section 3.4.18(1)(b) of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in respect of legal services provided to the client, and the law practice must comply with that section accordingly.

Division 4—Legal costs generally

3.4.19 On what basis are legal costs recoverable?

Subject to Division 2, legal costs are recoverable—

- (a) under a costs agreement made in accordance with Division 5 or the corresponding provisions of a corresponding law; or
- (b) if paragraph (a) does not apply, in accordance with an applicable practitioner remuneration order or 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

See section 3.4.44(2) for the criteria that are to be applied on a costs review to determine whether legal costs are fair and reasonable.

3.4.20 Security for legal costs

A law practice may take reasonable security from a client for legal costs (including security for the payment of interest on unpaid legal costs) and may refuse or cease to act for a client who does not provide reasonable security.

3.4.21 Interest on unpaid legal costs

S. 3.4.21
substituted by
No. 12/2007
s. 49.

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the practice has given a bill for the costs in accordance with this Part.
- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest under subsection (1) or (2) on unpaid legal costs unless the bill for those costs contains a statement that interest is payable if the costs are not paid and of the rate of interest.
- (4) A law practice may not charge interest under this section or under a costs agreement at a rate that exceeds the rate prescribed by the regulations.

3.4.22 Practitioner remuneration orders

- (1) The Legal Costs Committee, after consultation with the Board, may make orders with respect to the costs that may be charged by law practices for providing legal services other than in relation to litigious matters.
- (2) A practitioner remuneration order may provide that law practices may charge—
 - (a) according to a scale of rates of commission or percentages; or
 - (b) a specified amount; or
 - (c) a maximum amount; or
 - (d) in any other way or combination of ways.
- (3) A practitioner remuneration order—
 - (a) may differ according to different classes of legal services;

- (b) may confer a discretionary authority or impose a duty on a specified person or class of persons.

3.4.23 Publication and availability of practitioner remuneration order

- (1) The Legal Costs Committee must give a copy of each practitioner remuneration order to the Attorney-General, the Board and each professional association within 7 days after it is made.
- (2) Each professional association must publish the contents of a practitioner remuneration order in its next available official publication after it receives a copy of the order.
- (3) A person may inspect without charge a copy of a practitioner remuneration order during ordinary office hours at the office of the Board, or purchase a copy from the Board.

3.4.24 Disallowance of practitioner remuneration order

- (1) The Attorney-General must cause a copy of each practitioner remuneration order to be laid before each House of the Parliament on or before the 6th sitting day of that House after the day on which the order is received by him or her.
- (2) A practitioner remuneration order is subject to disallowance by the Parliament and, for that purpose, sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply as if a practitioner remuneration order were a statutory rule within the meaning of that Act.

3.4.25 Legal Costs Committee

- (1) The Legal Costs Committee consists of—
 - (a) the Chief Justice of the Supreme Court or another Judge of the Supreme Court nominated by him or her;

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- (ab) the Chief Judge or another judge of the County Court nominated by the Chief Judge; **S. 3.4.25 (1)(ab) inserted by No. 78/2008 s. 11.**
- (ac) the Chief Magistrate or another magistrate nominated by the Chief Magistrate; **S. 3.4.25(1)(ac) inserted by No. 78/2008 s. 11.**
- (ad) the President of the Tribunal or another member of the Tribunal nominated by the President; **S. 3.4.25 (1)(ad) inserted by No. 78/2008 s. 11.**
- (b) 2 members nominated by the Attorney-General, at least one of whom is not a legal practitioner;
- (c) 2 members nominated by the Board;
- (d) one member nominated by each professional association.
- (2) The Chief Justice or his or her nominee is to be chairperson of the committee.
- (3) A quorum of the committee is a majority of the members of the committee for the time being.
- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) Subject to this Act, the Committee may regulate its own procedure.

3.4.25A Functions of the Legal Costs Committee

S. 3.4.25A inserted by No. 78/2008 s. 12.

- (1) The Legal Costs Committee has the functions conferred on it by this Act or any other Act.
- (2) The Legal Costs Committee may advise the Judges of the Supreme Court, the judges of the County Court, the Chief Magistrate and the

President of the Tribunal on any desirable adjustments in scales of costs in relation to litigious matters.

- (3) The Legal Costs Committee may inquire into and report to the Judges of the Supreme Court, the judges of the County Court, the Chief Magistrate and the President of the Tribunal on the following—
- (a) alternative structures to the existing scales of costs;
 - (b) inconsistencies in scales of costs as between jurisdictions;
 - (c) any other matter which the Committee believes could make the conduct of litigation less expensive.

Division 5—Costs agreements

3.4.26 Making costs agreements

- (1) A costs agreement may be made—
- (a) between a client and a law practice retained by the client; or
 - (b) between a client and a law practice retained on behalf of the client by another law practice; or
 - (c) between a law practice and another law practice that retained that law practice on behalf of a client; or
 - (d) between a law practice and an associated third party payer.
- (2) A costs agreement must be written or evidenced in writing.

S. 3.4.26(1)(c)
amended by
No. 12/2007
s. 50(1)(a).

S. 3.4.26(1)(d)
inserted by
No. 12/2007
s. 50(1)(b).

- (3) A costs agreement may consist of a written offer in accordance with 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 3.4.27(3)(c).

- (4) The offer must clearly state—
- (a) that it is an offer to enter a costs agreement; and
 - (b) that the client may accept it in writing or by other conduct; and
 - (c) the type of conduct that will constitute acceptance.

- (5) Except as provided by section 3.4.48A, a costs agreement cannot provide that the legal costs to which it relates are not subject to costs review under Division 7.

S. 3.4.26(5)
amended by
No. 12/2007
s. 50(2).

Note

If it attempts to do so, the costs agreement will be void—see section 3.4.31(1).

- (6) A reference in section 3.4.32 and in any prescribed provisions of this Part to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as referred to in subsection (1)(d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

S. 3.4.26(6)
inserted by
No. 12/2007
s. 50(3).

3.4.27 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.

S. 3.4.27(1)
amended by
No. 12/2007
s. 50(4).

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- (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 of the Commonwealth.
- (3) A conditional costs agreement—
- (a) must set out the circumstances that constitute the successful outcome of the matter to which it relates; and
 - (b) may provide for disbursements to be paid irrespective of the outcome of the matter; and
 - (c) must be—
 - (i) in writing; and
 - (ii) in clear plain language; and
 - (iii) signed by the client; and
 - (d) must contain a statement that the client has been informed of the client's right to seek independent legal advice before entering into the agreement; and
 - (e) must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement.
- (4) Subsection (3)(c)(iii), (d) and (e) does not apply to a conditional costs agreement made under section 3.4.26(1)(c).
- (4A) Subsection (3)(c)(iii), (d) and (e) does not apply to a conditional costs agreement made with a sophisticated client.

S. 3.4.27(4A)
inserted by
No. 79/2006
s. 37(5).

(5) If a client terminates an agreement within the period referred to in subsection (3)(e), the law practice—

S. 3.4.27(5)
substituted by
No. 12/2007
s. 50(5).

- (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
- (b) without affecting the generality of paragraph (a), may not recover the uplift fee (if any).

3.4.28 Conditional costs agreements involving uplift fees

S. 3.4.28
substituted by
No. 12/2007
s. 51.

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) The basis of calculation of the uplift fee must be separately identified in the agreement.
- (3) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable—
 - (a) a range of estimates of the uplift fee; and
 - (b) an explanation of the major variables that will affect the calculation of the uplift fee.
- (4) If a conditional costs agreement relates to a litigious matter—
 - (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
 - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.

s. 3.4.29

- (5) A law practice must not enter into a costs agreement in contravention of this section.

Penalty: 60 penalty units.

3.4.29 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—

S. 3.4.29(1)(a)
repealed by
No. 12/2007
s. 52(a).

* * * * *

- (b) the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.

Penalty: 120 penalty units.

S. 3.4.29(2)
amended by
No. 12/2007
s. 52(b).

- (2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable scale of costs.

3.4.30 Effect of costs agreement

- (1) Subject to this Division and Division 7, a costs agreement may be enforced in the same way as any other contract.
- (2) Nothing in this Part prevents a person making a complaint under Chapter 4 in relation to legal costs that are the subject of a costs agreement.

3.4.31 Certain 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 3.4.19(b) or (c).
- (3) However, a law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amounts received.
- (4) A law practice that has entered into a costs agreement in contravention of section 3.4.28 is not entitled to recover the whole or any part of the uplift fee and must repay the amount received in respect of the uplift fee to the person from whom it was received.
- (5) A law practice that has entered into a costs agreement in contravention of section 3.4.29 is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.
- (6) If a law practice does not repay an amount required by subsection (3), (4) or (5) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

3.4.32 Setting aside costs agreements

- (1) On application by a client, the Tribunal may order that a costs agreement be set aside if satisfied that the agreement is not fair or reasonable.
- (2) In determining whether or not a costs agreement is fair or reasonable, the Tribunal may have regard to any or all of the following matters—

S. 3.4.32(1)
amended by
No. 12/2007
s. 53(1)(a).

S. 3.4.32(2)
amended by
No. 12/2007
s. 53(1)(a).

s. 3.4.32

S. 3.4.32(2)(d)
substituted by
No. 12/2007
s. 53(1)(b).

S. 3.4.32(2)(e)
inserted by
No. 12/2007
s. 53(1)(b).

S. 3.4.32(2)(f)
inserted by
No. 12/2007
s. 53(1)(b).

S. 3.4.32(2)(g)
inserted by
No. 12/2007
s. 53(1)(b).

- (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;
 - (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 Tribunal may adjourn the hearing of an application under this section pending the completion of any investigation or determination of any charge in relation to the conduct of any Australian legal practitioner or Australian-registered foreign lawyer.

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- (4) If the Tribunal orders that a costs agreement be set aside, it may make an order in relation to the payment of legal costs the subject of the agreement.
- (5) In making an order under subsection (4)—
- (a) the Tribunal must apply the applicable scale of costs or practitioner remuneration order (if any); or
 - (b) if there is no applicable scale of costs or practitioner remuneration order—the Tribunal must determine the fair and reasonable legal costs in relation to the work to which the agreement related, taking into account—
 - (i) the seriousness of the conduct of the law practice or any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf; and
 - (ii) whether or not it was reasonable to carry out the work; and
 - (iii) whether or not the work was carried out in a reasonable manner.
- (6) In making an order under subsection (4), the Tribunal may not order the payment of an amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been set aside.
- (7) For the purposes of subsection (5)(b), the 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, the regulations or the legal profession rules;

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- (b) any disclosures made by the law practice under Division 3, or the failure to make any disclosures required under that Division;
- (c) any relevant advertisement as to—
- (i) the law practice's costs; or
 - (ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;
- (d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;
- (e) the retainer and whether the work done was within the scope of the retainer;
- (f) the complexity, novelty or difficulty of the matter;
- (g) the quality of the work done;
- (h) the place where, and circumstances in which, the work was done;
- (i) the time within which the work was required to be done;
- (j) any other relevant matter.
- (8) The Tribunal may determine whether or not a costs agreement exists.
- (9) The Tribunal may order the payment of the costs of and incidental 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.

Note

See also section 3.4.26(6) which extends the application of this section to associated third party payers.

S. 3.4.32(10)
inserted by
No. 12/2007
s. 53(2).

Division 6—Billing

3.4.33 Legal costs cannot be recovered unless bill has been served

- (1) A law practice must not commence legal proceedings to recover legal costs from a person until at least 65 days after the law practice has given a bill to the person in accordance with sections 3.4.34 and 3.4.35.

Note

Section 4.3.2 prohibits a law practice from commencing proceedings if it has received notice of a civil complaint regarding the legal costs.

- (2) A court of competent jurisdiction may make an order authorising a law practice to commence legal proceedings against a person sooner if satisfied that—
- (a) the law practice has given a bill to the person in accordance with sections 3.4.34 and 3.4.35; and
 - (b) the person is about to leave this jurisdiction.
- (3) A court or tribunal before which any proceedings are brought in contravention of subsection (1) must stay those proceedings on the application of a party, or on its own initiative.
- (4) This section applies whether or not the legal costs are the subject of a costs agreement.

3.4.34 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—
- (a) in any case, by an Australian legal practitioner or an employee of the law practice; or

S. 3.4.34(2)
substituted by
No. 79/2006
s. 38(1).

s. 3.4.34

S. 3.4.34(2A)
inserted by
No. 12/2007
s. 54(1).

- (b) in the case of a barrister, by an approved clerk or an employee of an approved clerk authorised by the approved clerk.
- (2A) It is sufficient compliance with subsection (2) if—
- (a) in any case, 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;
 - (b) in the case of a barrister, a letter signed on behalf of the barrister by an approved clerk or an employee of an approved clerk authorised by the approved clerk is attached to, or enclosed with, the bill.
- (3) In the case of a law practice that is an incorporated legal practice, the bill may be sealed by the practice in accordance with its constitution, instead of being signed under subsection (2).
- (4) 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.

(5) A reference in subsection (4) to any method of
giving a bill to a person includes a reference to
arranging for the bill to be given to that person by
that method (for example, by delivery by courier).

(5A) Despite anything in subsections (2) to (5), a bill
may be given to a client electronically if the client
is a sophisticated client and requested the bill to
be given electronically.

S. 3.4.34(5A)
inserted by
No. 79/2006
s. 38(2).

(6) 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.

3.4.35 Notification of client's rights

S. 3.4.35
amended by
No. 79/2006
s. 38(3) (ILA
39B(1)).

(1) A bill must include or be accompanied by a
written statement setting out—

(a) the following avenues that are open to the
client in the event of a dispute in relation to
legal costs—

(i) costs review under Division 7;

(ii) the setting aside of a costs agreement
under section 3.4.32;

(iii) making a complaint under Chapter 4;
and

(b) any time limits that apply to the taking of
any action referred to in paragraph (a).

(2) Subsection (1) does not apply in relation to a
sophisticated client.

S. 3.4.35(2)
inserted by
No. 79/2006
s. 38(3).

s. 3.4.36

S. 3.4.35(3)
inserted by
No. 12/2007
s. 54(2),
substituted by
No. 46/2007
s. 23(3).

(3) A law practice is taken to have complied with the requirement to provide the written statement referred to in subsection (1) if it provides a written statement in or to the effect of a form prescribed by the regulations for the purposes of this subsection.

S. 3.4.35(4)
inserted by
No. 46/2007
s. 23(3).

(4) A regulation prescribing a form for the purposes of subsection (3) may provide for the form to refer to fact sheets or other documents (whether as current at the time the regulation commences or any earlier time or as in force for the time being) that contain details of the kind referred to in subsection (1).

S. 3.4.35(5)
inserted by
No. 46/2007
s. 23(3).

(5) The regulation may—
(a) require the Commissioner to produce and maintain fact sheets or other documents that are referred to in the form and to make them available on the Internet; and
(b) require the fact sheets or other documents to be developed in consultation with the professional associations.

S. 3.4.36
substituted by
No. 12/2007
s. 55.

3.4.36 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 a review of the legal costs to which the bill relates may, within 30 days after the day the bill is given, request the law practice to give the person an itemised bill.
- (2) The law practice must comply with the request within 21 days after the date on which the request was 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) If a person makes a request for an itemised bill in accordance with this section, the law practice must not commence legal proceedings to recover the legal costs from the person until at least 35 days after complying with the request.

Note

Section 4.3.2 prohibits a law practice from commencing proceedings if it has received notice of a civil complaint regarding the legal costs.

- (5) A law practice is not entitled to charge a person other than a non-associated third party payer for the preparation of an itemised bill requested under this section.
- (6) Section 3.4.34(2), (3) and (4) apply to the giving of an itemised bill under this section.

3.4.37 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 reviewed 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 reviewed or paid.

Division 7—Costs review by Costs Court

Pt 3.4 Div. 7
(Heading)
amended by
No. 78/2008
s. 13(1).

3.4.38 Application by clients or third party payers for costs review

S. 3.4.38
substituted by
No. 12/2007
s. 56.

- (1) A client may apply to the Costs Court for a review of the whole or any part of legal costs.

S. 3.4.38(1)
amended by
No. 78/2008
s. 13(2).

s. 3.4.38

S. 3.4.38(2)
amended by
No. 78/2008
s. 13(2).

- (2) A third party payer may apply to the Costs Court for a review of the whole or any part of legal costs payable by the third party payer.
- (3) An application for a costs review 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 apply for a costs review.
- (5) An application by a client or third party payer for a costs review under this section 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, an application that is made out of time, otherwise than by—
 - (a) a sophisticated client; or
 - (b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned—

S. 3.4.38(6)
amended by
No. 78/2008
s. 13(3).

may be dealt with by the Costs Court if the Supreme Court constituted by a Judge of the Court within the meaning of the **Supreme Court Act 1986**, on referral by a Costs Judge or the client or third party payer who made the application for review, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for review to be dealt with after the 12 month period.

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- (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, an application for a costs review under this section.
- (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 one or more applications for review under this section in relation to costs for which the client is solely liable; and
- (ii) the associated third party payer from making one or more applications for review under this section in relation to costs for which the associated third party payer is solely liable—
- and those applications may be made by them at the same time or at different times and may be dealt with jointly or separately; and
- (b) the client or the associated third party payer—
- (i) may participate in the costs review process where the other of them makes an application for review under this section in relation to costs for which they are both liable; and
- (ii) is taken to be a party to the review and is bound by the review; and
- (c) the law practice—
- (i) must participate in the costs review process where an application is made under this section by the associated

third party payer in the same way as the practice must participate in the process where an application is made under this section by a client; and

(ii) is taken to be a party to the review and is bound by the review.

(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 one or more applications for review under this section in relation to costs for which the client is liable; and

(ii) the non-associated third party payer from making one or more applications for review under this section in relation to costs for which the non-associated third party payer is liable—

and those applications may be made by them at the same time or at different times but must be dealt with separately; and

(b) the client—

(i) may participate in the costs review process where the non-associated third party payer makes an application under this section in relation to costs for which the non-associated third party payer is liable; and

(ii) is taken to be a party to the review and is bound by the review; and

(c) the law practice—

(i) must participate in the costs review process; and

(ii) is taken to be a party to the review; and

(d) despite any other provision of this Division, the review 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) 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—

- (a) an executor or administrator of a third party payer;
- (b) a trustee of the estate of a third party payer.

3.4.39 Application for costs review by law practice retaining another law practice

- (1) A law practice that retains another law practice to act on behalf of a client may apply to the Costs Court for a review of the whole or any part of the legal costs. S. 3.4.39(1) amended by Nos 12/2007 s. 57(1)(a), 78/2008 s. 13(4).
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs review. S. 3.4.39(2) amended by No. 12/2007 s. 57(1)(b).
- (2A) An application for a costs review may be made even if the legal costs have been wholly or partly paid. S. 3.4.39(2A) inserted by No. 12/2007 s. 57(2).
- (3) An application under this section must be made within 60 days after— S. 3.4.39(3) substituted by No. 12/2007 s. 57(2).
 - (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.

s. 3.4.40

- (4) An application cannot be made under this section if there is a costs agreement between the client and the other law practice.

3.4.40 Application for costs review by law practice giving bill

S. 3.4.40(1) amended by No. 78/2008 s. 13(5).

- (1) A law practice that has given a bill in accordance with Division 6 may apply to the Costs Court for a review of the whole or any part of the legal costs to which the bill relates.

S. 3.4.40(2) amended by No. 12/2007 s. 57(3).

- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs review.

S. 3.4.40(2A) inserted by No. 12/2007 s. 57(4).

- (2A) An application for a costs review may be made even if the legal costs have been wholly or partly paid.

S. 3.4.40(3) substituted by No. 12/2007 s. 57(4).

- (3) An application may not be made under this section unless at least 30 days have passed since—
- (a) the bill was given or the request for payment was made; or
 - (b) the costs were paid if neither a bill was given nor a request was made; or
 - (c) an application has been made under this Division by another person in respect of the legal costs.

S. 3.4.41 amended by No. 18/2005 s. 11 (ILA s. 39B(1)).

3.4.41 Consequences of application

- (1) If an application for a costs review is made in accordance with this Division—
- (a) the costs review must take place without any money being paid into court on account of the legal costs the subject of the application; and

(b) the law practice must not commence any proceedings to recover the legal costs until the costs review has been completed.

(2) If—

- (a) a law practice has commenced proceedings to recover legal costs; and
- (b) an application for a costs review in relation to those legal costs is made under section 3.4.38 out of time; and
- (c) the Costs Court determines to deal with the application—

S. 3.4.41(2)
inserted by
No. 18/2005
s. 11.

S. 3.4.41(2)(b)
amended by
No. 79/2006
s. 38(4).

S. 3.4.41(2)(c)
amended by
No. 78/2008
s. 13(6).

the court or tribunal in which the proceedings have been brought must stay the proceedings on the application of a party, or on its own initiative, pending the completion of the review.

3.4.42 Persons to be notified of application

S. 3.4.42
substituted by
No. 12/2007
s. 58.

- (1) An applicant for costs review must cause a copy of the application to be given to any law practice or client concerned or any other person whom the Costs Court thinks it appropriate to notify.
- (2) A person who is notified by the applicant under subsection (1)—
 - (a) is entitled to participate in the costs review process; and
 - (b) is taken to be a party to the review; and
 - (c) if the Costs Court so determines, is bound by the review.

S. 3.4.42(1)
amended by
No. 78/2008
s. 13(7).

S. 3.4.42(2)(c)
amended by
No. 78/2008
s. 13(7).

s. 3.4.43

3.4.43 Procedure on review

S. 3.4.43(1)
amended by
No. 78/2008
s. 13(8).

- (1) If, after proper notice that a costs review will take place, a party to the review does not attend, the Costs Court may proceed with the review in the absence of that party.
- (2) If, before giving an itemised bill the law practice had previously given a lump sum bill, on a costs review the law practice is not bound by the amount and matters stated in the lump sum bill.

S. 3.4.43(3)
repealed by
No. 12/2007
s. 59.

* * * * *

3.4.44 Criteria for review

S. 3.4.44(1)
amended by
No. 78/2008
s. 13(9).

- (1) In conducting a review of legal costs, the Costs Court must consider—
 - (a) whether or not it was reasonable to carry out the work to which the legal costs relate; and
 - (b) whether or not the work was carried out in a reasonable manner; and
 - (c) the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that section 3.4.44A or 3.4.44B applies to any disputed costs.

S. 3.4.44(1)(c)
amended by
No. 12/2007
s. 60(1)(a).

S. 3.4.44(2)
amended by
No. 78/2008
s. 13(9).

- (2) In considering what is a fair and reasonable amount of legal costs, the Costs Court may have regard to any or all of the following matters—
 - (a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act, the regulations or the legal profession rules;

S. 3.4.44(2)(b)
amended by
No. 12/2007
s. 60(1)(b)(i).

- (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;

* * * * *

S. 3.4.44(2)(d)
repealed by
No. 12/2007
s. 60(1)(b)(ii).

- (e) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;
 - (f) the retainer and whether the work done was within the scope of the retainer;
 - (g) the complexity, novelty or difficulty of the matter;
 - (h) the quality of the work done;
 - (i) the place where, and circumstances in which, the legal services were provided;
 - (j) the time within which the work was required to be done;
 - (k) any other relevant matter.
- (3) In conducting a review of legal costs payable by a non-associated third party payer, the Costs Court 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.

S. 3.4.44(3)
inserted by
No. 12/2007
s. 60(2),
amended by
No. 78/2008
s. 13(9).

s. 3.4.44A

S. 3.4.44A
inserted by
No. 12/2007
s. 61.

3.4.44A Review of costs by reference to costs agreement

S. 3.4.44A(1)
amended by
No. 78/2008
s. 13(9).

- (1) The Costs Court must review the amount of any disputed costs that are subject to a costs agreement by reference to the provisions of the costs agreement if—
- (a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs; and
 - (b) the agreement has not been set aside under section 3.4.32—

unless the Costs Court is satisfied—

- (c) that the agreement does not comply in a material respect with any applicable disclosure requirements of Division 3; or
- (d) that Division 5 precludes the law practice concerned from recovering the amount of the costs; or
- (e) that the parties otherwise agree.

S. 3.4.44A(2)
amended by
No. 78/2008
s. 13(9).

- (2) The Costs Court is not required to initiate an examination of the matters referred to in subsection (1)(c) and (d).

S. 3.4.44B
inserted by
No. 12/2007
s. 61,
amended by
Nos 78/2008
s. 13(10),
15/2012
s. 15(1).

3.4.44B Review of costs by reference to practitioner remuneration order or scale of costs

The Costs Court must review the amount of any disputed costs that are subject to a practitioner remuneration order or scale of costs by reference to the order or scale.

3.4.45 Costs of review

- (1) The Costs Court must determine the costs of a costs review. S. 3.4.45(1) amended by No. 78/2008 s. 13(11).
- (2) Unless the Costs Court otherwise orders and subject to subsection (3), the law practice to which the legal costs are payable or were paid must pay the costs of the review if—
- (a) on the review the legal costs are reduced by 15% or more; or
- (b) the Costs Court is satisfied that the law practice failed to comply with Division 3. S. 3.4.45(2)(b) amended by No. 78/2008 s. 13(11).
- (2A) Unless the Costs Court otherwise orders and subject to subsection (3), if the law practice is not, under subsection (2), liable to pay the costs of the review, the costs of the review must be paid by the party ordered by the Costs Court to pay those costs. S. 3.4.45(2A) inserted by No. 12/2007 s. 62, amended by No. 78/2008 s. 13(11).
- (3) A Costs Judge of the Costs Court may refer to the Supreme Court constituted by a Judge of the Court within the meaning of the **Supreme Court Act 1986** any special circumstances relating to a costs review and the Supreme Court constituted by a Judge of the Court may make any order the Court thinks fit concerning the costs of the costs review. S. 3.4.45(3) substituted by No. 78/2008 s. 13(12).

3.4.46 Referral for disciplinary action

- (1) If, on a costs review, the Costs Court considers that the legal costs charged by a law practice are grossly excessive, the Costs Court must refer the matter to the Commissioner to consider whether disciplinary action should be taken against any Australian legal practitioner or Australian-registered foreign lawyer involved. S. 3.4.46(1) amended by No. 78/2008 s. 13(13).

s. 3.4.47

S. 3.4.46(2)
amended by
No. 78/2008
s. 13(13).

- (2) If the Costs Court considers that a costs review raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the Costs Court may refer the matter to the Commissioner to consider whether disciplinary action should be taken against an Australian legal practitioner or Australian-registered foreign lawyer.

S. 3.4.47
substituted by
No. 78/2008
s. 14.

3.4.47 Appeal

A person may appeal from a decision of the Costs Court in accordance with the **Supreme Court Act 1986** and the Rules of the Supreme Court.

3.4.48 Legal costs subject to a civil complaint are not reviewable

Despite anything to the contrary in this Part, legal costs that are or have been the subject of a civil complaint under Chapter 4 may not be the subject of a costs review under this Division.

S. 3.4.48A
inserted by
No. 79/2006
s. 39,
amended by
No. 12/2007
s. 63.

3.4.48A Contracting out of Division by sophisticated clients

A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, may contract out of this Division.

Division 8—Miscellaneous

3.4.49 Application of Part to incorporated legal practices and multi-disciplinary partnerships

The regulations may provide that specified provisions of this Part do not apply to incorporated legal practices and multi-disciplinary partnerships or both or apply to them with specified modifications.

3.4.50 Imputed acts, omission or knowledge

For the purposes of this Part—

(a) anything done or omitted by, to or in relation to—

(i) an Australian legal practitioner; or

(ii) an Australian-registered foreign lawyer (except for the purposes of section 3.4.28(4) or for the purposes of any provisions of this Part prescribed for the purposes of this section)—

in the course of acting on behalf of a law practice is taken to have been done or omitted by, to or in relation to the law practice; and

(b) without limiting paragraph (a), the law practice is taken to become or be aware of, or to have a belief as to, any matter if—

(i) an Australian legal practitioner; or

(ii) an Australian-registered foreign lawyer (except for the purposes of section 3.4.28(4) or for the purposes of any provisions of this Part prescribed for the purposes of this section)—

becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the law practice.

PART 3.5—PROFESSIONAL INDEMNITY INSURANCE

3.5.1 Definition

In this Part—

law practice does not include a community legal centre.

Note

Section 3.5.4 requires community legal centres to insure.

3.5.2 Law practices required to insure

- (1) Before commencing to engage in legal practice in this jurisdiction, a law practice must obtain professional indemnity insurance.
- (2) At all times while a law practice is engaged in legal practice in this jurisdiction, the law practice must maintain professional indemnity insurance.
- (3) The insurance must cover civil liability of—
 - (a) the law practice; and
 - (b) each person who is or was a principal or an employee of the law practice—in connection with the practice's legal practice and administration of trusts in this jurisdiction.
- (4) The insurance must be with the Liability Committee unless the law practice is a barrister.
- (5) A barrister may choose to apply for insurance with the Liability Committee and that Committee may provide, or refuse to provide, the insurance.
- (6) If the insurance for a barrister is not with the Liability Committee, the insurance must be on terms and conditions approved by the Board.
- (7) The Victorian Bar Council may, on or before 28 February 2005, resolve that all barristers are to insure with the Liability Committee and, if the

Victorian Bar Council so resolves, the insurance for a barrister must be with that Committee despite subsection (4).

- (8) This section does not apply to the extent that the Board exempts the law practice from compliance under section 3.5.7.
- (9) In this section, *Victorian Bar Council* means the governing body of Victorian Bar Inc, an association incorporated under the **Associations Incorporation Reform Act 2012**.

S. 3.5.2(9)
amended by
No. 20/2012
s. 226(Sch. 5
item 17(2)).

3.5.3 Australian-registered foreign lawyers required to insure

An Australian-registered foreign lawyer who practises foreign law in this jurisdiction must maintain professional indemnity insurance on terms and conditions approved by the Board.

3.5.4 Community legal centres required to insure

- (1) Before commencing to engage in legal practice in this jurisdiction, a community legal centre must obtain professional indemnity insurance on terms and conditions approved by the Board.
- (2) At all times while a community legal centre is engaged in legal practice in this jurisdiction, the community legal centre must maintain professional indemnity insurance on terms and conditions approved by the Board.
- (3) The insurance must cover civil liability of—
- (a) the community legal centre; and
 - (b) each person who is or was a director, employee or contractor of, or a volunteer at, the community legal centre—

in connection with the centre's legal practice and administration of trusts.

s. 3.5.4A

- (4) This section does not apply to the extent that the Board exempts a community legal centre from compliance under section 3.5.7.

S. 3.5.4A
inserted by
No. 15/2012
s. 5.

3.5.4A Corporate legal practitioners required to insure to engage in legal practice on a pro bono basis

- (1) At all times while a corporate legal practitioner is engaged in legal practice on a pro bono basis in this jurisdiction (other than as a volunteer at a community legal centre), the practitioner must be covered by professional indemnity insurance on terms and conditions approved by the Board.
- (2) The insurance must cover civil liability of the corporate legal practitioner in connection with—
- (a) the legal practice being engaged in on a pro bono basis; and
 - (b) any related administration of trusts.

S. 3.5.5
(Heading)
amended by
No. 21/2012
s. 239(Sch. 6
item 24.1).

3.5.5 Competition and Consumer Act and Competition Code

For the purposes of the Competition and Consumer Act 2010 of the Commonwealth and the Competition Code, the entering into and performance of a contract of professional indemnity insurance by a law practice and the Liability Committee under this Part is authorised by this Act.

S. 3.5.5
amended by
No. 21/2012
s. 239(Sch. 6
item 24.2).

3.5.6 Terms and conditions of insurance

- (1) The Liability Committee, with the approval of the Board, may determine the arrangements for, including the terms of contracts of, professional indemnity insurance for law practices that insure with it.

(2) In determining premiums and excesses in relation to contracts of professional indemnity insurance, the Liability Committee must take into account the following—

- (a) any significant differences in risk attaching to—
 - (i) the different types of legal practices of law practices;
 - (ii) the different types of matters handled by law practices;
- (b) the number of principals of, and Australian legal practitioners employed by, law practices;
- (ba) the revenues of law practices;

S. 3.5.6(2)(ba)
inserted by
No. 15/2012
s. 6(1).

- (c) the need to encourage proper management of risk;
- (d) the past claims records of law practices;
- (e) the cost and difficulty of differentiating between the different types of legal practices of, and the different types of matters handled by, law practices;
- (f) whether the amount standing to the credit of the Liability Fund is likely to be sufficient to meet the liabilities to which it is subject.

S. 3.5.6(2)(e)
substituted by
No. 15/2012
s. 6(2).

(3) In determining premiums and excesses in relation to contracts of professional indemnity insurance, the Liability Committee must also obtain and take into account actuarial advice.

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- (4) Despite subsection (1), the Liability Committee is not required to obtain the approval of the Board to determine any premiums or excesses in relation to contracts of professional indemnity insurance.

3.5.7 Exemption from insurance requirements

- (1) The Board may exempt law practices or community legal centres, or classes of law practices or community legal centres, from the requirement to obtain or maintain professional indemnity insurance or to obtain or maintain that insurance with the Liability Committee.
- (2) The Board may exempt a law practice or class of law practice from the requirement to obtain or maintain professional indemnity insurance with the Liability Committee if the Board is satisfied that the practice, or each practice that is a member of the class—
- (a) does not have an office located in this jurisdiction; or
 - (b) has an office located in this jurisdiction but no principal of the practice whose home jurisdiction is this jurisdiction engages in legal practice at that office.
- (3) The Board must exempt a law practice from the requirement to obtain or maintain professional indemnity insurance with the Liability Committee if the Board is satisfied that—
- (a) the practice has an office located in another jurisdiction; and
 - (b) a principal of the practice whose home jurisdiction is that other jurisdiction engages in legal practice at that office; and

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- (c) the practice has professional indemnity insurance in accordance with the requirements of a corresponding law in that other jurisdiction; and
 - (d) the insurance referred to in paragraph (c) covers civil liability of the practice and each person who is or was a principal or an employee of the practice in connection with the legal practice of, and administration of trusts by, the practice in this jurisdiction.
- (4) The Board may exempt a corporate legal practitioner or class of corporate legal practitioners from the requirement to be covered by professional indemnity insurance in relation to legal practice engaged in on a pro bono basis.

S. 3.5.7(4)
inserted by
No. 15/2012
s. 7.

PART 3.6—FIDELITY COVER

Division 1—Preliminary

3.6.1 Purpose

The purpose of this Part is to compensate clients for loss arising out of defaults by law practices arising from acts or omissions of associates and defaults by approved clerks.

3.6.2 Definitions

In this Part—

capping and sufficiency provisions means—

- (a) in relation to this jurisdiction—section 3.6.26 and 3.6.27; or
- (b) in relation to 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;

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 two 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 one of the associates and another jurisdiction is the relevant jurisdiction for at least one of the associates;

S. 3.6.2 def. of
*concerted
interstate
default*
amended by
No. 12/2007
s. 64(1)(a).

default means—

- (a) in the case of a law practice—
 - (i) a failure of the practice to pay or deliver trust money or trust property that was received by the practice in the course of legal practice by the practice, where the failure arises from or is constituted by an act or omission of an associate that involves dishonesty; or
 - (ii) a fraudulent dealing with trust property that was received by the practice in the course of legal practice by the practice, where the fraudulent dealing arises from or is constituted by an act or omission of an associate that involves dishonesty; or
- (b) in the case of an approved clerk—
 - (i) a failure of the clerk to pay or deliver trust money or trust property that was received by the clerk in his or her capacity as an approved clerk, where the failure arises from or is constituted by an act or omission of the clerk or an employee of the clerk that involves dishonesty; or

S. 3.6.2 def. of *default* substituted by No. 12/2007 s. 64(1)(b).

- (ii) a fraudulent dealing with trust money that was received by the clerk in his or her capacity as an approved clerk, where the fraudulent dealing arises from or is constituted by an act or omission of the clerk or an employee of the clerk that involves dishonesty;

dishonesty includes fraud;

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;

relevant jurisdiction has the meaning given in section 3.6.4.

3.6.3 Time of default

- (1) This section applies for the purpose of determining which jurisdiction's law applies in relation to a default by a law practice.
- (2) The default is taken to have occurred where the act or omission giving rise to or constituting the default occurred.
- (3) An omission is taken to have occurred on the day on or by which the act not performed ought reasonably to have been performed or on such other day as is determined in accordance with the regulations.

Division 2—Defaults to which this Part applies

3.6.4 Meaning of relevant jurisdiction

- (1) The relevant jurisdiction for an associate of a law practice whose act or omission (whether alone or with one or more other associates of the practice) gives rise to or constitutes a default of the practice is to be determined under this section.

Note

The concept of an associate's "relevant jurisdiction" is used to determine the jurisdiction whose Fidelity Fund is liable for a default of a law practice arising from an act or omission committed by the associate. The relevant jurisdiction for an associate is in some cases the associate's home jurisdiction.

- (2) In the case of a default involving trust money received in Australia (whether or not it was paid into an Australian trust account), the relevant jurisdiction for the associate is—
- (a) if the trust money was paid into an Australian trust account and if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default—the jurisdiction under whose law that trust account was maintained; or
 - (b) in any other case—the associate's home jurisdiction.
- (3) In the case of a default involving trust money received outside Australia and paid into an Australian trust account, the relevant jurisdiction for the associate is—

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- (a) if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default—the jurisdiction under whose law that trust account was maintained; or
 - (b) in any other case—the associate's home jurisdiction.
- (4) In the case of a default involving trust property received in Australia, or received outside Australia and brought to Australia, the relevant jurisdiction for the associate is the associate's home jurisdiction.

Note

Section 3.6.31 may treat the default as consisting of two or more defaults for the purpose of determining the liability of the Fidelity Fund.

3.6.5 Defaults to which this Part applies

- (1) This Part applies to—
 - (a) a default of a law practice arising from or constituted by an act or omission of one or more associates of the practice, if this jurisdiction is the relevant jurisdiction for the only associate or one or more of the associates involved; or
 - (b) a default of an approved clerk.
- (2) It is immaterial where the default occurs.
- (3) It is immaterial that the act or omission giving rise to or constituting a default does not constitute a crime or other offence under the law of this or any other jurisdiction or of the Commonwealth or that proceedings have not been commenced or concluded in relation to a crime or other offence of that kind.

3.6.6 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 occurs in relation to money or property that is entrusted to or held by the practice for or in connection with—
 - (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not such a licence is held at any relevant time); or
 - (b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).
- (2) Without limiting subsection (1), this Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for or in connection with—
 - (a) a managed investment scheme undertaken by the practice; or
 - (b) mortgage financing undertaken by the practice.
- (3) Without limiting subsection (1) or (2), this Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for investment purposes, whether on its own account or as agent, unless—

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- (a) the money or property was entrusted to or held by the practice—
- (i) in the ordinary course of legal practice; and
 - (ii) primarily in connection with the provision of legal services to or at the direction of the client; and
- (b) the investment is or is to be made—
- (i) in the ordinary course of legal practice; and
 - (ii) for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.
- (4) In this section *Australian financial services licence, authorised representative, financial services* and *financial services business* have the same meanings as in Chapter 7 of the Corporations Act.

Division 3—Claims about defaults

3.6.7 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 Board about the default.
- (2) A claim is to be made in writing in a form approved by the Board.

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- (3) The Board 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.

3.6.8 Time limit for making claims

- (1) Subject to section 3.6.10, a claim does not lie against the Fidelity Fund unless the prospective claimant notifies the Board of the default concerned—
- (a) within the period of 6 months after the prospective claimant becomes aware of the default; or
 - (b) within a further period allowed by the Board; or
 - (c) if the Supreme Court allows further time after the Board refuses to do so—within a period allowed by the Supreme Court.
- (2) The Supreme Court or Board may allow a further period referred to in subsection (1) if satisfied that—
- (a) it would be reasonable to do so after taking into account all ascertained and contingent liabilities of the Fidelity Fund; and
 - (b) it would be appropriate to do so in a particular case having regard to matters the Supreme Court or Board considers relevant.

3.6.9 Advertisements

- (1) If the Board considers that there has been, or may have been, a default by a law practice or an approved clerk, the Board may publish either or both of the following—
 - (a) a notice that seeks information about the default;
 - (b) a notice that invites claims about the default and fixes a final date after which claims relating to the default cannot be made.
- (2) The final date fixed by a notice must be a date that is—
 - (a) at least 3 months later than the date of the first or only publication of the notice; and
 - (b) not more than 12 months after the date of that first or only publication.
- (3) A notice in respect of a default by a law practice must be published—
 - (a) in a newspaper circulating generally throughout Australia; and
 - (b) in a newspaper circulating generally in each jurisdiction where the law practice—
 - (i) has an office; or
 - (ii) at any relevant time had an office—
if known to the appropriate authority; and
 - (c) on the Internet site (if any) of the Board.
- (4) A notice in respect of a default by an approved clerk must be published—
 - (a) in a newspaper circulating generally throughout this jurisdiction; and
 - (b) on the Internet site (if any) of the Board.

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- (5) The Board may provide information to persons making inquiries in response to a notice published under this section.
- (6) Apart from extending the period during which claims can be made under this Part (where relevant), publication of a notice under this section does not confer any entitlements in relation to any claim or the default to which it relates or provide any grounds affecting the determination of any claim.
- (7) A protected person is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith in connection with the publication of a notice under this section.
- (8) In this section—
- protected person* means—
- (a) the Board or a member of the Board; or
 - (b) the proprietor, editor or publisher of the newspaper; or
 - (c) an internet service provider or internet content host; or
 - (d) a person acting at the direction of any person or entity referred to in paragraphs (a) to (c).

3.6.10 Time limit for making claims following advertisement

- (1) This section applies if the Board publishes a notice under section 3.6.9 fixing a final date after which claims relating to a default cannot be made.
- (2) A claim may be made—
- (a) up to and including the final date fixed under the notice; or

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- (b) within a further period allowed by the Board;
or
 - (c) if the Supreme Court allows further time
after the Board refuses to do so—within a
period allowed by the Supreme Court.
- (3) Subsection (2) applies even though the claim
would have been barred under section 3.6.8 had
the notice not been published.

3.6.11 Claims not affected by certain matters

- (1) A claim may be made about a law practice's
default despite a change in the status of the
practice or the associate concerned after the
occurrence of the act or omission from which the
default arose or that constituted the default.
- (2) A claim that has been made is not affected by a
later change in the status of the practice or
associate.
- (3) For the purposes of this section, a change in status
includes—
 - (a) a change in the membership or staffing or the
dissolution of the practice (in the case of a
partnership); and
 - (b) a change in the directorship or staffing or the
winding up or dissolution of the practice
(in the case of an incorporated legal
practice); and
 - (c) the fact that the associate had ceased to
engage in legal practice or to hold an
Australian practising certificate (in the case
of an associate who was an Australian legal
practitioner); and
 - (d) the death of the associate.

3.6.12 Investigation of claims

- (1) The Board may investigate a claim made to it, including the default to which it relates, in any manner it considers appropriate.
- (2) The Board may at any time require a claimant to produce or deliver any security, document or statement of evidence necessary or available—
 - (a) to support a claim; or
 - (b) to enable the Board to exercise its rights against any law practice, associate, approved clerk or other person concerned; or
 - (c) to enable the criminal proceeding to be commenced against a person who committed a default.
- (3) The Board may disallow a claim if a requirement under subsection (2) is not complied with.

3.6.13 Advance payments

- (1) The Board may, at its absolute discretion, make payments to a claimant in advance of the determination 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 determined.
- (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 Board as a debt due to the Board.
- (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 Board as a debt due to the Board.

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- (6) Amounts recovered under subsection (4) or (5) must be paid into the Fidelity Fund.

Division 4—Determination of claims

3.6.14 Determination of claims

- (1) The Board may determine a claim by wholly or partly allowing or disallowing it, or otherwise settling it.
- (2) The Board may disallow a claim to the extent that the claim does not relate to a default for which the Fidelity Fund is liable.
- (3) The Board may wholly or partly disallow a claim, or reduce a claim, to the extent that—
- (a) the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
 - (b) the negligence of the claimant contributed to the loss; or
 - (c) the conduct of the transaction with the law practice or approved clerk in relation to whom 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 co-operate with the Board or its delegate in the investigation of the claim.

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- (4) Subsections (2) and (3) do not limit the Board's power to disallow a claim on any other ground.
 - (5) Without limiting subsection (2) or (3), the Board may reduce the amount otherwise payable on a claim to the extent the Board considers appropriate—
 - (a) if satisfied that the claimant assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
 - (b) if satisfied that the claimant unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or
 - (c) if satisfied that the claimant has unreasonably hindered the investigation of the claim.
 - (6) If satisfied that the act or omission giving rise to a claim actually occurred, the Board may allow the claim despite the fact that—
 - (a) the person who committed the act or omission has not been charged with, or found guilty of, an offence in respect of the default; or
 - (b) the evidence on which the Board is acting would not be sufficient to establish the guilt of that person in a criminal proceeding in respect of the default.
 - (7) In allowing a claim, the Board must specify the amount payable.

3.6.15 Maximum amount allowable

- (1) The amount payable to a person in respect of a default must not exceed the amount of the person's actual pecuniary loss resulting from the default.

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- (2) This section is subject to section 3.6.18.
 - (3) This section does not apply to costs payable under section 3.6.16 or to interest payable under section 3.6.17.

3.6.16 Costs

- (1) If the Board wholly or partly allows a claim, the Board must order payment of the claimant's reasonable legal costs involved in making and proving the claim, unless the Board considers that special circumstances exist warranting a reduction in the amount of costs or warranting a determination that no amount should be paid for costs.
- (2) If the Board wholly disallows a claim, the Board may order payment of the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim, if the Board considers it is appropriate to make the order.
- (3) The costs are to be assessed on a solicitor and client basis as if they were costs in a proceeding in a court that would have jurisdiction to hear and determine the claim if the claim were a claim for a debt.
- (4) The costs are payable from the Fidelity Fund.

3.6.17 Interest

- (1) In determining the amount of pecuniary loss resulting from a default, the Board is to add interest on the amount payable (excluding interest), unless the Board considers that special circumstances exist warranting a reduction in the amount of interest or warranting a determination that no amount should be paid by way of interest.

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- (2) The interest is to be calculated from the date on which the claim was made, to the date the Board notifies the claimant that the claim has been allowed, at the rate calculated in accordance with the method determined by the Attorney-General from time to time and published in the Government Gazette.
 - (3) To the extent that no determination is in force for the purposes of subsection (2), interest is to be calculated at the rate of 5%.
 - (4) The interest is payable from the Fidelity Fund.

3.6.18 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—
 - (a) that have already been paid to or received by the person; or
 - (b) that have already been determined and are payable to or receivable by the person; or
 - (c) that (in the opinion of the Board) are likely to be paid to or received by the person; or
 - (d) that (in the opinion of the Board) might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person—

from other sources in respect of the pecuniary loss to which a claim relates.

- (2) The Board may, at its absolute discretion, pay to a person the whole or part of an amount referred to in subsection (1)(c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 3.6.20.

3.6.19 Subrogation

- (1) On payment of a claim from the Fidelity Fund, the Board 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 or person in respect of whom the claim is made; or
 - (b) the person authorised to administer the estate of the associate or person in respect of whom the claim is made and who is deceased or an insolvent under administration.
- (3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate or person been a claimant in respect of the default, the claim would not be disallowed on any of the grounds set out in section 3.6.14(3).
- (4) The Board may exercise its rights and remedies under this section in its own name or in the name of the claimant.
- (5) If the Board brings proceedings under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceedings.
- (6) The Board may exercise its rights and remedies under this section even though any limitation periods under this Part have expired.
- (7) The Board must pay into the Fidelity Fund any money recovered in exercising its rights and remedies under this section.

3.6.20 Repayment of certain amounts

- (1) If a claimant—
 - (a) receives a payment from the Fidelity Fund in respect of the claim; and
 - (b) receives or recovers from another source 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 sources—

the amount of the surplus is a debt payable by the claimant to the Fund.

- (2) However, the amount payable by the claimant cannot exceed the amount the claimant received from the Fidelity Fund in respect of the claim.
- (3) A claimant must notify the Board of the receipt or recovery of a payment referred to in subsection (1)(b) within 60 days after the receipt or recovery.

Penalty: 60 penalty units.

3.6.21 Notification of delay in making decision

- (1) If the Board considers that a claim is not likely to be determined within 12 months after the claim was made, the Board must notify the claimant in writing that the claim is not likely to be determined within that period.
- (2) The notification must contain a brief statement of reasons for the delay.

3.6.22 Notification of decision

- (1) The Board must, as soon as practicable, notify the claimant about any decision it makes about the claim.
- (2) The notification must contain an information notice about—
 - (a) a decision of the Board to wholly or partly disallow a claim; or
 - (b) a decision of the Board to reduce the amount allowed in respect of a claim.

3.6.23 Appeal against decision on claim

- (1) A claimant may appeal to an appropriate court against—
 - (a) a decision of the Board to wholly or partly disallow a claim; or
 - (b) a decision of the Board to reduce the amount allowed in respect of a claim—but an appeal does not lie against a decision of the Board to limit the amount payable, or to decline to pay an amount, under the capping and sufficiency provisions of this jurisdiction.
- (2) An appeal against a decision must be lodged within 30 days after receiving the information notice about the decision.
- (3) On an appeal under this section—
 - (a) the appellant 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 Board waives that requirement; and

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- (b) the appropriate court may, on application by the Board, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
- (4) The appropriate court may review the merits of the Board's decision.
- (5) The appropriate court may—
- (a) affirm the decision; or
 - (b) if satisfied that the reasons for varying or setting aside the Board's decision are sufficiently cogent to warrant doing so—
 - (i) vary the decision; or
 - (ii) set aside the decision and make a decision in substitution for the decision set aside; or
 - (iii) set aside the decision and remit the matter for reconsideration by the Board in accordance with any directions or recommendations of the court.
- (6) The appropriate court may make other orders as it thinks fit.
- (7) No order for costs is to be made on an appeal under this section unless the appropriate court is satisfied that an order for costs should be made in the interests of justice.
- (8) In this section—
- appropriate court*** means a court that would have jurisdiction to determine the claim if it were a claim for a debt owing to the claimant.

3.6.24 Appeal against failure to determine claim

- (1) A claimant may appeal to an appropriate court against a failure of the Board to determine a claim after 12 months after the claim was made.
- (2) An appeal against failure to determine a claim may be made at any time after the period of 12 months after the claim was made and while the failure continues.
- (3) On an appeal under this section—
 - (a) the appellant 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 Board waives that requirement; and
 - (b) the appropriate court may, on application by the Board, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
- (4) The appropriate court may determine the appeal—
 - (a) by—
 - (i) giving directions to the Board for the expeditious determination of the matter; and
 - (ii) if the court is satisfied that there has been unreasonable delay—ordering that interest be paid at a specified rate that is higher than the rate applicable under section 3.6.17, until further order or the determination of the claim; and

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- (iii) if the court is satisfied that there has not been unreasonable delay—ordering that, if delay continues in circumstances of a specified kind, interest be paid for a specified period at a specified rate that is higher than the rate applicable under section 3.6.17, until further order or the determination of the claim; or
- (b) by deciding not to give directions or make orders under paragraph (a).
- (5) No order for costs is to be made on an appeal under this section unless the appropriate court is satisfied that an order for costs should be made in the interests of justice.
- (6) In this section—
appropriate court has the same meaning as in section 3.6.23.

3.6.25 Court proceedings

In any proceedings brought in a court under section 3.6.19 or 3.6.23—

- (a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal practitioner or other person with respect to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the practitioner or other person is not a defendant in, or a party to, the proceedings; and
- (b) any defence that would have been available to the practitioner or other person is available to the Board.

Division 5—Payments from Fidelity Fund for defaults

3.6.26 Caps on payments

- (1) The regulations may fix either or both of the following—
 - (a) the maximum amounts, or the method of calculating maximum amounts, that may be paid from the Fidelity Fund in respect of individual claims or classes of individual claims;
 - (b) the maximum aggregate amount, or the method of calculating the maximum aggregate amount, that may be paid from the Fidelity Fund in respect of all claims made in relation to individual law practices or approved clerks or classes of law practices or approved clerks.
- (2) Amounts must not be paid from the Fidelity Fund that exceed the amounts fixed, or calculated by a method fixed, under subsection (1).
- (3) Payments from the Fidelity Fund in accordance with subsection (2) are made in full and final settlement of the claims concerned.
- (4) Despite subsection (2), the Board may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the Fidelity Fund and the circumstances of the particular case.
- (5) No proceedings can be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the Board to consider payment of a larger amount.

3.6.27 Sufficiency of Fidelity Fund

- (1) If the Board is of the opinion that the Fidelity Fund is likely to be insufficient to meet the Fund's ascertained and contingent liabilities, the Board 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 Division 3 of Part 6.7;
 - (c) make partial payments of the amounts of one 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 Board—
 - (a) must have regard to hardship where relevant information is known to the Board; and
 - (b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.
- (3) If the Board declares that a decision is made under subsection (1)(d)—
 - (a) the balance specified in the declaration ceases to be a liability of the Fidelity Fund; and
 - (b) the Board may (but need not) at any time revoke the declaration in relation to either the whole or a specified part of the balance, and the balance or that part of the balance again becomes a liability of the Fund.

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- (4) A decision of the Board made under this section is final and not subject to appeal or review.

Division 6—Claims by law practices or associates

3.6.28 Claims by law practices or associates about defaults

- (1) This section applies to a default of a law practice arising from an act or omission of an associate of the practice.
- (2) A claim may be made under section 3.6.7 by another associate of the law practice, if the associate suffers pecuniary loss because of the default.
- (3) A claim may be made under section 3.6.10 by the law practice, if the law practice is an incorporated legal practitioner and it suffers pecuniary loss because of the default.

3.6.29 Claims by law practices or associates about notional defaults

- (1) This section applies if a default of a law practice arising from an act or omission of an associate of the practice was avoided, remedied or reduced by a financial contribution made by the practice or by one or more other associates.
- (2) The default, to the extent that it was avoided, remedied or reduced, is referred to in this section as a *notional default*.
- (3) This 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 7—Defaults involving interstate elements

3.6.30 Concerted interstate defaults

- (1) The Board may treat a concerted interstate default as if the default consisted of 2 or more separate defaults—
 - (a) one of which is a default to which this Part applies, if this jurisdiction is the relevant jurisdiction for one or more of the associates involved; and
 - (b) the other or others of which are defaults to which this Part does not apply, if another jurisdiction or jurisdictions are the relevant jurisdictions for one or more of the associates involved.
- (2) The Board may treat a claim about a concerted interstate default as if the claim consisted of—
 - (a) one or more claims made under this Part; and
 - (b) one or more claims made under a corresponding law or laws.
- (3) A claim about a concerted interstate default is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—
 - (a) in equal shares in respect of the default, regardless of the number of associates involved in each of those jurisdictions, and disregarding the capping and sufficiency provisions of those jurisdictions; or
 - (b) in other shares as agreed by the Board and the corresponding authority or authorities involved.

s. 3.6.31

- (4) Subsection (3) does not affect the application of the capping and sufficiency provisions of this jurisdiction in respect of the amount payable from the Fidelity Fund after the claim has been assessed.

3.6.31 Defaults involving interstate elements if committed by one associate only

S. 3.6.31(1)
amended by
No. 12/2007
s. 64(1)(c).

- (1) This section applies to a default of a law practice arising from or constituted by an act or omission that was committed by only one associate of the practice, if the default involves more than one of the cases referred to in section 3.6.4(2), (3) or (4).
- (2) The Board may treat a default to which this section applies if the default consisted of 2 or more separate defaults—
- (a) one 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 Board may treat a claim about the default as if the claim consisted of—
- (a) one or more claims made under this Part; and
 - (b) one or more claims made under a corresponding law or laws.
- (4) A claim about a default to which this section applies is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute—
- (a) in equal shares in respect of the default, and disregarding the capping and sufficiency provisions of those jurisdictions; or

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- (b) in other shares as agreed by the Board and the corresponding authority or authorities involved.
- (5) Subsection (4) does not affect the application of the capping and sufficiency provisions of this jurisdiction in respect of the amount payable from the Fidelity Fund after the claim has been assessed.

Division 8—Inter-jurisdictional provisions

3.6.32 Protocols

- (1) The regulations may authorise the Board to enter into arrangements (*protocols*) with corresponding authorities for or with respect to matters to which this Part relates.
- (2) Without limiting subsection (1), the regulations may authorise the making of a protocol that provides that the Board is taken to have—
- (a) requested a corresponding authority to act as agent of the Board in specified classes of cases; or
 - (b) agreed to act as agent of a corresponding authority in specified classes of cases.
- (3) The regulations may—
- (a) provide for the amendment, revocation or replacement of protocols; and
 - (b) provide that protocols or specified classes of protocols do not have effect in this jurisdiction unless approved by or in accordance with the regulations.

3.6.33 Forwarding of claims

- (1) If a claim is made to the Board about a default that appears to be a default to which a corresponding law applies, the Board must forward the claim or a copy of it to a corresponding authority of the jurisdiction concerned.
- (2) If a claim is made to a corresponding authority about a default that appears to be a default to which this Part applies and the claim or a copy of it is forwarded under a corresponding law to the Board 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.

3.6.34 Investigation of defaults to which this Part applies

- (1) This section applies if a default appears to be a default to which this Part applies and to have—
 - (a) occurred solely in another jurisdiction; or
 - (b) occurred in more than one jurisdiction; or
 - (c) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.
- (2) The Board may request a corresponding authority or corresponding authorities to act as agent or agents for the Board, for the purpose of processing or investigating a claim about the default or aspects of the claim.

3.6.35 Investigation of defaults to which a corresponding law applies

- (1) This section applies if a default appears to be a default to which a corresponding law applies and to have—
 - (a) occurred solely in this jurisdiction; or
 - (b) occurred in more than one jurisdiction (including this jurisdiction); or
 - (c) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.
- (2) The Board may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (3) If the Board agrees to act as agent of a corresponding authority under subsection (2), the Board may perform any of its functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made under this Part.

3.6.36 Investigation of concerted interstate defaults and other defaults involving interstate elements

- (1) This section applies if either of the following appears to have occurred—
 - (a) a concerted interstate default appears to have occurred; or
 - (b) a default to which section 3.6.31 applies.
- (2) The Board may request a corresponding authority or corresponding authorities to act as agent or agents for the Board, for the purpose of processing or investigating a claim about the default or aspects of the claim.

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- (3) The Board may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.
 - (4) If the Board agrees to act as agent of a corresponding authority under subsection (3), the Board may perform any of its functions in relation to processing or investigating the claim or aspects of the claim as if the claim had been made entirely under this Part.

3.6.37 Recommendations by Board to corresponding authorities

If the Board is acting as agent of a corresponding authority in relation to a claim made under a corresponding law, the Board may make recommendations about the decision the corresponding authority might make about the claim.

3.6.38 Recommendations to and decisions by Board after receiving recommendations from corresponding authorities

- (1) If a corresponding authority makes recommendations about the decision the Board might make about a claim in relation to which the corresponding authority was acting as agent of the Board, the Board may—
 - (a) make its decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or
 - (b) disregard the recommendations.
- (2) A corresponding authority cannot, as agent of the Board, make a decision about the claim under Division 4.

3.6.39 Request to another jurisdiction to investigate aspects of claim

- (1) The Board may request a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with by the Board and to provide a report on the result of the investigation.
- (2) A report on the result of the investigation received from—
 - (a) the corresponding authority; or
 - (b) a person or entity authorised by the corresponding authority to conduct the investigation—

may be used and taken into consideration by the Board in the course of dealing with the claim under this Part.

3.6.40 Request from another jurisdiction to investigate aspects of claim

- (1) This section applies in relation to a request received by the Board from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with under a corresponding law.
- (2) The Board may conduct the investigation.
- (3) The provisions of this Part relating to the investigation of a claim apply, with any necessary modifications, in relation to the investigation of the relevant aspect of the claim that is the subject of the request.
- (4) The Board must provide a report on the result of the investigation to the corresponding authority.

3.6.41 Co-operation with other authorities

- (1) When dealing with a claim under this Part involving a law practice or an Australian legal practitioner, the Board may consult and co-operate with another person or body who or which has powers under the corresponding law of another jurisdiction in relation to the practice or practitioner.
- (2) For the purposes of subsection (1), the Board and the other person or body may exchange information concerning the claim.

Division 9—Miscellaneous

3.6.42 Application of Part to incorporated legal practices

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Fidelity Fund, do not apply to incorporated legal practices or apply to them with specified modifications.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Fidelity Fund, to an incorporated legal practice, a reference in those provisions to a default of a law practice extends to a default of an incorporated legal practice, but only if it occurs in connection with the provision of legal services.
- (3) Nothing in this section affects any obligation of an Australian legal practitioner who is an officer or employee of an incorporated legal practice to comply with the provisions of this Act or any legal profession rule relating to the Fidelity Fund.

3.6.43 Application of Part to multi-disciplinary partnerships

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Fidelity Fund, do not apply to multi-disciplinary partnerships or apply to them with specified modifications.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Fidelity Fund, to a multi-disciplinary partnership, a reference in those provisions to a default of a law practice extends to a default of a multi-disciplinary partnership or a partner or employee of a multi-disciplinary partnership, but only if it occurs 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 or any legal profession rule relating to the Fidelity Fund.

3.6.44 Application of Part to sole practitioners whose practising certificates lapse

- (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 if—
 - (a) the certificate has been suspended or cancelled under this Act or a corresponding law; or

S. 3.6.44
(Heading)
substituted by
No. 12/2007
s. 64(1)(d).

S. 3.6.44(1)
amended by
No. 12/2007
s. 64(1)(e).

s. 3.6.44

- (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 the purposes of the other provisions of this Part, the practising certificate is taken not to have lapsed and, accordingly, the lawyer is taken to continue to be an Australian legal practitioner.
 - (3) Subsection (2) ceases to apply when the first of the following occurs—
 - (a) a manager or receiver is appointed under this Act for the law practice; or
 - (b) the period of 6 months after the practising certificate actually lapsed expires; or
 - (c) the lawyer's application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law.
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S. 3.6.44(3)
substituted by
No. 12/2007
s. 64(2).

CHAPTER 4—COMPLAINTS AND DISCIPLINE

PART 4.1—INTRODUCTION AND APPLICATION

Division 1—Preliminary

4.1.1 Purposes

The purposes of this Chapter are—

- (a) to provide a scheme for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of legal services and the public generally;
- (b) to promote and enforce the professional standards, competence and honesty of the legal profession;
- (c) to provide a means of redress for complaints about the legal profession.

Division 2—Application of Chapter

4.1.2 Application of Chapter to practitioners and law practices

- (1) This Chapter applies to an Australian legal practitioner in respect of conduct to which this Chapter applies, and so applies—
 - (a) whether or not the practitioner is a local lawyer; and
 - (b) whether or not the practitioner holds a local practising certificate; and
 - (c) whether or not the practitioner holds an interstate practising certificate; and
 - (d) whether or not the practitioner resides or has an office in this jurisdiction; and

(e) whether or not the person making the complaint about the conduct resides, works or has an office in this jurisdiction.

(2) This Chapter applies to a law practice in respect of conduct to which this Chapter applies, to the extent that the conduct gives rise to a civil dispute.

4.1.3 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 occurring while they were Australian lawyers, but not Australian legal practitioners, in the same way as it applies to Australian legal practitioners and former Australian legal practitioners, and so applies with any necessary modifications.

(2) This Chapter applies to former Australian legal practitioners in relation to conduct occurring while they were Australian legal practitioners in the same way as it applies to persons who are Australian legal practitioners, and so applies with any necessary modifications.

Note

Section 2.8.8 also applies this Chapter to Australian-registered foreign lawyers.

4.1.4 Conduct to which this Chapter applies—generally

(1) Subject to subsection (3), this Chapter applies to conduct occurring in this jurisdiction.

(2) This Chapter also applies to conduct occurring outside this jurisdiction, but only—

(a) if it is part of a course of conduct that has occurred partly in this jurisdiction and partly in another jurisdiction, and either—

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- (i) the corresponding authority of each other jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or
 - (ii) the complainant and the practitioner or law practice concerned consent to its being dealt with under this Act; or
 - (b) if it occurs in Australia but wholly outside this jurisdiction and the practitioner concerned is a local lawyer or a local legal practitioner, and either—
 - (i) the corresponding authority of each jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or
 - (ii) the complainant and the practitioner concerned consent to its being dealt with under this Act; or
 - (c) if—
 - (i) it occurs wholly or partly outside Australia; and
 - (ii) the practitioner concerned is a local lawyer or a local legal practitioner.
- (3) This Chapter does not apply to conduct occurring in this jurisdiction if—
- (a) the Commissioner consents to its being dealt with under a corresponding law; or
 - (b) the complainant and the practitioner or law practice concerned consent to its being dealt with under a corresponding law.
- (4) Subsection (3) does not apply if the conduct is not capable of being dealt with under the corresponding law.

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- (5) The Commissioner may give consent for the purposes of subsection (3)(a), and may do so conditionally or unconditionally.

4.1.5 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 occurring in Australia or elsewhere—
- (a) conduct of the practitioner in respect of which a court makes a finding of guilt 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 4.1.4.
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PART 4.2—MAKING A COMPLAINT

4.2.1 Complaints

- (1) A complaint may be made under this Chapter about conduct to which this Chapter applies.
- (2) A complaint may involve a civil complaint, a disciplinary complaint or both.

4.2.2 Civil complaints and disputes

- (1) A *civil complaint* is a complaint about conduct to which this Chapter applies, to the extent that the complaint involves a civil dispute.
- (2) A *civil dispute* is any of the following—
 - (a) a dispute (*costs dispute*) in relation to legal costs not exceeding \$25 000 in respect of any one matter—
 - (i) between a law practice or an Australian legal practitioner and a person who is charged with those costs or is liable to pay those costs (other than under a court or tribunal order for costs); or
 - (ii) between a law practice or an Australian legal practitioner and a beneficiary under a will or trust in relation to which the law practice or practitioner has provided legal services in respect of which those costs are charged;
 - (b) a claim that a person has suffered pecuniary losses as a result of an act or omission by a law practice or an Australian legal practitioner in the provision of legal services to the person, other than loss in respect of which a claim lies against the Fidelity Fund;

- (c) any other genuine dispute between a person and a law practice or an Australian legal practitioner arising out of, or in relation to, the provision of legal services to the person by the law practice or practitioner.
- (3) A civil complaint may be made about the conduct of a law practice or an Australian legal practitioner.

4.2.3 Disciplinary complaints

- (1) A *disciplinary complaint* is a complaint about conduct to which this Chapter applies to the extent that the conduct, if established, would amount to unsatisfactory professional conduct or professional misconduct.
- (2) A disciplinary complaint may be made about the conduct of an Australian legal practitioner.

4.2.4 Who may make a complaint

- (1) A person may make a civil complaint about the conduct of a law practice or an Australian legal practitioner if the person has a civil dispute with the practice or practitioner.
- (2) Any person may make a disciplinary complaint about the conduct of an Australian legal practitioner.

4.2.5 To whom is a complaint made?

A complaint is to be made to the Commissioner.

4.2.6 Form and content of complaint

- (1) A complaint must be in writing in the form approved by the Commissioner.
- (2) A complaint must include—
 - (a) the name and address of the complainant;

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- (b) the name of the law practice or Australian legal practitioner who is the subject of the complaint; and
 - (c) if the subject of the complaint is an Australian legal practitioner, the name of any law practice of which the practitioner is an associate; and
 - (d) details of the conduct complained about; and
 - (e) if the complainant is seeking compensation for pecuniary loss, the amount of the loss or the complainant's best estimate of the amount.
- (3) It is not necessary for a complaint to specify whether it is a civil complaint or a disciplinary complaint.

4.2.7 Time limits for complaints

- (1) Subject to this section, a complaint must be made within 6 years after the conduct complained about allegedly occurred.
- (2) To the extent that a complaint involves a costs dispute, it must be made within 60 days after the legal costs were payable or, if an itemised bill was requested in respect of those costs, within 30 days after the request was complied with.
- (3) The Commissioner may accept a disciplinary complaint made outside the period referred to in subsection (1) if satisfied that—
 - (a) there was a reasonable cause for the delay in making the complaint; or
 - (b) it is otherwise in the public interest to do so.

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- (4) The Commissioner may accept a complaint referred to in subsection (2) made outside the period referred to in that subsection (but made within 4 months after the end of that period) if satisfied that—
- (a) there was a reasonable cause for the delay in making the complaint; and
 - (b) legal proceedings have not been commenced for the recovery or review of the legal costs that are the subject of the complaint.

4.2.8 Notification

- (1) The Commissioner must give a law practice or an Australian legal practitioner written notice of a complaint made about the practice or practitioner as soon as practicable after the complaint is made.
- (2) The notice must include—
 - (a) the name of the complainant; and
 - (b) details of the nature of the complaint.
- (3) Nothing in this section requires the Commissioner to give the law practice or Australian legal practitioner an opportunity to be heard or make a submission to the Commissioner before the Commissioner determines how the complaint is to be dealt with.

S. 4.2.8(3)
inserted by
No. 81/2008
s. 23(1).

4.2.9 Further information from complainant

- (1) The Commissioner may require a complainant to—
 - (a) give further details of the complaint; and
 - (b) verify any details of the complaint by statutory declaration or in another manner specified by the Commissioner.

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- (2) A requirement under subsection (1) must be in writing and allow the complainant a reasonable time to comply.

4.2.10 Summary dismissal of complaints

- (1) The Commissioner may dismiss a complaint if—
- (a) further details are not given, or the details of the complaint or further details are not verified, as required by the Commissioner under section 4.2.9; or
 - (b) the complaint is vexatious, misconceived, frivolous or lacking in substance; or
 - (c) the conduct complained about has been the subject of a previous complaint that has been dismissed; or
 - (d) the conduct complained about is the subject of another complaint; or
 - (e) the complaint is not one that the Commissioner has power to deal with; or
 - (f) in the case of a disciplinary complaint, the Commissioner, having considered the complaint, forms the view that—
 - (i) it is not in the public interest to investigate the complaint because the subject of the complaint is an Australian legal practitioner whose name has been removed from the local roll; or
 - (ii) the complaint requires no further investigation.
- (2) If the Commissioner dismisses a complaint under this section, he or she must give the complainant a written notice of the dismissal including the reasons for the dismissal.

S. 4.2.10(1)(f)
substituted by
No. 15/2012
s. 8.

s. 4.2.11

S. 4.2.10(3)
inserted by
No. 81/2008
s. 23(2).

- (3) The Commissioner is not required to give a complainant, a law practice or an Australian legal practitioner an opportunity to be heard or make a submission to the Commissioner before determining whether or not to dismiss a complaint under this section.

4.2.11 Dealing with complaints

- (1) A complaint is to be dealt with as follows—
- (a) to the extent that it is a civil complaint, it is to be dealt with in accordance with Part 4.3;
 - (b) to the extent that it is a disciplinary complaint, it is to be dealt with in accordance with Part 4.4.
- (2) If a complaint involves both a civil complaint and a disciplinary complaint, it is to be dealt with under Part 4.3 and Part 4.4 as appropriate to its subject-matter.

4.2.12 Information about complaints procedure

The Commissioner may—

- (a) produce information about the making of complaints and the procedure for dealing with complaints; and
- (b) make information available to members of the public on request; and
- (c) provide assistance to members of the public in making complaints.

4.2.13 No Tribunal fees

Despite anything to the contrary in the **Victorian Civil and Administrative Tribunal Act 1998**, no fee is payable for any application to the Tribunal under this Chapter.

4.2.14 Compensation orders

- (1) A compensation order may not be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation under an order made by a court or tribunal or a payment from the Fidelity Fund.
- (2) A compensation order does not affect the right of a complainant to recover damages for pecuniary loss, but a court in making an award of damages must take the compensation order into account.

4.2.15 Waiver of privilege or duty of confidentiality

- (1) If a client of a law practice or an Australian legal practitioner makes a complaint about the practice or practitioner, the complainant is taken to have waived legal professional privilege, or the benefit of any duty of confidentiality, to enable the practice or practitioner to disclose to the Commissioner any information necessary for dealing with or investigating the complaint.
- (2) Without limiting subsection (1), any information so disclosed may be used in or in connection with any procedures or proceedings relating to the complaint.

4.2.16 Ex gratia payments to complainants

- (1) Subject to this section, the Commissioner, after consultation with the chairperson of the Board, may pay a complainant an amount determined by the Commissioner as compensation for pecuniary loss suffered as a result of the conduct of a law practice or an Australian legal practitioner, if the Commissioner considers it fair to do so.
- (2) Receipt of a payment under subsection (1) does not affect the right of a complainant to recover damages for pecuniary loss, but a court in making an award of damages must take the payment into account.

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- (3) In deciding whether or not to make a payment under subsection (1) to a complainant, and the amount of any such payment, the Commissioner may take into account—
- (a) whether or not the law practice or Australian legal practitioner has ceased engaging in legal practice; and
 - (b) the financial position of the practice or practitioner.
- (4) Nothing in subsection (3) limits the matters the Commissioner may take into account in making a decision under subsection (1).
- (5) The Board, by written notice to the Commissioner before the beginning of a financial year, may set a maximum amount that may be paid to complainants (whether individually or in total or both) in that year and may, in special circumstances, vary that amount at any time during the year.
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PART 4.3—CIVIL COMPLAINTS AND DISPUTES

Division 1—Application of Part

4.3.1 Application of Part

This Part applies to a complaint to the extent that it involves a civil dispute, whether or not it also involves a disciplinary complaint.

Division 2—Dealing with civil complaints

4.3.2 Effect of complaint on other proceedings

- (1) Subject to subsection (2)—
- (a) a law practice or an Australian legal practitioner must not commence proceedings in relation to the subject-matter of a civil dispute between a person and the practice or practitioner after the practice or practitioner has received notice under section 4.2.8 of a civil complaint about the conduct of the practice or practitioner in respect of the dispute;
 - (b) a law practice of which an Australian legal practitioner is an associate must not commence proceedings in relation to the subject-matter of a civil dispute between a person and the practitioner after the practitioner has received notice under section 4.2.8 of a civil complaint about the conduct of the practitioner in respect of the dispute;
 - (c) a complainant must not commence proceedings against a law practice or an Australian legal practitioner in relation to the subject-matter of a civil dispute with the practice or practitioner after the complainant has made a civil complaint about the conduct

s. 4.3.3

of the practice or practitioner in respect of the dispute—

until the complaint is determined or dismissed and any appeal rights are exhausted.

- (2) Nothing in subsection (1) prevents a law practice or an Australian legal practitioner commencing proceedings (except proceedings against the complainant) on the lawful instructions of the complainant or a person other than the complainant.
- (3) A court or tribunal before which any proceedings are brought in contravention of subsection (1) must stay those proceedings on the application of a party, or on its own initiative.

4.3.3 Lodgement of disputed legal costs with Commissioner

S. 4.3.3(1)
amended by
No. 79/2006
s. 40.

- (1) Subject to subsection (2), a complainant who makes a complaint that involves a costs dispute must lodge the unpaid amount of the legal costs with the Commissioner within 28 days after making the complaint.
- (2) The Commissioner may determine in any case that a complainant need not lodge a disputed amount, or may lodge a lesser amount, if the Commissioner is satisfied that lodgement would cause the complainant undue hardship.
- (3) The Commissioner must dismiss a complaint to the extent that it involves a costs dispute if the complainant fails to comply with this section.

4.3.4 Dealing with lodged costs

- (1) The Commissioner must cause money lodged under section 4.3.3 to be placed on deposit in an interest-bearing account with an ADI in the name of the Commissioner.

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- (2) Money in the account, including interest earned on money deposited in the account, is to be paid (after the deduction of any relevant government duties and ADI charges and fees)—
- (a) if the costs dispute is successfully resolved by the Commissioner, as agreed by the parties; or
 - (b) if the costs dispute is not successfully resolved by the Commissioner and proceeds to the Tribunal, in accordance with the order of the Tribunal under section 4.3.17; or
 - (c) if the complainant withdraws the complaint or does not apply to the Tribunal, or the complaint is dismissed under section 4.3.13(2)(a), to the law practice or Australian legal practitioner concerned.

S. 4.3.4(2)(c)
amended by
No. 46/2007
s. 24.

4.3.5 Commissioner to attempt to resolve civil dispute

- (1) The Commissioner must attempt to resolve a civil dispute that is the subject of a civil complaint and may take any action he or she considers necessary to assist the parties to reach agreement.
- (2) Without limiting subsection (1), the Commissioner may—
 - (a) refer a civil dispute for mediation under Division 3; or
 - (b) in the case of a costs dispute—arrange for a non-binding assessment of legal costs.
- (3) For the purposes of an assessment referred to in subsection (2)(b), the Commissioner may require the law practice or Australian legal practitioner concerned to provide any relevant documents or information.
- (4) Evidence of anything said or done in the course of attempting to resolve a civil dispute is not admissible in proceedings before the Tribunal or

s. 4.3.5A

any other proceedings relating to the subject-matter of the dispute.

- (5) This section does not apply if—
- (a) the Commissioner has dismissed the complaint in respect of the dispute under section 4.2.10 or 4.3.3(3); or
 - (b) the Commissioner considers that a civil dispute is unlikely to be resolved, or is not suitable for resolution by the Commissioner.

S. 4.3.5A
inserted by
No. 46/2007
s. 25.

4.3.5A Settlement agreements

- (1) If the parties to a civil dispute reach agreement with respect to the subject-matter of the dispute—
- (a) the Commissioner must prepare a written record of the agreement; and
 - (b) the record must be signed by or on behalf of each party and certified by the Commissioner; and
 - (c) the Commissioner must give each party a copy of the signed and certified record.
- (2) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the certified record free of charge in the Magistrates' Court.
- (3) On filing, the record must be taken to be an order of the Magistrates' Court in accordance with its terms, and may be enforced accordingly.
- (4) A record may be filed only once under subsection (2).
- (5) This section does not apply if the parties to the dispute reach agreement through mediation.

Note

Section 4.3.12 deals with agreements reached through mediation.

4.3.6 What happens if civil dispute is unsuitable for resolution by Commissioner?

If the Commissioner considers that a civil dispute is unlikely to be resolved, or is not suitable for resolution by the Commissioner, the Commissioner must give written notice to each party—

- (a) stating that the civil dispute is not likely to be resolved or is unsuitable for resolution by the Commissioner; and
- (b) setting out the party's right to apply to the Tribunal under section 4.3.15.

4.3.7 What happens if dispute resolution fails?

- (1) This section applies if—
 - (a) a civil dispute that is the subject of a civil complaint has been referred for mediation under Division 3 and the mediator has informed the Commissioner that the mediation has been unsuccessful; or
 - (b) the Commissioner has taken any other steps to resolve the dispute but it has not been resolved within a reasonable time.
- (2) The Commissioner must give written notice to each party—
 - (a) stating that the civil dispute could not be resolved by the Commissioner; and
 - (b) setting out the party's right to apply to the Tribunal under section 4.3.15.

Division 3—Mediation

4.3.8 Application of Division

This Division applies if the Commissioner refers a civil dispute for mediation.

4.3.9 Appointment of mediator

The Commissioner must appoint a mediator from the panel of mediators to conduct the mediation.

4.3.10 Mediation

- (1) The mediator must attempt to resolve the civil dispute by mediation.
- (2) A party is entitled to attend the mediation personally and to be represented at the mediation by an Australian legal practitioner or, with the leave of the mediator, by any other person.

4.3.11 Admissibility of evidence and documents

- (1) The following are not admissible in any proceedings in a court, tribunal or before a person or body authorised to hear and receive evidence—
 - (a) evidence of anything said or done in the course of mediation; and
 - (b) a document prepared for the purposes of mediation.
- (2) Subsection (1) does not apply to an agreement reached during mediation.

4.3.12 Mediation agreements

- (1) If, following mediation, the parties to the civil complaint reach agreement with respect to the subject-matter of the complaint—
 - (a) the mediator must prepare a written record of the agreement; and
 - (b) the record must be signed by or on behalf of each party and certified by the mediator; and
 - (c) the mediator must give each party and the Commissioner a copy of the signed and certified record.

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- (2) Any party, after giving written notice to the other party, may enforce the agreement by filing a copy of the certified record free of charge in the Magistrates' Court.
 - (3) On filing, the record must be taken to be an order of the Magistrates' Court in accordance with its terms, and may be enforced accordingly.
 - (4) A record may be filed only once under subsection (2).

4.3.13 What happens if a party does not attend a mediation?

- (1) If a party does not attend a properly convened mediation, the mediator must notify the Commissioner as soon as practicable.
- (2) Unless the non-attending party provides a reasonable excuse for the non-attendance to the Commissioner within 7 days after the day fixed for the mediation—
 - (a) if the non-attending party is the complainant—the Commissioner may dismiss the complaint by giving written notice to each party;
 - (b) if the non-attending party is the law practice or Australian legal practitioner—the Commissioner must give written notice to the complainant informing the complainant of the complainant's right to apply to the Tribunal under section 4.3.15.

4.3.14 What happens if mediation is not successful?

If mediation is not successful (other than in the circumstances set out in section 4.3.13), the mediator must advise the Commissioner as soon as practicable.

Division 4—Resolution of civil disputes by the Tribunal

4.3.15 Application to Tribunal

- (1) The following may apply to the Tribunal for resolution of a civil dispute that is the subject of a civil complaint—
 - (a) a party to the dispute to whom the Commissioner gives notice under section 4.3.6 or 4.3.7; or
 - (b) the complainant who has received a notice under section 4.3.13(2)(b).
- (2) The application must be made within 60 days after the party received the relevant notice from the Commissioner.
- (3) The Tribunal cannot entertain an application by a complainant under this section unless the complainant files with the Tribunal a written notice from the Commissioner stating (as the case requires) that—
 - (a) the dispute is not likely to be resolved or is unsuitable for resolution by the Commissioner; or
 - (b) the dispute could not be resolved by the Commissioner.
- (4) The notice referred to in subsection (3) may be contained in the notice referred to in subsection (1)(a) or (b).

4.3.16 Parties

The parties to a proceeding in the Tribunal under this Division are—

- (a) the complainant; and
- (b) the law practice or Australian legal practitioner in respect of whom the complaint was made; and

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- (c) any person joined as a party by the Tribunal under the **Victorian Civil and Administrative Tribunal Act 1998**.

4.3.17 What may the Tribunal order?

- (1) The Tribunal may make any one or more of the following orders in relation to a civil dispute that is the subject of an application—
- (a) an order that the law practice or Australian legal practitioner, or any law practice of which the practitioner is an associate, pay to the complainant as compensation a specified amount not exceeding \$25 000 within a specified time (*compensation order*);
 - (b) in a costs dispute—
 - (i) an order that the complainant pay the amount of legal costs in dispute or that the amount of legal costs be reduced by a specified amount (not exceeding the amount in dispute);
 - (ii) an order that the complainant pay interest on the amount of legal costs in dispute at a rate not exceeding the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**;
 - (c) an order that the law practice or Australian legal practitioner, or any law practice of which the practitioner is an associate, waive or repay the whole or a specified part of legal costs charged to the complainant for any specified legal services;
 - (d) an order that the law practice or Australian legal practitioner, or any law practice of which the practitioner is an associate, provide specified legal services to the

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- complainant either free of charge or at a specified cost;
- (e) an order that the law practice or Australian legal practitioner, or any law practice of which the practitioner is an associate, waive any lien held over documents belonging to the complainant and deliver the documents to the complainant within a specified time;
 - (f) any other order the Tribunal thinks fit.
- (2) If a complainant has lodged an amount with the Commissioner under section 4.3.3, an order under subsection (1) must include directions as to the payment of that money.
- (3) If the Tribunal makes an order under subsection (1)(b)(ii), the interest is payable from the day specified by the Tribunal, being at least 30 days after payment of the costs in dispute was demanded.
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PART 4.4—DISCIPLINARY COMPLAINTS AND DISCIPLINE

Division 1—Application of Part

4.4.1 Application of Part

- (1) This Part applies to a complaint to the extent that it is a disciplinary complaint, whether or not it also involves a civil dispute.
- (2) This Part also applies to the investigation of conduct of an Australian legal practitioner to which this Chapter applies, in the absence of a disciplinary complaint, or where a disciplinary complaint has been withdrawn.

Division 2—Key concepts

4.4.2 Unsatisfactory professional conduct

For the purposes of this Act—

unsatisfactory professional conduct includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

Note

Section 4.4.4 specifies conduct that is capable of constituting unsatisfactory professional conduct and section 4.4.5 specifies conduct that constitutes unsatisfactory professional conduct.

4.4.3 Professional misconduct

- (1) For the purposes of this Act—

professional misconduct includes—

- (a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or

s. 4.4.4

consistent failure to reach or maintain a reasonable standard of competence and diligence; and

- (b) conduct of an Australian legal practitioner, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law, that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

Note

Section 4.4.4 specifies conduct that is capable of constituting professional misconduct and section 4.4.6 specifies conduct that constitutes professional misconduct.

- (2) For the purpose of finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

4.4.4 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

Without limiting section 4.4.2 or 4.4.3, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

- (a) conduct consisting of a contravention of this Act, the regulations or the legal profession rules;
- (b) charging of excessive legal costs in connection with the practice of law;

- (c) conduct in respect of which there is a finding of guilt 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; S. 4.4.4(e) amended by No. 12/2007 s. 65(1)(a).
- (f) conduct of an Australian legal practitioner in failing to comply with an order of the Tribunal made under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Act or a corresponding law); S. 4.4.4(f) inserted by No. 12/2007 s. 65(1)(b).
- (g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law. S. 4.4.4(g) inserted by No. 12/2007 s. 65(1)(b).

4.4.5 Conduct that constitutes unsatisfactory professional conduct

- (1) Without limiting section 4.4.2 or 4.4.4, failure by an Australian legal practitioner to comply with a condition of his or her practising certificate constitutes unsatisfactory professional conduct.
- (2) Subsection (1) does not apply if the failure amounts to professional misconduct.

4.4.6 Conduct that constitutes professional misconduct

Without limiting section 4.4.3 or 4.4.4, the following conduct by an Australian legal practitioner constitutes professional misconduct—

- (a) wilful or reckless failure to comply with a condition to which an Australian practising certificate held by the practitioner is subject;
- (b) wilful or reckless failure to comply with an undertaking given to a court, tribunal, the Commissioner or the Board.

Division 3—Investigations

4.4.7 Disciplinary complaints to be investigated

- (1) The Commissioner is required to investigate each disciplinary complaint.
- (2) This section does not apply to—
 - (a) a complaint referred to a prescribed investigatory body under section 4.4.9; or
 - (b) a complaint taken over or referred to a corresponding authority; or
 - (c) a complaint that is dismissed under Part 4.2 or withdrawn.
- (3) Nothing in this section prevents the Commissioner from investigating or further investigating a complaint referred to a prescribed investigatory body.

4.4.8 Investigations without complaint

The Commissioner may investigate the conduct of an Australian legal practitioner if the Commissioner has reason to believe that the conduct may amount to unsatisfactory professional conduct or professional misconduct, even though no complaint has been made about

the conduct or a complaint about the conduct has been withdrawn.

4.4.9 Referral to prescribed investigatory body

- (1) The Commissioner may refer a disciplinary complaint to a prescribed investigatory body for investigation under this Division.
- (2) The referral may—
 - (a) state a date by which the prescribed investigatory body is to report to the Commissioner about the complaint; and
 - (b) give directions to the prescribed investigatory body about the way in which it is to conduct the investigation.
- (3) The Commissioner may extend the date for the report but may require the prescribed investigatory body to give the Commissioner an interim report.
- (4) At any time while a prescribed investigatory body is conducting an investigation, including after the Commissioner is given an interim report, the Commissioner may give directions or further directions about the way in which the body is to conduct the investigation.
- (5) The Commissioner must pay the reasonable costs incurred by a prescribed investigatory body in conducting an investigation and reporting to the Commissioner under this Division.

4.4.10 Role of prescribed investigatory body on a referral

- (1) If a disciplinary complaint is referred to a prescribed investigatory body under section 4.4.9, the body must investigate the complaint and report to the Commissioner about the complaint by the stated date or a later date stated in an extension.

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- (2) The report must—
- (a) be in the form approved by the Commissioner; and
 - (b) include a recommendation as to what action, if any, the Commissioner should take under section 4.4.13.
- (3) After receiving a report under this section, the Commissioner may—
- (a) deal with the matter under section 4.4.13; or
 - (b) require the prescribed investigatory body to investigate the complaint further and report to the Commissioner; or
 - (c) investigate or further investigate the complaint himself or herself.
- (4) This Division applies to a further investigation of a complaint in the same way it applies to the initial investigation.

4.4.11 Practitioner, law practice and others to provide information and documents

- (1) An investigating authority may require an Australian legal practitioner who is subject to an investigation under this Division to provide—
- (a) a full written explanation of the practitioner's conduct; and
 - (b) any other information or documents—
- and to verify the explanation, information or documents by statutory declaration or another manner specified by the investigating authority.

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- (2) The power referred to in subsection (1)(b) is exercisable—
- (a) at any time during the investigation; and
 - (b) so far as the power relates to the provision of documents—also at any time after the investigation but before the commencement of the hearing by the Tribunal of any charge resulting from the investigation.
- (3) For the purpose of an investigation under this Division, an investigating authority may require any of the following to provide any information or documents and to verify the information or documents by statutory declaration or another manner specified by the investigating authority—
- (a) a law practice of which the practitioner subject to the investigation is an associate;
 - (b) an associate of a law practice referred to in paragraph (a);
 - (c) an Australian legal practitioner who is not subject to investigation.
- (4) For the purpose of an investigation under this Division, an investigating authority may require an ADI that, or an external examiner who, has any documents that may be relevant to the subject-matter of the investigation to provide those documents and to verify them by statutory declaration or another manner specified by the investigating authority.
- (5) A requirement under subsection (1), (3) or (4) must be in writing and must allow the person to whom, or body to which, it is given at least 14 days to comply.

s. 4.4.11

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- (6) A person or body may not refuse to comply with subsection (1) or (3)—
- (a) on the ground of any duty of confidence, including any duty of confidence owed by a law practice or legal practitioner to a client; or
 - (b) on the ground that the production of the record or giving of the information may tend to incriminate the person or body.
- (7) If a natural person, before producing a document or giving an explanation or information, objects to the investigating authority on the ground that the production of the document or giving of the explanation or information may tend to incriminate the person, the document, explanation or information is inadmissible in evidence in any proceeding against the person for an offence, other than—
- (a) an offence against this Act; or
 - (b) any other offence in relation to the keeping of trust accounts or the receipt of trust money; or
 - (c) an offence against section 314(1) of the **Crimes Act 1958** (perjury).
- (8) An investigating authority may make copies of any document provided to the investigating authority under this section.
- (9) In this section—
- investigating authority* means—
- (a) the Commissioner, in relation to any investigation;

- (b) a prescribed investigatory body, in relation to the investigation of a complaint referred to it under section 4.4.9.

4.4.12 Investigation to be conducted expeditiously

- (1) Subject to section 4.4.12A, an investigation under this Division must be conducted as expeditiously as possible.
- (2) Until an investigation arising from a complaint is completed and a decision is made under section 4.4.13, the Commissioner must report progress to the complainant at intervals of not more than 6 months.
- (3) If a complaint has been referred to a prescribed investigatory body under section 4.4.9, that body must give the Commissioner any information the Commissioner requires to enable the Commissioner to comply with subsection (2).

S. 4.4.12(1)
amended by
No. 15/2012
s. 9.

S. 4.4.12(2)
amended by
No. 18/2005
s. 19(e).

4.4.12A Commissioner may suspend investigation if practitioner may be removed from local roll

S. 4.4.12A
inserted by
No. 15/2012
s. 10.

- (1) The Commissioner may suspend an investigation under this Division if the Commissioner forms the view that it is in the public interest to do so because an application has been made—
- (a) to the Supreme Court for an order that the practitioner's name be removed from the local roll; or
- (b) to the Tribunal for an order recommending to the Supreme Court that the name of the practitioner be removed from the local roll.
- (2) The Commissioner—
- (a) may resume the investigation at any time; and

s. 4.4.12B

- (b) must resume the investigation if the application referred to in subsection (1) is withdrawn or refused.

S. 4.4.12B
inserted by
No. 15/2012
s. 10.

4.4.12B Commissioner may decide to take no further action if practitioner removed from local roll

The Commissioner may decide to take no further action in relation to an investigation under this Division if the Commissioner forms the view that it is in the public interest to do so because the practitioner's name has been removed from the local roll.

S. 4.4.12C
inserted by
No. 15/2012
s. 10.

4.4.12C Notice of decision to suspend, resume or take no further action

- (1) The Commissioner must give the practitioner written notice if the Commissioner—
- (a) suspends an investigation under section 4.4.12A(1); or
 - (b) resumes an investigation under section 4.4.12A(2); or
 - (c) decides to take no further action in relation to an investigation under section 4.4.12B.
- (2) If the investigation arose from a complaint, the Commissioner must also give written notice to the complainant.
- (3) The Commissioner must give notice under this section as soon as practicable.
- (4) The Commissioner must include, in any notice given under this section, the reasons for suspending the investigation, resuming the investigation, or deciding to take no further action in relation to the investigation (as the case requires).

4.4.13 What happens after an investigation is completed?

- (1) After an investigation has been completed under this Division, the Commissioner must deal with the matter in accordance with this section.
- (2) The Commissioner must apply to the Tribunal for an order under Division 4 in respect of the Australian legal practitioner the subject of the investigation if the Commissioner is satisfied that there is a reasonable likelihood that the Tribunal would find the practitioner guilty of professional misconduct.
- (3) If the Commissioner is satisfied that there is a reasonable likelihood that the Tribunal would find the practitioner guilty of unsatisfactory professional conduct, the Commissioner may—
 - (a) apply to the Tribunal for an order under Division 4 in respect of the practitioner; or
 - (b) with the consent of the practitioner, reprimand or caution the practitioner; or
 - (c) take no further action against the practitioner if satisfied that—
 - (i) the practitioner is generally competent and diligent; and
 - (ii) there has been no substantiated complaint (other than the complaint that led to the investigation) about the conduct of the practitioner within the last 5 years.
- (4) If the investigation arose from a complaint under which the complainant requested a compensation order, the Commissioner may require the practitioner to pay compensation to the complainant as a condition of deciding under subsection (3) not to make an application to the Tribunal in respect of the practitioner.

s. 4.4.14

- (5) If the Commissioner is satisfied that there is no reasonable likelihood that the Tribunal would find the practitioner guilty of professional misconduct or unsatisfactory professional conduct, the Commissioner must take no further action against the practitioner.
- (6) In determining what action, if any, to take under this section, the Commissioner may rely on a recommendation contained in a report of a prescribed investigatory body under this Division.
- (7) An application to the Tribunal under this section need not identify the particular order or orders sought.

4.4.14 Notice of decision

- (1) If an investigation arose from a complaint, the Commissioner—
 - (a) must give the complainant written notice of his or her decision under section 4.4.13 as soon as practicable after making it, including the reasons for the decisions; and
 - (b) if the decision is to take no further action against the practitioner, must dismiss the complaint.
- (2) The Commissioner must give written notice to an Australian legal practitioner of a decision under section 4.4.13 not to take any further action against the practitioner.

S. 4.4.14(1)(b)
amended by
No. 18/2005
s. 19(f).

Division 4—Proceedings in the Tribunal

4.4.15 Tribunal to hear and determine application

The Tribunal must hear and determine an application by the Commissioner under section 4.4.13.

4.4.16 Determinations of Tribunal

If, after it has completed a hearing under this Division in relation to an application in respect of an Australian legal practitioner, the Tribunal is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal may make any orders it thinks fit, including any one or more of the orders specified in section 4.4.17, 4.4.18 or 4.4.19.

S. 4.4.16
amended by
No. 12/2007
s. 65(1)(c).

Note

In addition to the orders referred to in this section, the Tribunal has jurisdiction under the **Victorian Civil and Administrative Tribunal Act 1998** to grant injunctions, including interim injunctions (section 123 of that Act), to make declarations (section 124) and to make further orders and impose conditions on orders (section 130). Those further orders include orders for costs (see also clause 46D of Schedule 1 to that Act).

4.4.17 Orders requiring official implementation in this jurisdiction

The Tribunal may make the following orders under this section—

- (a) an order recommending to the Supreme Court that the name of the practitioner be removed from the local roll;
- (b) an order that the practitioner's local practising certificate be suspended for a specified period or cancelled;
- (c) an order that a local practising certificate not be granted to the practitioner before the end of a specified period;
- (d) an order amending the conditions of the practitioner's local practising certificate or imposing further conditions, restrictions or limitations on the certificate.

S. 4.4.17(c)
amended by
No. 18/2005
s. 12(a).

s. 4.4.18

4.4.18 Orders requiring official implementation in another jurisdiction

The Tribunal may make the following orders under this section—

- (a) an order recommending to the appropriate authority of another jurisdiction that the name of the practitioner be removed from an interstate roll;
- (b) an order recommending that the practitioner's interstate practising certificate be suspended for a specified period or cancelled;
- (c) an order recommending that an interstate practising certificate not be granted to the practitioner before the end of a specified period;
- (d) an order recommending—
 - (i) that specified conditions be imposed on the practitioner's interstate practising certificate, or existing conditions be amended; and
 - (ii) that the conditions be imposed or amended for a specified period; and
 - (iii) a specified time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed.

S. 4.4.18(b) amended by No. 12/2007 s. 65(1)(d).

S. 4.4.18(c) amended by No. 12/2007 s. 65(1)(d).

S. 4.4.18(d) substituted by No. 12/2007 s. 65(1)(e).

4.4.19 Orders requiring compliance by practitioner

The Tribunal may make the following orders under this section—

- (a) an order referred to in section 4.3.17(1)(a), (b), (c) or (e);

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- (b) an order that the practitioner pay a fine of a specified amount, not exceeding \$10 000 in the case of a finding of unsatisfactory professional conduct and \$50 000 in the case of a finding of professional misconduct;
 - (c) an order that the practitioner undertake and complete a specified course of further legal education;
 - (d) an order that the practitioner undertake a specified period of practice under specified supervision;
 - (e) an order that the practitioner do or refrain from doing something in connection with the practice of law;
 - (f) an order that the practitioner cease to accept instructions as a public notary in relation to notarial services;
 - (g) an order that the practitioner's practice be conducted for a specified period in a specified way or subject to specified conditions;
 - (h) an order that the practitioner's practice be subject to periodic inspection by a specified person for a specified period;
 - (i) an order that the practitioner seek advice in relation to the management of the practitioner's practice from a specified person;
 - (j) an order that the practitioner not apply for a local practising certificate before the end of a specified period;
 - (k) an order reprimanding the practitioner;
 - (l) an order that the practitioner report on the legal practice of the practitioner to a specified person at specified intervals;
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- (m) an order that the practitioner not employ, engage or recommend a specified person or class of persons;
- (n) any other order the Tribunal thinks fit.

4.4.20 Alternative finding

The Tribunal may find a person guilty of unsatisfactory professional conduct even though the application alleged professional misconduct.

Division 5—Rehearings

4.4.21 Application for rehearing

- (1) If the Tribunal makes an order in respect of an application under section 4.4.13 (other than an interim order), a party may apply to the Tribunal for a rehearing of the application.
- (2) An application for a rehearing must be made within 28 days after the day of the order.
- (3) If the Tribunal gives oral reasons for making an order and a party then requests written reasons under section 117 of the **Victorian Civil and Administrative Tribunal Act 1998**, the day on which the written reasons are given to the party is deemed to be the day of the order for the purposes of subsection (2).
- (4) A person cannot apply for a rehearing of—
 - (a) an application the order in respect of which was made by the Tribunal constituted by a judicial member, whether with or without others; or
 - (b) an application for a rehearing.

4.4.22 Parties and notice

A party to the proceeding on an application under section 4.4.13 is a party to a rehearing of the application under this Division.

4.4.23 Rehearing

- (1) For the purposes of a rehearing, the Tribunal has all the functions and powers that the Tribunal had with respect to the matter at first instance.
- (2) In determining a rehearing, the Tribunal may—
 - (a) affirm the order of the Tribunal at first instance; or
 - (b) vary the order of the Tribunal at first instance; or
 - (c) set aside the order of the Tribunal at first instance and make another order in substitution for it.

Note

Clause 46C of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** provides for the constitution of the Tribunal for the purposes of a rehearing.

4.4.24 Effect of first instance order pending rehearing

- (1) Subject to subsection (2), the making of an application for a rehearing does not affect the operation of any order to which the application relates or prevent the taking of action to enforce the order.
- (2) The Tribunal may make an order staying the operation of an order pending the determination of the rehearing of the matter to which the order relates.

Division 6—Publicising disciplinary action

4.4.25 Definitions

In this Division—

S. 4.4.25
def. of
*disciplinary
action*
amended by
Nos 18/2005
s. 12(b),
12/2007
s. 65(1)(f).

disciplinary action means—

- (a) the making of an order by a court or tribunal for or following a finding of unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner under this Act or under a corresponding law; or
- (b) any of the following actions taken under this Act or under a corresponding law, following a finding by a court or tribunal of professional misconduct by an Australian legal practitioner—
 - (i) removal of the name of the practitioner from an Australian roll;
 - (ii) the suspension or cancellation of the Australian practising certificate of the practitioner;
 - (iii) the refusal to grant or renew an Australian practising certificate to the practitioner;
 - (iv) the appointment of a receiver of all or any of the practitioner's property or the appointment of a manager of the practitioner's practice;

Register means the Register referred to in section 4.4.26.

4.4.26 Register of Disciplinary Action

- (1) There is to be a register of—
 - (a) disciplinary action taken under this Act against Australian legal practitioners; and
 - (b) disciplinary action taken under a corresponding law against Australian legal practitioners who are or were enrolled or practising in this jurisdiction when the conduct that is the subject of the disciplinary action occurred.
- (2) The Register is to include—
 - (a) the full name of the person against whom the disciplinary action was taken; and
 - (b) the person's address for service; and
 - (c) the person's home jurisdiction or most recent home jurisdiction; and
 - (d) particulars of the disciplinary action taken; and
 - (e) other particulars prescribed by the regulations.
- (3) Information is to be kept on the Register for the longer of—
 - (a) 5 years after the disciplinary action is taken; or
 - (b) if the disciplinary action has effect for a period exceeding 5 years, the period for which the disciplinary action has effect.
- (4) The Register may—
 - (a) be kept in a form determined or identified by the Board and may form part of other registers;

s. 4.4.27

- (b) may include the date and jurisdiction of the person's first and any later admission to the legal profession.
- (5) The Board may cause any error in or omission from the Register to be corrected.
- (6) The requirement to keep the Register applies only in relation to disciplinary action taken after the commencement of this section, but details relating to earlier disciplinary action may be included in the Register.

4.4.27 Publication of information on Register

- (1) The Register is to be made available for public inspection on—
 - (a) the Internet site of the Board; or
 - (b) an Internet site identified on the Internet site of the Board.
- (2) Information recorded in the Register may be provided to members of the public in any other manner approved by the Board.
- (3) This section is subject to sections 4.4.29 and 4.4.30.

4.4.28 Other means of publicising disciplinary action

- (1) The Board may publicise disciplinary action taken against an Australian legal practitioner in any manner the Board thinks fit.
- (2) Nothing in this section affects the provisions of this Division relating to the Register.
- (3) This section is subject to sections 4.4.29 and 4.4.30.

S. 4.4.28(3)
amended by
No. 18/2005
s. 19(g).

4.4.29 Information not to be published pending rehearing or appeal

Information about disciplinary action taken against an Australian legal practitioner must not be published or made available by the Board until the later of—

- (a) the expiry of the period during which the practitioner may appeal against the disciplinary action (whether by way of a rehearing under Division 5 or otherwise); or
- (b) the determination of any such appeal.

4.4.30 Person with infirmity, injury or illness

- (1) This section applies if—
 - (a) disciplinary action is taken against a person; and
 - (b) the person had an infirmity, injury or mental or physical illness at the time the action was taken, whether or not the action was taken because of that fact.
- (2) Any of the following may apply to the Tribunal for an order under this section—
 - (a) the person against whom the disciplinary action was taken;
 - (b) the legal personal representative of that person;
 - (c) the Commissioner;
 - (d) the Board.
- (3) On an application under subsection (2), the Tribunal may make an order that the disciplinary action taken against the person is not to be recorded in the Register or otherwise publicised under this Division.

4.4.31 General provisions about disclosure of information

- (1) The provisions of this Division are subject to section 6.4.5.
- (2) The provisions of this Division are subject to any order made by—
 - (a) the Tribunal in relation to disciplinary action taken under this Part; or
 - (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that corresponds to this Part; or
 - (c) a court or tribunal of this or another jurisdiction—

so far as the order prohibits or restricts the disclosure of information.

- (3) Despite subsection (2), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register in accordance with the requirements of this Division and may be otherwise publicised under this Division.

Division 7—Inter-jurisdictional provisions

4.4.32 Protocols

- (1) The Commissioner may enter into arrangements (*protocols*) with corresponding authorities for or with respect to investigating and dealing with conduct that appears to have occurred in more than one jurisdiction.

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- (2) In particular, the protocols may make provision for or with respect to—
- (a) providing principles to assist in determining where conduct occurs, either generally or in specified classes of cases; and
 - (b) giving and receiving consent for conduct occurring in a jurisdiction to be dealt with under a law of another jurisdiction; and
 - (c) the procedures to be adopted for requesting and conducting the investigation of any aspect of complaints under this Division; and
 - (d) the procedures to be adopted for requesting and conducting the investigation of the conduct of Australian legal practitioners in the absence of a complaint under this Division.

4.4.33 Request to another jurisdiction to investigate complaint or conduct

- (1) The Commissioner may request a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with by the Commissioner, or any aspect of the conduct of an Australian legal practitioner being investigated by the Commissioner in the absence of a complaint, and to provide a report on the result of the investigation.
- (2) A report on the result of the investigation received from—
 - (a) the corresponding authority; or

(b) a person or body authorised by the corresponding authority to conduct the investigation—

may be used and taken into consideration by the Commissioner and the Tribunal in the course of dealing with the complaint or conduct under this Part.

4.4.34 Request from another jurisdiction to investigate complaint or conduct

- (1) This section applies in relation to a request received by the Commissioner from a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with, or any aspect of the conduct of an Australian legal practitioner being investigated in the absence of a complaint, under a corresponding law.
- (2) The Commissioner may conduct the investigation.
- (3) The provisions of this Part relating to investigations apply, with any necessary adaptations, in relation to the investigation that is the subject of the request.
- (4) The Commissioner must provide a report on the result of the investigation to the corresponding authority.

4.4.35 Sharing of information with corresponding authorities

The Commissioner may enter into arrangements with a corresponding authority for providing information to the corresponding authority about—

- (a) complaints and investigations under this Part; and

- (b) any action taken with respect to any complaints made or investigations conducted under this Part, including determinations of the Tribunal under this Part.

4.4.36 Co-operation with corresponding authorities

- (1) When dealing with a complaint or conducting an investigation, the Commissioner may consult and co-operate with another person or body (whether in or of Australia or a foreign country) who or which has or may have relevant information or powers in relation to the person against whom the complaint was made or the person under investigation.
- (2) For the purposes of subsection (1), the Commissioner and the other person or body may exchange information concerning the complaint or investigation.

S. 4.4.36(1)
substituted by
No. 12/2007
s. 65(2).

4.4.37 Compliance with recommendations or orders made under corresponding laws

S. 4.4.37
(Heading)
amended by
No. 12/2007
s. 65(3).

- (1) Persons and bodies having relevant functions under this Act must—
- (a) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law in relation to powers exercisable under this Act; and
- (b) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law so far as the recommendation or order relates to the practice of law by the Australian legal practitioner concerned in this jurisdiction.

S. 4.4.37(1)(a)
amended by
No. 12/2007
s. 65(4)(a).

S. 4.4.37(1)(b)
amended by
No. 12/2007
s. 65(4)(b).

s. 4.4.38

S. 4.4.37(2)
amended by
No. 12/2007
s. 65(4)(c).

- (2) If a corresponding disciplinary body makes a recommendation or order that a person's name be removed from the roll of lawyers under this Act, the Supreme Court may order the removal of the name from the roll.
- (3) If a corresponding disciplinary body makes an order that an Australian legal practitioner pay an amount (whether as a fine or otherwise), a copy of the order may be filed in the appropriate court and the order may be enforced as if it were an order of that court.
- (4) In this section—
appropriate court means a court having jurisdiction to enforce a debt of the same amount as the amount ordered to be paid.

4.4.38 Other powers or functions not affected

Nothing in this Division affects any functions that a person or body has apart from this Division.

Division 8—Miscellaneous

4.4.39 Jurisdiction of Supreme Court

The inherent jurisdiction and powers of the Supreme Court with respect to the control and discipline of local lawyers are not affected by anything in this Part, and extend to—

- (a) local legal practitioners; and
- (b) interstate legal practitioners engaged in legal practice in this jurisdiction.

CHAPTER 5—EXTERNAL INTERVENTION

PART 5.1—INTRODUCTION AND APPLICATION

5.1.1 Purposes

The purposes of this Chapter are—

- (a) 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—
 - (i) the interests of the general public; and
 - (ii) the interests and the trust money and property of clients; and
 - (iii) the interests of lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients; and
- (b) to ensure that there is an accountable and transparent process for the appointment of interveners and for the conduct of interventions.

S. 5.1.1(a)
amended by
No. 12/2007
s. 66(1)(a).

Note

This Chapter—

- (a) applies to all law practices, regardless of whether or not they are incorporated under the Corporations Act; and
- (b) is intended to apply so that it, rather than the Corporations Act or the Bankruptcy Act 1966 of the Commonwealth, applies in respect of the winding up of trust property and in respect of the carrying on of a law practice by external intervention.

s. 5.1.2

5.1.2 Definitions

S. 5.1.2
amended by
No. 12/2007
s. 66(2) (ILA
s. 39B(1)).

(1) In this Chapter—

external intervener means a supervisor, manager or receiver under this Chapter;

external intervention means the appointment of, and the performance of the functions of, a supervisor, manager or receiver under this Chapter;

instrument of appointment, in the case of a receiver, means the order of the Supreme Court appointing the receiver;

regulated property, in relation to a law practice, means the following—

S. 5.1.2(1)
def. of
*regulated
property*
amended by
No. 18/2005
s. 13(a),
substituted by
No. 12/2007
s. 66(1)(b).

- (a) trust money or trust property received, receivable or held by the practice;
- (b) interest, dividends or other income or anything else derived from or acquired with money or property referred to in paragraph (a);
- (c) documents or records of any description relating to anything referred to in paragraph (a) or (b);
- (d) any computer hardware or software, or other device, in the custody or control of the practice or an associate of the practice by which any records referred to in paragraph (c) may be produced or reproduced in visible form.

(2) Other expressions used in this Chapter have the same meanings as in Part 3.3.

S. 5.1.2(2)
inserted by
No. 12/2007
s. 66(2).

5.1.3 Application of Chapter to Australian-registered foreign lawyers

S. 5.1.3
amended by
No. 12/2007
s. 66(3)(a).

This Chapter applies, with any necessary adaptations, to Australian-registered foreign lawyers and former Australian-registered foreign lawyers in the same way as it applies to law practices.

5.1.4 Application of Chapter to other persons

This Chapter applies, with any necessary adaptations, to—

- (a) a former law practice or former Australian legal practitioner; and
- (b) the executor (original or by representation) or administrator for the time being of a deceased Australian legal practitioner or of his or her estate; and
- (c) the administrator or receiver, or receiver and manager, or official manager, of the property of an incorporated legal practice; and
- (d) the liquidator of an incorporated legal practice that is being or has been wound up—

in the same way as it applies to law practices.

PART 5.2—INITIATION OF EXTERNAL INTERVENTION

5.2.1 Circumstances warranting external intervention

External intervention may take place in relation to a law practice in any of the following circumstances—

- (a) where a legal practitioner associate involved in the practice—
 - (i) has died; or
 - (ii) ceases to be an Australian legal practitioner; or
 - (iii) has become an insolvent under administration; or
 - (iv) is in prison; or
- (b) in the case of a firm—where the partnership has been wound up or dissolved; or
- (c) in the case of an incorporated legal practice—where the corporation concerned—
 - (i) ceases to be an incorporated legal practice; or
 - (ii) is being or has been wound up; or
 - (iii) has been deregistered or dissolved; or
- (d) in any case—where the Board forms a belief on reasonable grounds that the practice or an associate of the practice—
 - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the practice; or

S. 5.2.1(d)
amended by
No. 18/2005
s. 13(b)(f).

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- (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the practice; or
 - (iii) has failed properly to account in a timely manner to any person for trust money or trust property received by the practice for or on behalf of that person; or
 - (iv) has failed properly to make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or
 - (v) is in contravention of the regulations or legal profession rules with the result that the record-keeping for the practice's trust account is inadequate; or
 - (vi) has been or is likely to be found guilty 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 inspector or external examiner appointed under this Act; or
 - (ix) has ceased to engage 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 practice; or
- (e) where any other proper cause exists in relation to the practice.

**S. 5.2.1(d)(v)
amended by
No. 18/2005
s. 13(b)(ii).**

5.2.2 Determination regarding external intervention

S. 5.2.2(1)
amended by
Nos 18/2005
s. 19(h),
12/2007
s. 66(3)(b).

(1) This section applies when the Board becomes aware that one or more of the circumstances referred to in section 5.2.1 exists in relation to a law practice and decides that, having regard to the interests of the clients of the practice and to other matters that it considers appropriate, external intervention is warranted.

(2) The Board may determine—

S. 5.2.2(2)(a)
amended by
No. 12/2007
s. 66(3)(c).

(a) to appoint a supervisor of trust money of the law practice, if the Board is of the opinion—

- (i) that external intervention is required because of issues relating to the practice's trust accounts; and
- (ii) that it is not appropriate that the provision of legal services by the practice be wound up and terminated because of those issues; or

S. 5.2.2(2)(b)
substituted by
No. 12/2007
s. 66(3)(d).

(b) to appoint a manager for the law practice, if the Board is of the opinion—

- (i) that external intervention is required because of issues relating to the practice's trust records; or
- (ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
- (iii) that there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or

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- (c) to apply to the Supreme Court for the appointment of a receiver for the law practice, if the Board is of the opinion—
- (i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
 - (ii) that it may be appropriate that the provision of legal services by the practice be wound up and terminated.
- (3) The Board may, from time to time, make further determinations in relation to the law practice and for that purpose may revoke a previous determination with effect from a date or event specified by the Board.
- (4) A further determination may be made under subsection (3) whether or not there has been any change in the circumstances in consequence of which the original determination was made and whether or not any further circumstances have come into existence in relation to the law practice after the original determination was made.
- (5) An appointment of an external intervener for a law practice may be made in respect of the practice generally or may be limited in any way the Board, or in the case of a receiver, the Supreme Court, considers appropriate, including for example to matters connected with a particular legal practitioner associate or to matters connected with a particular office or a particular subject-matter.
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s. 5.3.1

Pt 5.3
(Heading)
amended by
No. 12/2007
s. 66(3)(e).

PART 5.3—SUPERVISORS OF TRUST MONEY

S. 5.3.1
(Heading)
amended by
No. 12/2007
s. 66(3)(f).

5.3.1 Appointment of supervisor of trust money

S. 5.3.1(1)
amended by
No. 12/2007
s. 66(3)(g)(i).

(1) This section applies if the Board determines to appoint a supervisor of trust money of a law practice.

S. 5.3.1(2)
amended by
No. 12/2007
s. 66(3)(g)(ii).

(2) The Board may, by instrument in writing, appoint a person as supervisor of trust money.

S. 5.3.1(3)
amended by
No. 15/2012
s. 15(2).

(3) The appointee must be either—
(a) an Australian legal practitioner who holds a practising certificate as a principal authorising the receipt of trust money; or
(b) a person holding accounting qualifications with experience in law practices' trust accounts—

and may (but need not) be an employee referred to in section 6.4.1.

S. 5.3.1(4)(b)
amended by
No. 12/2007
s. 66(3)(g)(ii).

(4) The instrument of appointment must—
(a) identify the practice and the supervisor; and
(b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and
(c) specify the term of the appointment; and
(d) specify any conditions imposed by the Board when the appointment is made; and

- (e) specify any fees payable by way of remuneration to the supervisor specifically for carrying out his or her duties in relation to the external intervention; and

Note

Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee referred to in section 6.4.1.

Note to
s. 5.3.1(4)(e)
amended by
No. 15/2012
s. 15(3).

- (f) provide for the legal costs and the expenses that may be incurred by the supervisor in relation to the external intervention.
- (5) The instrument of appointment may specify any reporting requirements to be observed by the supervisor.

5.3.2 Notice of appointment

- (1) As soon as possible after an appointment of a supervisor of trust money of a law practice is made, the Board must serve a notice of the appointment on—
- (a) the practice; and
 - (b) any other person authorised to operate any trust account of the practice; and
 - (c) any external examiner appointed to examine the practice's trust records; and
 - (d) the ADI with which any trust account of the practice is maintained; and
 - (e) any person whom the Board reasonably believes should be served with the notice.
- (2) The notice must—
- (a) identify the law practice and the supervisor; and

S. 5.3.2(1)
amended by
No. 12/2007
s. 66(3)(h)(i).

s. 5.3.3

S. 5.3.2(2)(b)
amended by
No. 12/2007
s. 66(3)(h)(ii).

- (b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and
- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the supervisor; and
- (e) specify any conditions imposed by the Board when the appointment is made; and
- (f) indicate the appeal rights under section 5.6.4 in respect of the appointment; and
- (g) contain or be accompanied by other information or material prescribed by the regulations.

5.3.3 Effect of service of notice of appointment

S. 5.3.3(1)
amended by
No. 12/2007
s. 66(3)(i)(i).

- (1) After service on an ADI of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless—

- (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by the supervisor or the supervisor's nominee; or
- (b) the withdrawal or transfer is made by the supervisor or the supervisor's nominee by means of electronic or internet banking facilities; or
- (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the supervisor or the supervisor's nominee.

S. 5.3.3(1)(b)
amended by
No. 12/2007
s. 66(3)(i)(ii).

- (2) After service on a person (other than the supervisor or an ADI) of a notice of the

S. 5.3.3(2)
amended by
No. 12/2007
s. 66(3)(j)(i).

appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the person must not—

- (a) deal with any of the practice's trust money; or
- (b) sign any cheque or other instrument drawn on a trust account of the practice; or
- (c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Penalty: 60 penalty units.

- (3) A supervisor of trust money may, for the purposes of subsection (1)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (4) Any money that is withdrawn or transferred in contravention of subsection (1) may be recovered from the ADI concerned by the supervisor as a debt in a court of competent jurisdiction, and any amount recovered is to be paid into a trust account as directed by the supervisor.

S. 5.3.3(3)
amended by
No. 12/2007
s. 66(3)(j)(ii).

5.3.4 Role of supervisor of trust money

S. 5.3.4
(Heading)
amended by
No. 12/2007
s. 66(3)(k).

- (1) A supervisor of trust money of a law practice has the powers and duties of the practice in relation to the trust money, including powers—
 - (a) to receive trust money entrusted to the practice; and
 - (b) to open and close trust accounts.
- (2) This section applies to trust money held by the practice before the supervisor is appointed, as well as to trust money received afterwards.

S. 5.3.4(1)(a)
amended by
No. 12/2007
s. 66(3)(l).

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- (3) 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.

5.3.5 Powers of entry etc.

- (1) For the purpose of exercising or performing his or her powers or duties under section 5.3.4, the supervisor may exercise any or all of the following powers—
- (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
 - (b) to require the practice or an associate or former associate of the practice or any other person who has or has had control of documents relating to trust money received by the practice to give the supervisor—
 - (i) access to the documents the supervisor reasonably requires; and
 - (ii) information relating to the trust money the supervisor reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
 - (d) to take possession of any relevant material;
 - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
 - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
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- (2) A supervisor may enter and remain on premises under subsection (1)(a) only—
- (a) during normal business hours; or
 - (b) during other hours with the consent of the occupier of the premises.
- (3) A supervisor must not enter premises under subsection (1)(a) unless, before the entry, he or she has produced for inspection by the occupier—
- (a) the supervisor's notice of appointment; and
 - (b) a form of identification that includes the supervisor's photograph and signature.
- (4) If a supervisor takes possession of—
- (a) a document, disk or tape or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied—
- under this section the supervisor, on request by the occupier, a principal of the law practice or a person from whom it was taken, must give a copy of the thing or information to that person as soon as practicable after taking possession of it.
- (5) If a supervisor takes possession of a document or other thing under this section and has not provided a copy of it under subsection (4), the supervisor must provide a receipt for the document or thing as soon as practicable after taking possession of it.
- (6) If a supervisor takes possession of a document or other thing under this section, the supervisor may keep it until it is no longer required for the performance of the supervisor's functions.

- (7) The supervisor must take all reasonable steps to return the document or other thing to the person entitled to it as soon as it is no longer required for the performance of the supervisor's functions.

5.3.6 Records of and dealing with trust money of law practice under supervision

- (1) A supervisor of trust money of a law practice must maintain the records of his or her dealings with the trust money—
- (a) separately from records relating to dealings with trust money before his or her appointment as supervisor; and
 - (b) separately from the affairs of any other law practice for which he or she is supervisor; and
 - (c) in the manner prescribed by the regulations.
- (2) Subject to subsection (1), a supervisor of trust money of a law practice must deal with trust money in the same way as a law practice must deal with trust money.

5.3.7 Termination of supervisor's appointment

- (1) The appointment of a supervisor of trust money of a law practice terminates in any of the following circumstances—
- (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside on appeal under section 5.6.4;
 - (c) the appointment of a manager for the practice takes effect;
 - (d) the appointment of a receiver for the practice takes effect;

S. 5.3.7(1)
amended by
No. 12/2007
s. 66(3)(m).

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- (e) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;
 - (f) a determination of the Board that the appointment be terminated has taken effect.
- (2) The Board may determine in writing that the appointment be terminated immediately or with effect from a specified date.
 - (3) The Board must serve a written notice of the termination on all persons originally served with notice of the appointment.
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PART 5.4—MANAGERS

5.4.1 Appointment of manager

- (1) This section applies if the Board determines to appoint a manager for a law practice.
- (2) The Board may, by instrument in writing, appoint a person as manager.
- (3) The appointee must be an Australian legal practitioner who holds a practising certificate as a principal authorising the receipt of trust money, and may (but need not) be an employee referred to in section 6.4.1.
- (4) The instrument of appointment must—
 - (a) identify the law practice and the manager; and
 - (b) indicate that the external intervention is by way of appointment of a manager; and
 - (c) specify the term of the appointment; and
 - (d) specify any conditions imposed by the Board when the appointment is made; and
 - (e) specify any fees payable by way of remuneration to the manager specifically for carrying out his or her duties in relation to the external intervention; and
 - (f) provide for the legal costs and the expenses that may be incurred by the manager in relation to the external intervention.
- (5) The instrument of appointment may specify any reporting requirements to be observed by the manager.

S. 5.4.1(3)
amended by
No. 15/2012
s. 15(2).

Note to
s. 5.4.1(4)(e)
amended by
No. 15/2012
s. 15(4).

Note

Paragraph (e) is intended to exclude remuneration payable generally, eg as an employee referred to in section 6.4.1.

5.4.2 Notice of appointment

- (1) As soon as possible after an appointment of a manager for a law practice is made, the Board must serve a notice of the appointment on—
 - (a) the practice; and
 - (b) any other person authorised to operate any trust account of the practice; and
 - (c) any external examiner appointed to examine the practice's trust records; and
 - (d) the ADI with which any trust account of the practice is maintained; and
 - (e) any person whom the Board reasonably believes should be served with the notice.
- (2) The notice must—
 - (a) identify the law practice and the manager; and
 - (b) indicate that the external intervention is by way of appointment of a manager; and
 - (c) specify the term of the appointment; and
 - (d) specify any reporting requirements to be observed by the manager; and
 - (e) specify any conditions imposed by the Board when the appointment is made; and
 - (f) indicate the appeal rights under section 5.6.4 in respect of the appointment; and
 - (g) contain or be accompanied by other information or material prescribed by the regulations.

s. 5.4.3

5.4.3 Effect of service of notice of appointment

- (1) After service on a law practice of a notice of the appointment of a manager for the practice and until the appointment is terminated, a legal practitioner associate of the practice must not participate in the affairs of the practice except under the direct supervision of the manager.

Penalty: 60 penalty units.

- (2) After service on an ADI of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless—

S. 5.4.3(2)(a)
substituted by
No. 12/2007
s. 66(3)(n).

- (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by—

- (i) the manager; or
- (ii) a receiver appointed for the practice; or
- (iii) a nominee of the manager or receiver; or

S. 5.4.3(2)(b)
substituted by
No. 12/2007
s. 66(3)(n).

- (b) the withdrawal or transfer is made by means of electronic or Internet banking facilities, by—

- (i) the manager; or
- (ii) a receiver appointed for the practice; or
- (iii) a nominee of the manager or receiver; or

S. 5.4.3(2)(c)
substituted by
No. 12/2007
s. 66(3)(n).

- (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by—

- (i) the manager; or

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- (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver.
- (3) After service on a person of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the person must not—
- (a) deal with any of the practice's trust money; or
 - (b) sign any cheque or other instrument drawn on a trust account of the practice; or
 - (c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Penalty: 60 penalty units.

- (4) A manager may, for the purposes of subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be recovered from the ADI concerned by the manager, or a receiver for the law practice, as a debt in a court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the practice or another trust account nominated by the manager or receiver.

S. 5.4.3(5)
amended by
No. 12/2007
s. 66(3)(o).

5.4.4 Role of manager

A manager for a law practice may carry on the practice and may do all things that the practice or a legal practitioner associate of the practice might lawfully have done, including but not limited to the following—

- (a) transacting any urgent business of the practice;

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- (b) transacting, with the approval of existing clients of the practice, any business on their behalf, including—
 - (i) commencing, continuing, defending or settling any proceedings; and
 - (ii) receiving, retaining and disposing of property;
 - (c) accepting instructions from new clients and transacting any business on their behalf, including—
 - (i) commencing, continuing, defending or settling proceedings; and
 - (ii) receiving, retaining and disposing of regulated property;
 - (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 an agreement;
 - (f) dealing with trust money in accordance with this Act and the regulations;
 - (g) winding up the affairs of the practice.

5.4.5 Powers of entry etc.

- (1) For the purpose of exercising his or her powers under section 5.4.4, the manager may exercise any or all of the following powers—
 - (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
 - (b) to require the practice, an associate or former associate of the practice or any other person who has or has had control of client files and associated documents (including documents

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- relating to trust money received by the practice) to give the manager—
- (i) access to the files and documents the manager reasonably requires; and
 - (ii) information relating to client matters the manager reasonably requires;
- (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
 - (d) to take possession of any relevant material;
 - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
 - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (2) A manager may enter and remain on premises under subsection (1)(a) only—
- (a) during normal business hours; or
 - (b) during other hours with the consent of the occupier of the premises.
- (3) A manager must not enter premises under subsection (1)(a) unless, before the entry, he or she has produced for inspection by the occupier—
- (a) the manager's notice of appointment; and
 - (b) a form of identification that includes the manager's photograph and signature.
- (4) If a manager takes possession of—
- (a) a document, disk or tape or other thing that can be readily copied; or
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(b) a storage device the information in which can be readily copied—

under this section the manager, on request by the occupier, a principal of the law practice or a person from whom it was taken, must give a copy of the thing or information to that person as soon as practicable after taking possession of it.

- (5) If a manager takes possession of a document or other thing under this section and has not provided a copy of it under subsection (4), the manager must provide a receipt for the document or thing as soon as practicable after taking possession of it.
- (6) If a manager takes possession of a document or other thing under this section, the manager may keep it until it is no longer required for the performance of the manager's functions.
- (7) The manager must take all reasonable steps to return the document or other thing to the person entitled to it as soon as it is no longer required for the performance of the manager's functions.

5.4.6 Records and accounts of law practice under management and dealings with trust money

- (1) The manager for a law practice must maintain the records and accounts of the practice that he or she manages—
 - (a) separately from the management of the records and accounts of the practice before his or her appointment as manager; and
 - (b) separately from the records and accounts of any other law practice for which he or she is manager; and
 - (c) in the manner prescribed by the regulations.

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- (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.

5.4.7 Deceased estates

- (1) It is the duty of the manager for a law practice to co-operate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding up of the estate.
- (2) The manager is not, in the exercise or performance of powers and duties as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from exercising or performing powers or duties as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment, powers and duties are not affected by the death.

5.4.8 Termination of manager's appointment

- (1) The appointment of a manager for a law practice terminates in any of the following circumstances—
- (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside on appeal under section 5.6.4;
 - (c) the appointment of a receiver for the practice takes effect, where the terms of the appointment indicate that the receiver is authorised to exercise the powers and duties of a manager;

s. 5.4.8

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- (d) the manager has wound up the affairs of the practice;
 - (e) a determination of the Board that the appointment be terminated has taken effect.
- (2) The Board may determine in writing that the appointment be terminated immediately or with effect from a specified date.
 - (3) If the appointment terminates in the circumstances referred to in subsection (1)(a), (b) or (d), the former manager must, as soon as practicable after the termination, transfer and deliver the property and client files of the law practice to—
 - (a) another external intervener appointed for the practice; or
 - (b) the practice, if another external intervener is not appointed for the practice.
 - (4) The former manager need not transfer property and files to the law practice in compliance with subsection (3) unless the manager's expenses have been paid to the Board.
 - (5) The Board must serve a written notice of the termination on all persons originally served with notice of the appointment.
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PART 5.5—RECEIVERS

5.5.1 Appointment of receiver

- (1) This section applies if the Board determines to apply to the Supreme Court for the appointment of a receiver for a law practice.
- (2) The Supreme Court may, on the application of the Board, appoint a person as receiver for the law practice.
- (3) The Supreme Court may make the appointment whether or not the law practice or a principal of the practice concerned has been notified of the application and whether or not the practice or principal is a party to the proceeding.
- (4) Before commencing to hear an application for appointment of a receiver, the Supreme Court may order from the precincts of the Court any person who is not—
 - (a) an officer of the Court; or
 - (b) a party, an officer or employee of a party, a legal representative of a party, or a clerk of a legal representative of a party; or
 - (c) a principal of the law practice concerned; or
 - (d) a person who is about to or is in the course of giving evidence.
- (5) The appointee must be—
 - (a) an Australian legal practitioner who holds a practising certificate as a principal authorising the receipt of trust money; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts—

S. 5.5.1(4)(b)
amended by
No. 12/2007
s. 66(3)(p).

S. 5.5.1(5)
amended by
No. 15/2012
s. 15(2).

and may (but need not) be an employee referred to in section 6.4.1.

- (6) The instrument of appointment must—
- (a) identify the law practice and the receiver;
and
 - (b) indicate that the external intervention is by way of appointment of a receiver; and
 - (c) specify any conditions imposed by the Supreme Court when the appointment is made; and
 - (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out his or her duties in relation to the external intervention; and
- Note**
- Paragraph (d) is intended to exclude remuneration payable generally, eg as an employee referred to in section 6.4.1.
- (e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.
- (7) The instrument of appointment may—
- (a) specify the term (if any) of the appointment;
and
 - (b) specify any reporting requirements to be observed by the receiver.

**Note to
s. 5.5.1(6)(d)
amended by
No. 15/2012
s. 15(5).**

5.5.2 Notice of appointment

- (1) As soon as possible after an appointment of a receiver for a law practice is made, the Board must serve a notice of the appointment on—
- (a) the practice; and
 - (b) any 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

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- (d) the ADI with which any trust account of the practice is maintained; and
 - (e) any person whom the Supreme Court directs should be served; and
 - (f) any person whom the Board reasonably believes should be served.
- (2) The notice must—
- (a) identify the law practice and the receiver; and
 - (b) indicate that the external intervention is by way of appointment of a receiver; and
 - (c) specify the term (if any) of the appointment; and
 - (ca) indicate the extent to which the receiver has the powers of a manager for the practice; and
 - (d) specify any reporting requirements to be observed by the receiver; and
 - (e) specify any conditions imposed by the Supreme Court when the appointment is made; and
 - (f) indicate the appeal rights under section 5.6.4 in respect of the appointment; and
 - (g) contain or be accompanied by other information or material prescribed by the regulations.

S. 5.5.2(2)(ca)
inserted by
No. 12/2007
s. 66(3)(q).

5.5.3 Effect of service of notice of appointment

- (1) After service on a law practice of a notice of appointment of a receiver for the practice and until the appointment is terminated, a legal practitioner associate of the practice must not participate in the affairs of the practice.

Penalty: 60 penalty units.

s. 5.5.3

(2) After service on an ADI of a notice of appointment of a receiver for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless—

S. 5.5.3(2)(a)
substituted by
No. 12/2007
s. 66(3)(r).

(a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by—

(i) the receiver; or

(ii) a manager appointed for the practice; or

(iii) a nominee of the receiver or manager;
or

S. 5.5.3(2)(b)
substituted by
No. 12/2007
s. 66(3)(r).

(b) the withdrawal or transfer is made by means of electronic or Internet banking facilities, by—

(i) the receiver; or

(ii) a manager appointed for the practice; or

(iii) a nominee of the receiver or manager;
or

S. 5.5.3(2)(c)
substituted by
No. 12/2007
s. 66(3)(r).

(c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by—

(i) the receiver; or

(ii) a manager appointed for the practice; or

(iii) a nominee of the receiver or manager.

(3) After service on a person of a notice of appointment of a receiver for a law practice and until the appointment is terminated, the person must not—

(a) deal with any of the practice's trust money;
or

- (b) sign any cheque or other instrument drawn on a trust account of the practice; or
- (c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Penalty: 60 penalty units.

- (4) A receiver may, for the purposes of subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be recovered from the ADI concerned by the receiver or a manager for the practice, as a debt in a court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the practice or another trust account nominated by the receiver or manager.

S. 5.5.3(5)
amended by
No. 12/2007
s. 66(3)(s).

5.5.4 Role of receiver

- (1) The role of a receiver for a law practice is—
 - (a) to be the receiver of regulated property of the practice; and
 - (b) to wind up and terminate the affairs of the practice.
- (2) For the purpose of winding up the affairs of the law practice and in the interests of the practice's clients, the Supreme Court may, by order, authorise—
 - (a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds a practising certificate as a principal authorising the receipt of trust money; or

-
- (b) an Australian legal practitioner who holds a practising certificate as a principal authorising the receipt of trust money, or a law practice whose principals are or include one or more Australian legal practitioners who hold practising certificates authorising the receipt of trust money, specified in the order to carry on the legal practice on behalf of the receiver.
- (3) Subject to any directions given by the Supreme Court, the person authorised to carry on the legal practice engaged in by a law practice has all the powers of a manager under this Part and is taken to have been appointed as manager for the law practice.
- (4) The Supreme Court may, by order, terminate an authorisation to carry on a legal practice granted under this section.

5.5.5 Records and accounts of law practice under receivership and dealings with trust money

- (1) The receiver for a law practice must maintain the records and accounts of the practice that he or she manages—
- (a) separately from the management of the records and accounts of the practice before his or her appointment as receiver; and
 - (b) separately from the records and accounts of any other law practice that the receiver is managing; and
 - (c) in the manner prescribed by the regulations.
- (2) Subject to subsection (1), the receiver for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

5.5.6 Power of receiver to take possession of regulated property

- (1) A receiver for a law practice may take possession of regulated property of the 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 specified in the order and make any further orders it thinks fit.
- (5) An order under subsection (4) operates to authorise—
 - (a) a member of the police force; or
 - (b) the receiver or a person authorised by the receiver, together with a member of the police force—

to enter the premises specified in the order and search for, seize and remove anything that appears to be regulated property of the law practice.
- (6) The receiver must, as soon as possible, return anything seized under this section if it transpires that it is not regulated property of the law practice.

5.5.7 Power of receiver to take delivery of regulated property

- (1) If a receiver for a law practice believes on reasonable grounds that another person is under an obligation, or will later be under an obligation, to deliver regulated property to the law practice, the receiver may, by notice in writing, require that other person to deliver the property to the receiver.
- (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 to the practice, the person must deliver the property to the receiver.
Penalty: 60 penalty units.
- (3) A document signed by a receiver acknowledging the receipt of regulated property delivered to the receiver is as valid and effectual as if it had been given by the law practice.

5.5.8 Power of receiver to deal with regulated property

- (1) This section applies if a receiver for a law practice acquires or takes possession of regulated property of the practice.
- (2) The receiver may deal with the regulated property in any manner in which the law practice might lawfully have dealt with the property.

5.5.9 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

S. 5.5.9(1)
substituted by
No. 12/2007
s. 66(4).

(c) a person who has information relating to regulated property of the practice or property that the receiver believes on reasonable grounds to be regulated property of the practice—

to give the receiver either or both of the following—

- (d) access to the documents relating to the affairs of the practice the receiver reasonably requires;
- (e) information relating to the affairs of the practice the receiver reasonably requires (verified by statutory declaration if the requirement so states).

(2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Penalty: 60 penalty units.

(3) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on the ground that compliance with the requirement may tend to incriminate the person.

(4) If, before complying with the requirement, the person objects to the receiver on the ground that compliance may tend to incriminate the person, the information given or the information in the documents to which access is given is inadmissible in evidence against the person in any proceedings for an offence, other than—

- (a) an offence against this Act; or
- (b) any other offence relating to the keeping of trust accounts or the receipt of trust money;
or

s. 5.5.10

S. 5.5.9(4)(c)
amended by
No. 12/2007
s. 66(5)(a).

(c) an offence relating to the falsity of the answer; or

S. 5.5.9(4)(d)
inserted by
No. 12/2007
s. 66(5)(b).

(d) proceedings taken by the receiver for the recovery of regulated property.

5.5.10 Examinations

- (1) On the application of a receiver for a law practice, the Supreme Court may make an order directing that an associate or former associate of the practice or any other person appear before the Court for examination on oath or affirmation in relation to the regulated property of the 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.
- (3) The person is not excused from answering a question on the ground that the answer might tend to incriminate the person.
- (4) If, before answering the question, the person objects on the ground that it may tend to incriminate the person, the answer is not admissible in evidence against the person in any proceedings for an offence, other than—
 - (a) an offence against this Act; or
 - (b) an offence relating to the falsity of the answer.

5.5.11 Lien for costs on regulated property

- (1) This section applies if—
 - (a) a receiver has been appointed for a law practice; and

-
- (b) the practice or a legal practitioner associate of the practice claims a lien for costs on regulated property of the practice. **S. 5.5.11(1)(b) amended by No. 12/2007 s. 66(5)(c)(i).**
- (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 specified period of not less than one month—
- (a) particulars sufficient to identify the regulated property; and
- (b) a detailed bill of costs.
- (3) If the law practice or legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided. **S. 5.5.11(3) amended by No. 12/2007 s. 66(5)(d).**
- (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.

5.5.12 Regulated property not to be attached

Regulated property of a law practice (including regulated property held by a receiver) is not liable to be taken, levied on or attached under any judgment, order or process of any court or any other process.

5.5.13 Receiver may recover money paid away in bets

If any money has been stolen or embezzled, the receiver is taken, for the purposes of section 2.6.3 of the **Gambling Regulation Act 2003**, to have been the person from whom the money was stolen or embezzled.

5.5.14 Recovery of regulated property where there has been a breach of trust etc.

- (1) This subsection applies if regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been taken by, paid 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 any other person any or any adequate consideration for the taking, payment or transfer; or
 - (c) because of the taking, payment or transfer, became 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.

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- (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 respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party—
- (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 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 the consideration (if any) provided by the debtor for the discharge.
- (5) A person authorised by the Board to do so may give a certificate with respect to all or any of the following facts—
- (a) the receipt of regulated property by the law practice 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 any 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.

5.5.15 Improperly destroying property etc.

A person must not, with intent to defeat the operation of this Part, and whether before or after appointment of a receiver, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any regulated property of a law practice for which a receiver has been or is likely to be appointed.

Penalty: Level 6 imprisonment (5 years maximum).

5.5.16 Deceased estates

- (1) It is the duty of the receiver for a law practice to co-operate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding up of the estate.
- (2) The receiver is not, in the exercise or performance of powers and duties as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from exercising or performing powers

or duties as a legal personal representative if otherwise appointed as representative.

- (3) Subject to subsections (1) and (2) and to the terms of the receiver's appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment, powers and duties are not affected by the death.

5.5.17 Termination of receiver's appointment by Supreme Court

S. 5.5.17
substituted by
No. 12/2007
s. 67.

- (1) The appointment by the Supreme Court of a receiver for a law practice terminates in the following circumstances—
- (a) the term (if any) of the appointment comes to an end;
 - (b) the appointment is set aside under section 5.6.4;
 - (c) a determination of the Supreme Court that the appointment be terminated has taken effect.
- (2) The Supreme Court may, on application by the Board or receiver made at any time, determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) A receiver for a law practice must apply to the Supreme Court for termination of the appointment when the affairs of the practice have been wound up and terminated, unless the term (if any) of the appointment has already come to an end.
- (4) The Supreme Court may make any order it considers appropriate in relation to an application under this section.
- (5) The appointment of a receiver is not stayed by the making of an application for termination of the receiver's appointment, and the receiver may accordingly continue to perform his or her

functions as receiver pending the Supreme Court's decision on the application except to the extent (if any) that the Court otherwise directs.

- (6) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice to—
- (a) another external intervener appointed for the practice within the period of 14 days beginning on the day after the date of the termination; or
 - (b) the practice, if another external intervener is not appointed for the practice within that period and paragraph (c) does not apply; or
 - (c) another person in accordance with arrangements approved by the Supreme Court, if it is not practicable to transfer and deliver the regulated property to the practice.
- (7) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (6) unless the expenses of receivership have been paid.
- (8) The Board must serve a written notice of the termination on all persons originally served with notice of the appointment.
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PART 5.6—GENERAL

5.6.1 Conditions on appointment of external intervener

- (1) An appointment of an external intervener is subject to—
 - (a) any conditions imposed by the appropriate authority; and
 - (b) any conditions imposed by or under the regulations.
- (2) The appropriate authority may impose conditions—
 - (a) when the appointment is made; or
 - (b) during the term of the appointment.
- (3) The appropriate authority may revoke or vary conditions imposed under subsection (2).
- (4) In this section—

appropriate authority means—

 - (a) the Board, in the case of a supervisor or manager;
 - (b) the Supreme Court, in the case of a receiver.

5.6.2 Status of acts of external intervener

- (1) An act done or omitted to be done by an external intervener for a law practice is taken to have been done or omitted to be done by the practice, for the purposes of—
 - (a) any proceeding; or
 - (b) any transaction that relies on that act or omission.
- (2) Nothing in this section subjects the law practice or an associate of the law practice to any personal liability.

5.6.3 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 in respect of the same type of external intervention or is of a different type.

5.6.4 Appeal against appointment

- (1) The following persons may appeal 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) any other person whose interests may be adversely affected by the appointment.
- (2) The appeal is to be lodged within 7 days after notice of the appointment is served on—
 - (a) the person who proposes to appeal; or
 - (b) the law practice, if a notice is not required to be served on the person who proposes to appeal.
- (3) An appeal under this section is to be made to—
 - (a) the Supreme Court, in the case of the appointment of a supervisor or manager;
 - (b) the Court of Appeal, in the case of the appointment of a receiver.
- (4) On an appeal, the Supreme Court or Court of Appeal (as the case requires) may—
 - (a) confirm the appointment;
 - (b) set aside the appointment;

- (c) impose or vary any conditions of the appointment;
 - (d) make any other orders it thinks fit.
- (5) The appointment of an external intervener is not stayed by the making of an appeal, and the external intervener may accordingly continue to perform his or her functions as external intervener during the currency of the appeal except to the extent (if any) that the Supreme Court or Court of Appeal (as the case requires) otherwise directs.

S. 5.6.4(5)
inserted by
No. 12/2007
s. 68.

5.6.5 Directions of Supreme Court

The Supreme Court may, on application by—

- (a) an external intervener for a law practice; or
- (b) a principal of the practice; or
- (c) any other person affected by the external intervention—

give directions in relation to any matter affecting the intervention or the intervener's powers, duties or functions under this Act.

5.6.5A 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 performance of their respective functions, to the extent of any inconsistency.

S. 5.6.5A
inserted by
No. 12/2007
s. 69.

5.6.6 ADI disclosure requirements

- (1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener without charge—
- (a) whether or not the practice, or an associate of the practice specified by the intervener, maintains or has maintained an account at

S. 5.6.6
substituted by
No. 12/2007
s. 70.

the ADI during a period specified by the intervener; and

- (b) details identifying every account so maintained.

Penalty: 60 penalty units.

- (2) An ADI at which an account of a law practice or associate of a law practice is or has been maintained must, at the request of an external intervener for the law practice, and without charge—

- (a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such accounts or money deposited in any such account; and
- (b) provide the intervener with full details of any transactions relating to any such account or money.

Penalty: 60 penalty units.

- (3) If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener without charge—

- (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener; and
- (b) the details of any such account.

- (4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the appointment

of the intervener in relation to the law practice concerned.

- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any legislation or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

5.6.7 Fees, legal costs and expenses

- (1) An external intervener is entitled to be paid, in accordance with the instrument of appointment—
 - (a) fees by way of remuneration; and
 - (b) the legal costs and the expenses incurred in relation to the external intervention.
- (2) An account of the external intervener for fees, costs and expenses may, on the application of the Board, be reviewed 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 payable from the Public Purpose Fund and must be debited to the General Account.
- (5) The Board may recover any unpaid fees, costs and expenses from the law practice.
- (6) Fees, costs and expenses paid by or recovered from the law practice after they have been paid from the Public Purpose Fund are to be paid into that Fund and must be credited to the General Account.

5.6.8 Reports by external intervener

- (1) An external intervener must provide written reports in accordance with any reporting requirements to be observed by the intervener as specified in the instrument of appointment.
- (2) If the instrument of appointment does not specify any reporting requirements, an external intervener must provide—
 - (a) written reports as required from time to time by the appropriate authority; and
 - (b) a written report to the appropriate authority at the termination of the appointment.
- (3) An external intervener must also keep the Board informed of the progress of the external intervention, including reports to the Board about any significant events occurring or state of affairs existing in connection with the intervention or with any of the matters to which the intervention relates.
- (4) Nothing in this section affects any other reporting obligations that may exist in respect of the law practice concerned.
- (5) In this section—

appropriate authority means—

- (a) the Board, in the case of a supervisor or manager;
- (b) the Supreme Court, in the case of a receiver;

instrument of appointment, in relation to a receiver, means the order of the Supreme Court appointing the receiver.

5.6.9 Confidentiality

- (1) An external intervener must not disclose information obtained as a result of his or her appointment except—
 - (a) so far as is necessary for performing his or her functions;
 - (b) as provided in subsection (3).
- (2) An employee or agent of an external intervener must not disclose information obtained as a result of the appointment of the external intervener except—
 - (a) so far as is necessary for performing the employee's or agent's functions;
 - (b) as provided in subsection (3).
- (3) An external intervener, or an employee or agent of an external intervener, may disclose information to any of the following—
 - (a) a court, tribunal or other person acting judicially;
 - (b) a regulatory authority of any jurisdiction;
 - (c) any officer of, or Australian legal practitioner instructed by—
 - (i) a regulatory authority of any jurisdiction; or
 - (ii) the Commonwealth or a State or Territory of the Commonwealth; or
 - (iii) an authority of the Commonwealth or a State or Territory of the Commonwealth—

in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation or examination;

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- (d) a member of the police force of any jurisdiction if the Board or external intervener believes on reasonable grounds that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;
 - (e) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;
 - (f) a client or former client of the law practice concerned if the information relates to the client or former client;
 - (g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener;
 - (h) any external examiner carrying out an external examination of the trust records of the law practice concerned.

5.6.10 External intervener may be reimbursed for damages

The Board may reimburse an external intervener out of the Public Purpose Fund for all or any damages and costs recovered against the external intervener, or an employee or agent of the external intervener, in respect of any act done or omitted to be done by the external intervener, or by an employee or agent of the external intervener, in good faith in the exercise or discharge, or the purported exercise or discharge, of the powers or duties conferred or imposed on the external intervener by or under this Chapter.

CHAPTER 6—REGULATORY BODIES AND FUNDING

PART 6.1—INTRODUCTION AND OVERVIEW

6.1.1 Purpose

The purpose of this Chapter is to establish organisational and funding structures and arrangements to protect the public interest in the proper administration of justice and protect consumers of legal services.

6.1.2 Simplified outline

- (1) The following is a general outline of the contents of this Chapter—
 - Part 6.2 establishes the Legal Services Board, sets out its objectives and regulates its membership and procedures. It also, in Division 4, provides for a register of local legal practitioners and locally registered foreign lawyers;
 - Part 6.3 provides for the appointment of a Legal Services Commissioner, sets out his or her objectives and imposes reporting and other requirements;
 - Part 6.4 provides for the staffing of the Board and the Commissioner and for the appointment of mediators and imposes confidentiality requirements on the Board, the Commissioner, staff, delegates and mediators;
 - Part 6.5 provides for the Council of Legal Education and the Board of Examiners, both of which have functions relating to the admission of people to the legal profession in this jurisdiction;

s. 6.1.2

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- Part 6.6 provides for the Legal Practitioners' Liability Committee, which arranges professional indemnity insurance for law practices, Australian legal practitioners and Australian-registered foreign lawyers in this jurisdiction;
 - Part 6.7 sets out the funding arrangements for the regulation of the legal profession in this jurisdiction and the funding of compensation for claimants under Part 3.6, including the imposition of contributions and levies to the Fidelity Fund.
- (2) Subsection (1) is intended only as a guide to readers as to the general scheme of this Chapter.
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PART 6.2—LEGAL SERVICES BOARD

Division 1—The Board

6.2.1 Establishment

- (1) The Legal Services Board is established.
- (2) The Board—
 - (a) is a body corporate with perpetual succession;
 - (b) must have a common seal;
 - (c) may sue and be sued;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of the Board must be kept as directed by the Board and may only be used as authorised by the Board.
- (4) All courts must take judicial notice of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

6.2.2 Relationship to the Crown

The Board is a public entity but does not represent the Crown.

S. 6.2.2
amended by
No. 80/2006
s. 26(Sch.
item 59.1).

6.2.3 Objectives

The objectives of the Board are—

- (a) to ensure the effective regulation of the legal profession and the maintenance of professional standards;

- (b) to address the concerns of clients of law practices and legal practitioners through the regulatory system and provide for the protection of consumers of legal services;
- (c) to ensure the adequate management of trust accounts;
- (d) to ensure that the Victorian system is at the forefront of regulation of legal practitioners.

6.2.4 Functions and powers

- (1) The Board has the functions conferred on it by or under this or any other Act.
- (2) The Board has all the powers necessary to perform its functions and achieve its objectives, including the powers conferred on it by or under this or any other Act.

Division 2—Membership

6.2.5 Membership

- (1) The Board consists of—
 - (a) a chairperson appointed under section 6.2.6;
 - (b) 3 members elected in accordance with section 6.2.8;
 - (c) 3 members appointed under section 6.2.9.
- (2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Board in respect of the office of member.

S. 6.2.5(2)
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 113.1),
80/2006
s. 26(Sch.
item 59.2).

6.2.6 Chairperson and deputy chairperson

- (1) The Governor in Council, on the recommendation of the Attorney-General, may appoint a person as chairperson of the Board.
- (2) The chairperson holds office, subject to this Act, for a term of 4 years from the date of appointment and is eligible for re-appointment.
- (3) The Governor in Council, on the recommendation of the Attorney-General, may appoint an elected member or appointed member of the Board to be the deputy chairperson of the Board.

6.2.7 Judge or former judge appointed as chairperson

- (1) If a judge of the Supreme Court or the County Court is appointed as chairperson of the Board—
 - (a) the appointment does not affect the tenure of office of the judge nor the judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of an office as a judge of the relevant Court; and
 - (b) for all purposes, service as the chairperson is to be taken to be service as the holder of an office as a judge.
- (2) If a person who has been a judge of the Supreme Court or the County Court is appointed as chairperson of the Board, the appointment does not affect any pension or other rights or privileges the person has as a former judge.
- (3) For the purposes of sections 80A(5A)(a) and 83(4) of the **Constitution Act 1975** and section 13A(5A)(a) and (5C) of the **County Court Act 1958**, the office of chairperson is not to be taken to be a judicial office or an office or place of profit under the Crown.

6.2.8 Elected members

- (1) 3 people are to be elected to the Board in accordance with this section, Schedule 1 and the regulations, as follows—
 - (a) one is to be a local legal practitioner of not less than 5 years' standing who is a barrister (*advocate member*);
 - (b) 2 are to be local legal practitioners of not less than 5 years' standing who are not barristers (*non-advocate members*).
- (2) An elected member holds office, subject to this Act, from and including 1 July immediately following his or her election for a period of 4 years and is eligible for re-election.
- (3) Schedule 1 sets out provisions for the election of elected members.

6.2.9 Appointed members

- (1) The Governor in Council, on the recommendation of the Attorney-General, may appoint a person to be a member of the Board.
- (2) A person is not eligible to be an appointed member if he or she—
 - (a) is, or has been, an Australian lawyer; or
 - (b) is eligible for admission to the legal profession.
- (3) Of the 3 appointed members—
 - (a) at least one must be a person who, in the Attorney-General's opinion, has experience in financial or prudential management;
 - (b) at least one must be a person who, in the Attorney-General's opinion, represents the interests of consumers of legal services.

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- (4) An appointed member—
- (a) holds office, subject to this Act, for a term specified in his or her instrument of appointment, not exceeding 4 years from the date of appointment; and
 - (b) is eligible for re-appointment.

S. 6.2.9(4)
substituted by
No. 18/2005
s. 14.

6.2.10 Payment of members

- (1) A member of the Board (except the chairperson if he or she is a judge other than a reserve judge) is entitled to receive the remuneration that is fixed from time to time by the Governor in Council.
- (2) Each member of the Board is entitled to receive the allowances that are fixed from time to time by the Governor in Council.
- (3) The Governor in Council may fix different remuneration for different classes of members of the Board.

6.2.11 Acting appointments

- (1) The Governor in Council may appoint a person to act as a member of the Board—
 - (a) during a vacancy in the office of member; or
 - (b) in the place of a member who is absent or who, for any other reason, is unable to perform the duties of the office.
- (2) Before a person is appointed to act in the place of an elected member, or during a vacancy in an office of an elected member, each professional association must be consulted about the appointment.
- (3) An acting appointment is for the term (not exceeding 4 months in the case of a person to act in the place of an elected member) specified in the instrument of appointment.

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- (4) An acting member—
- (a) has all the powers and must perform all the duties of the member for whom, or the office in which, he or she is acting; and
 - (b) is entitled to be paid the remuneration and allowances that the member would have been entitled to for performing those duties; and
 - (c) is eligible for re-appointment.
- (5) Section 6.2.7 applies to the appointment of an acting chairperson of the Board.
- (6) The Governor in Council may at any time terminate an acting appointment.

6.2.12 When does a member's office become vacant?

- (1) The office of a member becomes vacant if the member—
- (a) becomes an insolvent under administration; or
 - (b) is found guilty of an indictable offence or an offence that, if committed in this jurisdiction, would be an indictable offence; or
 - (c) resigns by writing delivered to the Governor in Council; or
 - (d) is removed from office under subsection (2).
- (2) The Governor in Council may remove a member from office if of the opinion that the member—
- (a) is guilty of improper conduct in carrying out the duties of his or her office; or
 - (b) is mentally or physically incapable of carrying out satisfactorily the duties of his or her office; or

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- (c) has failed to comply with any term or condition of appointment.
- (3) In addition to the circumstances set out in subsection (1), the office of an elected member becomes vacant if the member ceases to be a local legal practitioner.

6.2.13 Casual vacancies of elected members

- (1) If the office of an elected member becomes vacant (other than within 4 months before the expiry of the term of the member vacating office) an election must be held in accordance with Schedule 1 to fill the vacancy.
- (2) A member elected to fill a vacancy referred to in subsection (1) holds office for the remainder of the term of the elected member who vacated the office.

Division 3—Performance of functions

6.2.14 Meetings

- (1) The following person is to preside at a meeting of the Board—
- (a) the chairperson; or
 - (b) the deputy chairperson if the chairperson is absent; or
 - (c) a member appointed by the members present if both the chairperson and deputy chairperson are absent.
- (2) The quorum of the Board is a majority of the members for the time being, consisting of at least one appointed member and one elected member.
- (3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.

s. 6.2.15

- (4) The Board must ensure that accurate minutes are kept of its meetings.
- (5) The Board may permit members to participate in a particular meeting, or all meetings, by telephone, video conference or any other means of communication that does not require the physical presence of each member in the same place.
- (6) Subject to this Division, the Board may regulate its own procedure.

6.2.15 Conflicts of interest

- (1) If—
 - (a) a member has a personal interest (whether pecuniary or otherwise) in a matter being considered or about to be considered by the Board; and
 - (b) the interest appears to raise a conflict of interest with the proper performance of the member's duties in relation to the consideration of the matter—

the member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest at a meeting of the Board.

Penalty: 5 penalty units.

- (2) The person presiding at a meeting at which a declaration is made must cause a record of the declaration to be made in the minutes of the meeting.
- (3) After becoming aware of the conflict of interest in a matter—
 - (a) unless the Board directs otherwise, the member must not be present during any deliberations on the matter; and

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- (b) the member is not entitled to vote on the matter; and
 - (c) if the member does vote, the vote must be disallowed.
- (4) For the purposes of this section and section 6.2.16, a member is not to be regarded as having a conflict of interest—
- (a) in a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or
 - (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the member has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body.

6.2.16 Resolutions without meetings

- (1) If—
- (a) the Board has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and
 - (b) a majority of the members, including at least one appointed member and one elected member, sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Board held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

- (2) If a resolution is, under subsection (1), deemed to have been passed at a meeting of the Board, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
- (3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
- (4) In this section, *member*, in relation to a resolution, does not include a member who, by reason of section 6.2.15, is not entitled to vote on the resolution.

6.2.17 Validity of acts or decisions

An act or decision of the Board is not invalid—

- (a) only because—
 - (i) of a defect or irregularity in, or in connection with, the appointment of a member or an acting member or the election of a member; or
 - (ii) of a vacancy in the office of a member; or
- (b) on the ground that the occasion for an acting member to act had not risen or had ceased.

6.2.18 Immunity

S. 6.2.18(1)
amended by
No. 12/2007
s. 71.

- (1) A member or an acting member of the Board is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the performance of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the performance of a function under this Act.

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- (2) A person to whom the Board has delegated a function under this Act is not personally liable for anything done or omitted to be done in good faith—
- (a) in the performance of the function; or
 - (b) in the reasonable belief that the act or omission was in the performance of the function.
- (3) Any liability resulting from an act or omission that, but for subsection (1) or (2), would attach to a person attaches instead to the Board.

S. 6.2.18(2)
amended by
No. 12/2007
s. 71.

6.2.19 Delegation

- (1) The Board, by instrument, may delegate any function of the Board, except a function referred to in subsection (2), to—
- (a) a member of the Board; or
 - (b) the Commissioner; or
 - (c) an employee referred to in section 6.4.1; or
 - (d) a person who is, or who is a member of a class that is, prescribed by the regulations.
- (2) The following functions of the Board cannot be delegated under this section—
- (a) making or approving legal profession rules under section 3.2.9;
 - (b) controlling and administering funds under this Act;
 - (c) conducting elections for the elected members of the Board;
 - (d) making an arrangement with an ADI under section 3.3.59;

s. 6.2.19

S. 6.2.19(2)(g)
substituted by
No. 15/2012
s. 11.

- (e) authorising courses of education for approved external examiners and trust account inspectors;
- (f) setting contributions and levies for the Fidelity Fund under Division 3 of Part 6.7;
- (g) setting professional indemnity insurance requirements under Part 3.5, other than—
 - (i) approving terms and conditions under section 3.5.3, 3.5.4(1) or (2) or 3.5.4A(1);
 - (ii) exempting individual law practices from the requirement to obtain professional indemnity insurance from, or maintain professional indemnity insurance with, the Liability Committee under section 3.5.7;

S. 6.2.19(2)(h)
repealed by
No. 15/2012
s. 15(6).

* * * * *

- (i) nominating members to the Legal Costs Committee under section 3.4.25 and consulting that Committee regarding the making of practitioner remuneration orders;
 - (j) any function relating to appointments to the Board of Examiners;
 - (k) any function under Chapter 5;
 - (l) the power of delegation in subsection (1).
- (3) Subsection (2)(l) does not apply in relation to the power of the Board to delegate functions to the Commissioner.

- (4) The Board must keep a register of delegations containing details of each function delegated and the name, office or position of the person or class of person to whom it has been delegated.
- (5) At least once every 12 months the Board must perform an audit of its delegations under this section to determine whether each delegation is still appropriate.

6.2.20 Performance targets etc.

- (1) The Board may from time to time set performance targets to be met by persons to whom functions are delegated by the Board under this Act.
- (2) The Board must monitor each delegate's performance of functions delegated to the delegate by the Board under this Act.

6.2.21 Annual report

The Board must include the following information in its report of operations under Part 7 of the **Financial Management Act 1994** each year—

- (a) a list of all delegations by the Board in force as at the end of the year, the functions delegated, the date of the delegation and the name, office or position of the delegate; and
- (b) a list of any delegations that were revoked during the year and the reasons for their revocation; and

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S. 6.2.21(c)
repealed by
No. 15/2012
s. 12.

- (d) the number and type of investigations conducted under Division 3 of Part 3.3 during the year; and

- (e) any other information required by the Attorney-General.

6.2.22 Other reports

- (1) The Attorney-General may request the Board to report to the Attorney-General, within the reasonable time specified by the Attorney-General, on any matter relevant to the performance of the Board's functions or the achievement of its objectives.
- (2) The Board must comply with a request under subsection (1) within the specified time.
- (3) The Attorney-General must cause a copy of a report requested by him or her to be laid before each House of Parliament within 7 sitting days after receiving the report.
- (4) The Board may make any other reports to the Attorney-General it thinks desirable on any matter relevant to the performance of the Board's functions.
- (5) The Board must specify in a report under subsection (4) whether it requires the report to be laid before Parliament and, if it does so require, the Attorney-General must cause a copy of the report to be laid before each House of Parliament within 7 sitting days after receiving the report.

Division 4—The register

6.2.23 Keeping the Register

- (1) The Board must keep a register.
- (2) The register must include—
 - (a) for each local legal practitioner—
 - (i) the practitioner's name, date of birth, date of admission to the legal profession and address for service; and

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|---|--|
| (ii) any conditions imposed on the practitioner's local practising certificate in relation to engaging in legal practice; and | S. 6.2.23(2)(a)(ii) amended by No. 12/2007 s. 72(a). |
| (iii) an indication of whether or not the practitioner is a barrister; and | S. 6.2.23(2)(a)(iii) inserted by No. 12/2007 s. 72(b). |
| (iv) if the practitioner is an employee of a law practice—the name of the law practice; and | S. 6.2.23(2)(a)(iv) inserted by No. 12/2007 s. 72(b). |
| (v) if the practitioner is a sole practitioner—any business name under which the practitioner carries on business; | S. 6.2.23(2)(a)(v) inserted by No. 12/2007 s. 72(b). |
- (b) for each law firm that engages in legal practice in this jurisdiction—
- (i) the firm's name and address for service; and
 - (ii) any business name under which the firm carries on business; and
 - (iii) the name of each partner of the firm;
- (c) for each incorporated legal practice that has given notice to the Board under section 2.7.7—
- (i) the practice's name and address for service; and
 - (ii) any business name under which the practice carries on business; and
 - (iii) the name of each director of the practice, indicating which are legal practitioner directors;

s. 6.2.23

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- (d) for each multi-disciplinary partnership in respect of which a legal practitioner partner has given notice to the Board under section 2.7.38—
- (i) the partnership's name and address for service; and
 - (ii) any business name under which the partnership carries on business; and
 - (iii) the name of each partner of the partnership, indicating which are legal practitioner partners;
- (e) for each locally registered foreign lawyer—
- (i) the lawyer's name, date of birth, date of registration as a locally registered foreign lawyer and address for service; and
 - (ii) any conditions imposed on the lawyer's registration; and
 - (iii) the name of the entity of which the lawyer is a director, officer, partner or employee or with which the lawyer is otherwise engaged in legal practice; and
 - (iv) any business name under which the lawyer carries on business;
- (f) for each community legal centre—
- (i) the centre's name and address for service; and
 - (ii) the name of each supervising legal practitioner for the centre;

S. 6.2.23(2)(e)(iii)
inserted by
No. 12/2007
s. 72(c).

S. 6.2.23(2)(e)(iv)
inserted by
No. 12/2007
s. 72(c).

S. 6.2.23(2)(f)(ii)
amended by
No. 12/2007
s. 72(d).

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- (g) any other particulars prescribed by the regulations.
- (3) The register may be kept in the way the Board decides.
- (4) The register must be available for public inspection, without charge, at the Board's office during normal business hours.
- (5) Information recorded in the register may be provided to members of the public in any other manner approved by the Board.

6.2.24 Requirement to notify the Board of change of information

If there is any change in the information recorded on the register in relation to a law practice, local legal practitioner or locally registered foreign lawyer, the practice, practitioner or lawyer must notify the Board of the change within 14 days after it occurs.

Penalty: 10 penalty units.

PART 6.3—LEGAL SERVICES COMMISSIONER

Division 1—Establishment, objectives, functions and powers

6.3.1 Establishment

There is to be a Legal Services Commissioner.

6.3.2 Objectives

The objectives of the Commissioner are—

- (a) to ensure that complaints against Australian legal practitioners and disputes between law practices or Australian legal practitioners and clients are dealt with in a timely and effective manner;
- (b) to educate the legal profession about issues of concern to the profession and to consumers of legal services;
- (c) to educate the community about legal issues and the rights and obligations that flow from the client-practitioner relationship.

6.3.3 Functions and powers

- (1) The Commissioner has the functions conferred on him or her by or under this or any other Act.

**Note to
s. 6.3.3(1)
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.2).**

Note

The Commissioner also has the function of public service body Head of the Office of the Legal Services Commissioner—see section 16 of the **Public Administration Act 2004**.

- (2) The Commissioner has all the powers necessary to perform his or her functions and achieve his or her objectives, including the powers conferred on the Commissioner under this or any other Act.

6.3.4 Relationship to Board

- (1) The Commissioner is the chief executive officer of the Board.
- (2) In addition to all other functions, powers and duties, the Commissioner is to administer the affairs of the Board in accordance with the policies and directions of the Board.

Division 2—Appointment, terms of office and removal

6.3.5 Initial appointment of Commissioner

- (1) The initial appointment of the Commissioner is to be made by the Attorney-General.
- (2) The Attorney-General may appoint as Commissioner a person who the Attorney-General considers has sufficient knowledge of legal practice and the legal system to be able to perform the functions of Commissioner.
- (3) The Commissioner holds office, subject to this Act, for a term of 5 years from the date of appointment and is eligible for re-appointment under section 6.3.6.
- (4) The **Public Administration Act 2004** does not apply to the Commissioner, except as provided by section 16 of that Act.

S. 6.3.5(4)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.3).

6.3.6 Subsequent appointment of Commissioner

- (1) This section applies to each appointment of the Commissioner other than the initial appointment.
- (2) The Governor in Council, on the recommendation of the Attorney-General, may appoint a person as Commissioner.

s. 6.3.7

- (3) The Attorney-General can recommend a person for appointment as Commissioner only if—
 - (a) the person has been approved by the Board for recommendation for appointment; and
 - (b) the Attorney-General considers that the person has sufficient knowledge of legal practice and the legal system to be able to perform the functions of Commissioner.
- (4) The Commissioner holds office, subject to this Act, for a term of 5 years from the date of appointment and is eligible for re-appointment.
- (5) The **Public Administration Act 2004** does not apply to the Commissioner, except as provided by section 16 of that Act.

S. 6.3.6(5)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.3).

6.3.7 Payment

The Commissioner is entitled to receive the remuneration and allowances that are fixed from time to time—

- (a) during the initial term of the Commissioner appointed under section 6.3.5, by the Attorney-General;
- (b) in any other case, by the Governor in Council on the recommendation of the Board.

6.3.8 Acting Commissioner

- (1) The Board may appoint a person to act as Commissioner—
 - (a) during a vacancy in the office of Commissioner; or
 - (b) during a period, or all periods, when the Commissioner is absent from duty or, for any other reason, is unable to perform the duties of the office.

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- (2) The Board may appoint a person as Acting Commissioner only if the Board considers that he or she has sufficient knowledge of legal practice and the legal system to be able to perform the functions of the Commissioner.
 - (3) An acting appointment is for the term (not exceeding 6 months) specified in the instrument of appointment and a person appointed to act is eligible for re-appointment.
 - (4) The Acting Commissioner—
 - (a) has all the powers and must perform all the functions of the Commissioner; and
 - (b) is entitled to be paid the remuneration and allowances that the Commissioner would have been entitled to for performing those functions.
 - (5) The Board may remove the Acting Commissioner from office at any time.

6.3.9 When does the Commissioner's office become vacant?

- (1) The office of Commissioner becomes vacant if the Commissioner—
 - (a) becomes an insolvent under administration; or
 - (b) is found guilty of an indictable offence or an offence that, if committed in this jurisdiction, would be an indictable offence; or
 - (c) resigns by writing delivered to the Governor in Council; or
 - (d) is removed from office under subsection (2).
- (2) The Governor in Council may remove the Commissioner from office on the recommendation of the Attorney-General.

6.3.10 Validity of acts and decisions

An act or decision of the Commissioner or Acting Commissioner is not invalid only because—

- (a) of a defect or irregularity in, or in connection with, their appointment; or
- (b) in the case of the Acting Commissioner, that the occasion for so acting had not risen or had ceased.

6.3.11 Immunity

S. 6.3.11(1)
amended by
No. 12/2007
s. 73.

- (1) The Commissioner is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the performance of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the performance of a function under this Act.
- (2) If the function is a function of the Board under this Act, any liability resulting from the act or omission that, but for subsection (1), would attach to the Commissioner attaches instead to the Board.

S. 6.3.11(3)
amended by
No. 12/2007
s. 73.

- (3) A person to whom the Commissioner has delegated a function of the Commissioner under Chapter 4 is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the performance of the function; or
 - (b) in the reasonable belief that the act or omission was in the performance of the function.

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- (4) A prescribed investigatory body to which the Commissioner has referred a complaint under section 4.4.9 is not personally liable for anything done or omitted to be done in good faith—
- (a) in the performance of a function under Division 3 of Part 4.4; or
 - (b) in the reasonable belief that the act or omission was in the performance of a function under that Division.

S. 6.3.11(4)
amended by
No. 12/2007
s. 73.

6.3.12 Delegation

- (1) The Commissioner, by instrument, may delegate to an employee referred to in section 6.4.1 any function of the Commissioner, except this power of delegation.
- (2) The Commissioner, by instrument, may delegate to a person who is, or who is a member of a class that is, prescribed by the regulations any function of the Commissioner, except—
 - (a) the function of—
 - (i) receiving complaints under Chapter 4; or
 - (ii) summarily dismissing a complaint under section 4.2.10; or
 - (iii) receiving and dealing with disputed legal costs under section 4.3.3 or 4.3.4; or
 - (iv) investigating disciplinary complaints under Division 3 of Part 4.4; or
 - (v) referring disciplinary complaints to a prescribed investigatory body under section 4.4.9; or

s. 6.3.13

S. 6.3.12
(2)(ab)
inserted by
No. 18/2005
s. 15.

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- (ab) a function under section 4.4.13 (other than the function of applying to the Tribunal for an order under Division 4 of Part 4.4); or
- (b) the function of appointing a panel of mediators under section 6.4.3; or
- (c) this power of delegation.
- (3) The Commissioner must keep a register of delegations containing details of each function delegated and the name, office or position of the person or class of person to whom it has been delegated.
- (4) At least once every 12 months the Commissioner must perform an audit of its delegations under this section to determine whether each delegation is still appropriate.

6.3.13 Annual report

- (1) The Commissioner must include the following information in the report of operations of the Commissioner's office under Part 7 of the **Financial Management Act 1994** each year—
- (a) the number and type of complaints made to the Commissioner during the year; and
- (b) the number of disciplinary complaints referred to a prescribed investigatory body and the number investigated by the Commissioner during the year; and
- (c) information regarding the outcome of complaints made to the Commissioner (including the outcome of complaints made in previous years that were dealt with during the year); and

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- (d) the number and type of applications made to the Tribunal under section 4.4.13 during the year, whom they were made by and the result of those applications; and
 - (e) the number of complaints outstanding at the end of the year and the date on which they were made; and
 - (f) information regarding the time taken to investigate disciplinary complaints; and
 - (g) a list of all delegations by the Commissioner in force as at the end of the year, the functions delegated, the date of the delegation and the name, office or position of the delegate; and
 - (h) a list of any delegations that were revoked during the year and the reasons for their revocation; and
 - (i) any other information required by the Attorney-General.
- (2) Matters included in a report of operations must not identify individual complainants, clients, law practices or legal practitioners, unless the names have already lawfully been made public in connection with the complaint concerned.

6.3.14 Other reports

- (1) In addition to the report of operations under the **Financial Management Act 1994**, the Commissioner may make any reports to the Attorney-General that the Commissioner thinks necessary or desirable on any matter relevant to the performance of the Commissioner's functions (other than the Commissioner's functions as chief executive officer of the Board or a function of the Board delegated to the Commissioner).

- (2) The Commissioner must specify in a report under subsection (1) whether he or she requires the report to be laid before Parliament and, if he or she does so require, the Attorney-General must cause a copy of the report to be laid before each House of Parliament within 7 sitting days after the Attorney-General receives the report.

6.3.15 Guidelines

The Commissioner may from time to time issue guidelines for the handling of complaints.

Note

The Commissioner may also give directions to prescribed investigatory bodies regarding complaints referred to them—see section 4.4.9.

**PART 6.4—GENERAL PROVISIONS FOR THE BOARD AND
THE COMMISSIONER**

Division 1—Staffing

6.4.1 Staff

Any employees that are necessary for the purposes of the Board or Commissioner are to be employed by the Commissioner under Part 3 of the **Public Administration Act 2004**.

S. 6.4.1
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.3).

6.4.2 Consultants

The Commissioner may engage any consultants required for the purposes of the Commissioner or the Board.

6.4.3 Mediators

- (1) The Commissioner must appoint a panel of mediators for the purposes of this Act.
- (2) A person is eligible for appointment to the panel if, in the Commissioner's opinion, he or she has the necessary skills and experience to perform the functions of a mediator under this Act.
- (3) Each mediator—
 - (a) holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment;
 - (b) is entitled to receive the remuneration and allowances that are fixed from time to time by the Commissioner;
 - (c) is eligible for re-appointment.
- (4) The **Public Administration Act 2004** does not apply to a mediator in respect of his or her appointment as such.

S. 6.4.3(4)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.3).

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- (5) The Commissioner may at any time remove a mediator from office.
 - (6) A mediator may resign by writing delivered to the Commissioner.

6.4.4 Immunity for mediators

A mediator is not personally liable for anything done or omitted to be done in good faith—

- (a) in the capacity of mediator under this Act; or
- (b) in the reasonable belief that the thing was done or omitted to be done in the capacity of mediator under this Act.

Division 2—Confidentiality

6.4.5 Confidentiality

- (1) This section applies to a person who is or has been—
 - (a) a member of the Board; or
 - (b) the Commissioner; or
 - (c) an employee in the office of the Commissioner; or
 - (d) a consultant engaged by the Commissioner; or
 - (e) a mediator; or
 - (f) a person to whom the Board or the Commissioner has delegated functions under this Act.
- (2) A person to whom this section applies must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any person or law practice acquired in the performance of functions under this Act, unless—

-
- (a) it is necessary to do so for the purpose of, or in connection with, the performance of a function under this Act; or
 - (b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 120 penalty units.

- (3) Subsection (2) does not prevent a person (other than a mediator)—
 - (a) producing a document or giving evidence to a court or tribunal in the course of criminal proceedings or proceedings under this Act; or
 - (b) reporting a suspected offence to the police or assisting them in their investigations.
 - (4) Subsection (2) does not prevent a mediator giving evidence to a court or tribunal of the existence of a settlement or agreement achieved through mediation or of the failure to achieve such a settlement or agreement.
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PART 6.5—ADMISSION BODIES

Division 1—Council of Legal Education

6.5.1 Composition of Council

- (1) There continues to be a Council of Legal Education.
- (2) The Council consists of—
 - (a) the Chief Justice;
 - (b) the Chairperson of the Board;
 - (c) 3 Judges of the Supreme Court nominated by the Chief Justice;
 - (d) 2 persons nominated by the Victorian Bar;
 - (e) 3 persons nominated by the Law Institute, one of whom must be a country legal practitioner;
 - (f) 2 persons nominated by the Attorney-General who have experience in the provision of legal education;
 - (g) 3 persons representing Victorian tertiary institutions nominated in accordance with section 6.5.1A.
- (3) The members (other than those referred to in subsection (2)(a) and (b)) are to be appointed by the Governor in Council.
- (4) The term of office of a nominated member is—
 - (a) 3 years in the case of a member referred to in subsection (2)(c), (d), (e) or (f);
 - (b) 2 years in the case of a member referred to in subsection (2)(g)—and members are eligible for reappointment.

S. 6.5.1(2)
substituted by
No. 46/2007
s. 9.

S. 6.5.1(3)
substituted by
No. 46/2007
s. 9.

S. 6.5.1(4)
inserted by
No. 46/2007
s. 9.

(5) In this section—

country legal practitioner means a local legal practitioner who is a country legal practitioner within the meaning of the constitution of the Law Institute.

S. 6.5.1(5)
inserted by
No. 46/2007
s. 9.

6.5.1A Members representing Victorian tertiary institutions

S. 6.5.1A
inserted by
No. 46/2007
s. 10.

- (1) The persons referred to in section 6.5.1(2)(g) are to be nominated as follows—
- (a) for the purpose of the first nomination of those persons, the governing body of each group 1 institution is to nominate one person;
 - (b) for the purpose of the second nomination of those persons, the governing body of each group 2 institution is to nominate one person;
 - (c) for the purpose of subsequent nominations of those persons, the nominations are to alternate between the governing bodies of each group of institutions, as described in paragraphs (a) and (b), beginning with the group 1 institutions.
- (2) Despite subsection (1), if a person referred to in section 6.5.1(2)(g) ceases to be a member of the Council before the expiry of his or her term of office under section 6.5.1(4)(b), the governing body of the institution that nominated that person is to nominate another person to be appointed by the Governor in Council for the remainder of that term.

(3) In this section—

group 1 institution means—

- (a) La Trobe University;
- (b) Royal Melbourne Institute of Technology;
- (c) the University of Melbourne;

group 2 institution means—

- (a) Deakin University;
- (b) Monash University;
- (c) Victoria University.

6.5.2 Functions

(1) The functions of the Council are—

- (a) to determine the qualifications and training required for admission to the legal profession under this Act;
- (b) any other functions conferred on it by or under this or any other Act.

(2) The Council has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(3) Without limiting subsection (2), the Council has the rule-making power conferred on it by section 2.3.12.

6.5.3 Membership provisions

(1) The **Public Administration Act 2004** does not apply to a member of the Council in respect of the office of member.

(2) A nominated member may resign his or her office in writing delivered to the Chief Justice.

S. 6.5.3(1)
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.4).

- (3) A member is entitled to receive the fees (if any) that are fixed by the Governor in Council from time to time in respect of him or her or in respect of a class of member that includes him or her.
- (4) The appointment of a judge of the Supreme Court or the County Court as a member does not affect the tenure of office of the judge nor the judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of an office as a judge of the Supreme Court or County Court and, for all purposes, service as a member is to be taken to be service as the holder of an office as a judge.
- (5) The appointment of a person who has been a judge of the Supreme Court or the County Court as a member does not affect any pension or other rights or privileges the person has as a former judge.
- (6) For the purposes of sections 80A(5A)(a) and 83(4) of the **Constitution Act 1975** and section 13A(5A)(a) and (5C) of the **County Court Act 1958**, the office of member is not to be taken to be a judicial office or an office or place of profit under the Crown.

6.5.4 Meetings

- (1) The Chief Justice or his or her deputy must preside at any meeting of the Council at which he or she is present. S. 6.5.4(1)
amended by
No. 46/2007
s. 11(1)(a).
- (2) If the Chief Justice or his or her deputy is absent, the most senior Judge of the Supreme Court present must preside or, if there is no Supreme Court Judge present, a member appointed by the members present must preside. S. 6.5.4(2)
amended by
No. 46/2007
s. 11(1)(b).
- (3) The quorum of the Council is 5 members. S. 6.5.4(3)
amended by
No. 46/2007
s. 11(1)(c).

s. 6.5.5

- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (5) The Council must meet at the times and places that are determined by the Chief Justice or the Council.
- (6) The Council must ensure that accurate minutes are kept of its meetings.
- (6A) At any time when the members of the Council do not include the nominee of a group 1 institution (within the meaning of section 6.5.1A), the Council must ensure that copies of minutes of its meetings and any other papers relevant to those meetings are provided to each group 1 institution.
- (6B) At any time when the members of the Council do not include the nominee of a group 2 institution (within the meaning of section 6.5.1A), the Council must ensure that copies of minutes of its meetings and any other papers relevant to those meetings are provided to each group 2 institution.
- (7) Subject to this Division, the Council may regulate its own procedure.

S. 6.5.4(6A)
inserted by
No. 46/2007
s. 11(2).

S. 6.5.4(6B)
inserted by
No. 46/2007
s. 11(2).

S. 6.5.5
substituted by
No. 46/2007
s. 12.

6.5.5 Deputy for Chief Justice

- (1) The Chief Justice may appoint a person to be his or her deputy as a member of the Council.
- (2) A deputy appointed under subsection (1) may, in the absence of the Chief Justice, attend a meeting of the Council in his or her place and perform any function at that meeting that the Chief Justice could have performed.

6.5.6 Consultants

The Council may engage any consultants required for the purposes of carrying out its functions.

S. 6.5.6 amended by No. 108/2004 s. 117(1) (Sch. 3 item 113.5), substituted by No. 46/2007 s. 12.

6.5.7 Delegation

- (1) The Council, by instrument, may delegate to the members of a committee of the Council, any function of the Council other than—
 - (a) the power to make rules under section 2.3.12; or
 - (b) this power of delegation.
- (2) An instrument of delegation is to be signed by the Chief Justice of the Supreme Court.
- (3) A committee of the Council referred to in subsection (1) may include persons who are not members of the Council but who, in the Council's opinion, have experience in the provision of legal education or training making them suitable persons to be appointed to a committee of the Council.

S. 6.5.7(3) inserted by No. 46/2007 s. 13(1).

6.5.8 Validity of acts or decisions

An act or decision of the Council is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in, or in connection with, the appointment of a member.

S. 6.5.8(b) amended by No. 46/2007 s. 13(2).

s. 6.5.9

Division 2—Board of Examiners

6.5.9 Composition of Board of Examiners

S. 6.5.9(2)
substituted by
No. 46/2007
s. 14(1).

- (1) There continues to be a Board of Examiners.
- (2) The Board of Examiners consists of the following persons appointed by the Governor in Council—
 - (a) a chairperson, being a former judge of a superior court who is—
 - (i) suitable for appointment; and
 - (ii) nominated by the Chief Justice;
 - (b) 6 local legal practitioners who are—
 - (i) suitable for appointment; and
 - (ii) nominated by the Council after consultation with each professional association and the Board.

S. 6.5.9(3)
substituted by
No. 46/2007
s. 14(1).

- (3) A person is suitable for appointment to the Board of Examiners only if he or she—
 - (a) is qualified to undertake individual assessments of an applicant's eligibility and suitability to be admitted to the legal profession; and
 - (b) is sufficiently objective to perform the function referred to in paragraph (a) in an appropriate manner; and
 - (c) has sufficient time to perform the functions of member.

S. 6.5.9(4)
substituted by
No. 46/2007
s. 14(1).

- (4) The appointment of a person as chairperson does not affect any pension or other rights and privileges the person has as a former judge.

S. 6.5.9(5)
inserted by
No. 46/2007
s. 14(1).

- (5) The term of office of a member of the Board of Examiners is 3 years and members are eligible for reappointment.

(6) In this section—

superior court means—

- (a) the High Court; or
- (b) the Federal Court; or
- (c) the Supreme Court of a State or Territory; or
- (d) the County Court or a court of another State or Territory of equivalent status to the County Court.

S. 6.5.9(6)
inserted by
No. 46/2007
s. 14(1).

6.5.10 Functions and powers

(1) The functions of the Board of Examiners are—

- (a) the functions conferred by section 2.3.10; and
- (b) any other functions conferred by or under this or any other Act, including by or under the admission rules.

(2) The Board of Examiners has the powers conferred on it by or under this or any other Act, including by or under the admission rules.

6.5.11 Membership provisions

(1) The **Public Administration Act 2004** does not apply to a member of the Board of Examiners in respect of the office of member.

S. 6.5.11(1)
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.6).

(2) A member is entitled to receive the fees (if any) that are fixed by the Governor in Council from time to time in respect of him or her or in respect of a class of member that includes him or her.

S. 6.5.11(2)
amended by
No. 46/2007
s. 14(2)(a).

6.5.12 Resignation and removal

(1) A member (other than the chairperson) may resign his or her office in writing delivered to the chairperson.

S. 6.5.12(1)
amended by
No. 46/2007
s. 14(2)(b)(i).

s. 6.5.14

S. 6.5.12(2)
amended by
No. 46/2007
s. 14(2)(b)(ii).

S. 6.5.12(2)(a)
amended by
No. 46/2007
s. 14(2)(b)(iii).

S. 6.5.12(3)
inserted by
No. 46/2007
s. 14(3).

S. 6.5.13
repealed by
No. 46/2007
s. 14(4)(a).

- (2) The Governor in Council may at any time remove a member (other than the chairperson) from office on the ground that the member—
- (a) is incapable of carrying out the duties of the office; or
 - (b) has become an insolvent under administration; or
 - (c) has been found guilty by the Tribunal of professional misconduct or unsatisfactory professional conduct.
- (3) The chairperson may resign his or her office in writing delivered to the Governor in Council.

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6.5.14 Meetings

S. 6.5.14(3)
amended by
No. 46/2007
s. 14(4)(b).

- (1) The chairperson must preside at any meeting of the Board of Examiners at which he or she is present.
- (2) If the chairperson is absent from a meeting, or there is a vacancy in the office of chairperson, a member appointed by the members present, must preside.
- (3) The quorum for a meeting of the Board of Examiners is 4 members.
- (4) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.

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- (5) The Board of Examiners must meet at the times and places that are determined by the chairperson or the Board.
 - (6) The Board of Examiners must ensure that accurate minutes are kept of its meetings.
 - (7) Subject to this Division, the Board of Examiners may regulate its own procedure.

6.5.15 Special hearings

**S. 6.5.15
substituted by
No. 46/2007
s. 15.**

- (1) The Board of Examiners may hold a special hearing into an applicant for admission to the legal profession if the Board of Examiners becomes aware of anything that may affect his or her eligibility or suitability for admission to the legal profession.
- (2) Subsection (1) applies whether or not the matter was disclosed to the Board of Examiners by the applicant.
- (3) The decision to hold a special hearing is to be made by the chairperson of the Board of Examiners.
- (4) The quorum for a special hearing is 3 members.
- (5) The Board of Examiners may regulate the procedure for a special hearing.

6.5.16 Deputy members

**S. 6.5.16
(Heading)
substituted by
No. 46/2007
s. 16.**

- (1) The Council may appoint a qualified person to be the deputy of any person nominated by it as a member of the Board of Examiners.
- (2) A deputy member appointed under subsection (1) may, in the absence of the member, attend a meeting of the Board of Examiners in the place of the member and perform any function at that meeting that the member could have performed.
- (3) The appointment of a deputy member continues until the member ceases to hold office.

s. 6.5.17

S. 6.5.17
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.7),
substituted by
No. 46/2007
s. 17.

6.5.17 Consultants

The Board of Examiners may engage any consultants required for the purposes of carrying out its functions.

S. 6.5.17A
inserted by
No. 46/2007
s. 17.

6.5.17A Delegation

The Board of Examiners, by instrument, may delegate to the members of a committee of the Board of Examiners any function of the Board of Examiners other than this power of delegation.

6.5.18 Validity of acts or decisions

An act or decision of the Board of Examiners is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in, or in connection with, the appointment of a member or deputy member.

Pt 6.5 Div. 3
(Heading and
s. 6.5.19)
inserted by
No. 46/2007
s. 18.

Division 3—General provisions

S. 6.5.19
inserted by
No. 46/2007
s. 18.

6.5.19 Staff

Any employees that are necessary for the purposes of the Council or the Board of Examiners are to be employed under Part 3 of the **Public Administration Act 2004**.

**PART 6.6—LEGAL PRACTITIONERS' LIABILITY
COMMITTEE**

Division 1—Liability Committee

6.6.1 Continuation of Committee

- (1) There continues to be a Legal Practitioners' Liability Committee.
- (2) The Liability Committee—
 - (a) is a body corporate with perpetual succession;
 - (b) must have a common seal;
 - (c) may sue and be sued in its corporate name;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all things that a body corporate may, by law, do and suffer and that are necessary or expedient for the purpose of performing functions and exercising powers under this Act.
- (3) The common seal must be kept as directed by the Liability Committee and must not be used except as authorised by the Committee.
- (4) All courts must take judicial notice of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.
- (5) The Liability Committee is the same body as that established by section 234 of the **Legal Practice Act 1996**.

6.6.2 Liability Committee not to represent the Crown

The Liability Committee is a public authority but does not represent the Crown.

6.6.3 Functions and powers

- (1) The Liability Committee has the following functions—
 - (a) to carry on the business of providing professional indemnity insurance to law practices;
 - (b) to undertake liability under contracts of professional indemnity insurance with law practices;
 - (c) any other functions conferred by this Act.
- (2) The Liability Committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Without limiting subsection (2), the Liability Committee may—
 - (a) enter into contracts or arrangements in relation to insurance, re-insurance or limitation of any liability undertaken by it under subsection (1);
 - (b) with the approval of the Board, borrow money from an authorised deposit-taking institution by way of overdraft or otherwise obtain financial accommodation and give security for that financial accommodation;
 - (c) require a professional association or the Board to give it, in the form it requires, access to any information held by the professional association or the Board that is necessary for it to perform its functions;
 - (d) exercise any other powers conferred by this Act.

6.6.4 Membership

- (1) The Liability Committee consists of a chairperson and 6 other members appointed by the Board.
- (2) A member holds office, subject to this Act, for a term specified in his or her instrument of appointment, not exceeding 5 years from the date of appointment, and is eligible for re-appointment.
- (3) A member may be removed from office at any time by the Board.
- (4) A member may resign by writing delivered to the Board.
- (5) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member of the Liability Committee in respect of the office of member.

S. 6.6.4(5)
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.8).

6.6.5 Qualifications for membership

- (1) At least 2 of the members are to be Australian legal practitioners.
- (2) At least one of the members is to be appointed as a representative of the interests of consumers.
- (3) At least 2 of the members are to be persons who have knowledge of or experience in the insurance industry or have accounting or financial expertise.
- (4) In this section—
member does not include the chairperson.

6.6.6 Payment of members

- (1) A member of the Liability Committee, other than a member who is a member of the Board or an employee of the public service within the meaning of the **Public Administration Act 2004**, is entitled to receive the fees that are fixed from time to time by the Board.

S. 6.6.6(1)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 113.9).

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- (2) Each member of the Liability Committee is entitled to receive the allowances that are fixed from time to time by the Board.

6.6.7 Acting members

- (1) The Board may appoint a person to act in the place of a member who is absent or who, for any other reason, is unable to perform the duties of the office.
- (2) An acting appointment is for the term (not exceeding the balance of the member's term) determined by the Board.
- (3) A person appointed under subsection (1) is eligible for re-appointment.
- (4) A person appointed under subsection (1) has all the powers and may perform all the duties of the member for whom he or she is acting.
- (5) The Board may at any time terminate an acting appointment.

6.6.8 Meetings

- (1) The chairperson of the Liability Committee, or in his or her absence a member elected by the members present, must preside at a meeting of the Committee.
- (2) The quorum of the Liability Committee is a majority of the members for the time being.
- (3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (4) The Liability Committee must ensure that accurate minutes are kept of its meetings.
- (5) Subject to this Part, the Liability Committee may regulate its own procedure.

6.6.9 Resolutions without meetings

- (1) If—
- (a) the Liability Committee has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and
 - (b) a majority of the members for the time being sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—
- a resolution in those terms is deemed to have been passed at a meeting of the Liability Committee held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.
- (2) If a resolution is, under subsection (1), deemed to have been passed at a meeting of the Liability Committee, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
- (3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
- (4) In this section, *member*, in relation to a resolution, does not include a member who, because of section 6.6.11, is not entitled to vote on the resolution.

6.6.10 Validity of acts or decisions

An act or decision of the Liability Committee is not invalid—

- (a) only because—
 - (i) of a defect or irregularity in, or in connection with, the appointment of a member; or
 - (ii) of a vacancy in the office of a member; or
- (b) on the ground that the occasion for an acting member to act had not arisen or had ceased.

6.6.11 Conflicts of interest

- (1) If—
 - (a) a member has a personal interest (whether pecuniary or otherwise) in a matter being considered or about to be considered by the Liability Committee; and
 - (b) the interest appears to raise a conflict of interest with the proper performance of the member's duties in relation to the consideration of the matter—

the member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest at a meeting of the Committee.

Penalty: 10 penalty units.

- (2) The person presiding at a meeting at which a declaration is made must cause a record of the declaration to be made in the minutes of the meeting.

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- (3) After becoming aware of the conflict of interest in a matter—
- (a) unless the Liability Committee directs otherwise, the member must not be present during any deliberations on the matter; and
 - (b) the member is not entitled to vote on the matter; and
 - (c) if the member does vote, the vote must be disallowed.
- (4) For the purposes of this section and section 6.6.9, a member is not to be regarded as having a conflict of interest—
- (a) in a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or
 - (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the member has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body; or
 - (c) in a matter only because the member, or a firm or incorporated legal practice of which the member is a partner, a director or an employee, has, or is required to have, a contract of professional indemnity insurance with the Committee.

S. 6.6.11(4)(c)
amended by
No. 15/2012
s. 15(7).

6.6.12 Staff and consultants

The Liability Committee may employ any staff and engage any consultants required for the purpose of performing its functions under this Act.

6.6.13 Confidentiality

- (1) A person who is, or has been, a member or an acting member of the Liability Committee or an employee of or consultant to the Liability Committee must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any person or firm acquired in the performance of functions or duties or exercise of powers under this Act, unless—
- (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
 - (b) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 60 penalty units.

- (2) Subsection (1) does not prevent a person—
- (a) producing a document or giving evidence to a court or tribunal in the course of criminal proceedings, proceedings under this Act or proceedings relating to a contract of professional indemnity insurance; or
 - (b) disclosing or communicating to the Board or a professional association the name of a law practice, Australian legal practitioner or Australian-registered foreign lawyer suspected of breaching a provision of, or failing to maintain, a contract of professional indemnity insurance; or
 - (c) reporting a suspected defalcation to the Board, a professional association or the police or assisting any of them in their investigations.

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- (3) This section applies despite anything to the contrary in section 7.2.15.

6.6.14 Annual report

The Attorney-General may require the Liability Committee to include any information the Attorney-General thinks appropriate in relation to the Liability Committee's functions in the Liability Committee's report of operations under Part 7 of the **Financial Management Act 1994**.

Division 2—Legal Practitioners' Liability Fund

6.6.15 Requirement for Liability Fund

- (1) The Liability Committee must maintain a Legal Practitioners' Liability Fund.
- (2) The Liability Fund may be kept in one or more accounts.

6.6.16 Payments into Liability Fund

There must be paid into the Liability Fund—

- (a) insurance premiums paid by law practices in connection with contracts of insurance with the Liability Committee;
- (b) any money derived from any investment of the Liability Fund;
- (c) any other money received by the Liability Committee.

6.6.17 Payments out of Liability Fund

There may be paid out of the Liability Fund—

- (a) premiums, brokerage and commissions payable by the Liability Committee for insurance, re-insurance or any other arrangements for limitation of liability entered into by it;

s. 6.6.18

- (b) amounts payable under contracts of insurance entered into by the Liability Committee with law practices;
- (c) the cost of the administration of the Liability Fund, including remuneration of staff of the Liability Committee and amounts (if any) payable to consultants engaged by the Committee;
- (d) any other costs and expenses incurred by the Liability Committee under this Act.

6.6.18 Investment of Fund

The Liability Committee may invest any money standing to the credit of the Liability Fund that is not immediately required for the purposes of the Liability Fund in the manner in which money may be invested under the **Trustee Act 1958**.

6.6.19 Levies

- (1) If the Liability Committee is at any time of the opinion that the amount standing to the credit of the Liability Fund is likely to be insufficient to meet the liabilities to which it is subject, the Liability Committee, with the approval of the Board, may determine the amount of a levy to be paid to the Liability Fund by law practices that had a contract of professional indemnity insurance with the Liability Committee at any time within the previous 12 months.
- (2) In determining the amount of the levy, the Liability Committee must take into account the factors set out in section 3.5.6(2).
- (3) A law practice referred to in subsection (1) must pay the levy to the Liability Committee at the time, and in the manner, fixed by the Liability Committee.

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- (4) The Liability Committee may, in a special case, allow further time for the payment of a levy or of a part of a levy.
 - (5) The amount of a levy that is not paid in accordance with this section is recoverable in the Magistrates' Court from the law practice concerned by the Liability Committee as a debt.
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PART 6.7—FUNDING

Division 1—Public Purpose Fund

6.7.1 Public Purpose Fund

- (1) The Board must maintain a fund called the Public Purpose Fund.
- (2) Subject to this Division, the amount standing to the credit of the Public Purpose Fund must—
 - (a) be kept separate from any other money held by the Board;
 - (b) be held in trust for the purposes set out in this Division.
- (3) The Board may invest any money standing to the credit of the Public Purpose Fund that is not immediately required for the purposes of that Fund in the manner in which money may be invested under the **Trustee Act 1958**.

S. 6.7.1A
inserted by
No. 64/2010
s. 21.

6.7.1A Financial arrangements for Public Purpose Fund

- (1) The Board may enter into a financial arrangement or obtain financial accommodation necessary or convenient to facilitate the investment of any money in the Public Purpose Fund.
- (1A) A financial arrangement or financial accommodation under subsection (1) is invalid unless the Board has obtained the Treasurer's approval in writing for that financial arrangement or financial accommodation.
- (2) In this section—
 - (a) *financial arrangement* and *financial accommodation* have the same meanings as they have in the **Borrowing and Investment Powers Act 1987**; and

S. 6.7.1A(1A)
inserted by
No. 64/2010
s. 22.

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- (b) for the avoidance of doubt, a financial arrangement or financial accommodation may include establishing an overdraft account with an ADI in the name of the Board to be secured against moneys standing to the credit of the Public Purpose Fund.

6.7.2 Accounts in Public Purpose Fund

The Board must keep in the Public Purpose Fund the following accounts separate from each other—

- (a) General Account;
- (b) Statutory Deposit Account;
- (c) Distribution Account.

6.7.3 General Account

- (1) There must be paid into the Public Purpose Fund and credited to the General Account—
 - (a) any fine imposed by an order of the Tribunal;
 - (b) any money transferred to the Public Purpose Fund from the Fidelity Fund under section 6.7.21;
 - (c) any money derived from any investment of the Public Purpose Fund;
 - (d) any profit arising on the realisation or revaluation of any investment of the Public Purpose Fund;
 - (e) any other money received by the Board that is not by this Part required to be credited to another account in the Public Purpose Fund or to the Fidelity Fund, including (but not limited to)—
 - (i) all fees received in respect of applications for the grant or renewal of local practising certificates;

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- (ii) all amounts received in accordance with arrangements made with ADIs under section 3.3.59.
- (2) There must be debited to the General Account—
- (a) first—
- (i) any amount required to be paid under section 6.7.6 to meet the expenses and liabilities of the Board;
 - (ii) any amount required to be paid under section 6.7.7 to meet the expenses and liabilities of the Commissioner;
 - (iii) any amount required to be paid to the Tribunal under section 6.7.8;
 - (iv) any money required to be paid to an external intervener or to a law practice out of the Public Purpose Fund under Chapter 5;
 - (v) any loss incurred on the realisation or revaluation of any investment of the Public Purpose Fund;
 - (vi) any amount determined by the Auditor-General to defray the reasonable costs and expenses of an audit of the accounts of the Public Purpose Fund;
 - (vii) any amount for which the Board is liable under a judgment or order for the recovery or payment of money given or made by a court in a proceeding;
 - (viii) any amount required to meet the reasonable expenses of the Council and the Board of Examiners in performing functions under this Act, including the fees of members and the remuneration of employees and consultants (to the extent that those expenses are not met
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from admission fees under section 2.3.5);

- (ix) any refund of practising certificate fee surcharges under section 2.4.9(4) or 2.4.11(2);
- (b) secondly, any amount paid to a professional association under section 6.7.14 for continuing legal education or other programs;
- (c) thirdly, any amount paid to the Fidelity Fund under section 6.7.13;
- (d) fourthly, the amount required to be credited to the Distribution Account under section 6.7.5.

6.7.4 Statutory Deposit Account

- (1) There must be paid into the Public Purpose Fund and credited to the Statutory Deposit Account any money deposited with the Board under Division 6 of Part 3.3.
- (2) There must be debited to the Statutory Deposit Account any money required to be repaid by the Board to a law practice or an approved clerk under Division 6 of Part 3.3.

6.7.5 Distribution Account

- (1) There must be credited to the Distribution Account each financial year an amount equal to 50% of the amount standing to the credit of the General Account as at 30 June in the previous financial year.
- (2) There must be debited to the Distribution Account—
 - (a) the amount to be paid to the Legal Aid Fund under section 6.7.9;

s. 6.7.6

S. 6.7.5(2)(b)
amended by
No. 79/2006
s. 41(a).

(b) any amount paid by the Board under section 6.7.10;

S. 6.7.5(2)(c)
inserted by
No. 79/2006
s. 41(b).

(c) any amount paid by the Board under section 6.7.11A.

6.7.6 Expenses of the Board

An amount determined by the Board, with the approval of the Attorney-General, is to be paid out of the Public Purpose Fund each financial year to meet the expenses of, and discharge the liabilities incurred by, the Board in performing functions under this Act during that year, other than functions in respect of which payment is to be made from the Fidelity Fund under section 6.7.18.

6.7.7 Expenses of the Commissioner

- (1) The Board must pay out of the Public Purpose Fund each financial year an amount determined by the Board to meet the expenses of, and discharge the liabilities incurred by, the Commissioner in performing functions under this Act during that year.
- (2) The amount in any financial year must not be less than the amount (if any) specified in relation to that year by the Attorney-General by written notice given to the Board.
- (3) Without limiting subsection (1), the liabilities of the Commissioner include liability for the reasonable costs incurred by a prescribed investigatory body in performing functions under Division 3 of Part 4.4.

6.7.8 Expenses of the Tribunal

- (1) The Board must pay out of the Public Purpose Fund each financial year an amount determined by the Board to meet the expenses of the Tribunal in performing functions under this Act during that year.
- (2) The amount in any financial year must not be less than the amount (if any) specified in relation to that year by the Attorney-General by written notice given to the Board.

6.7.9 Legal aid funding

- (1) In each financial year the Board must pay out of the Public Purpose Fund and into the Legal Aid Fund established under the **Legal Aid Act 1978** an amount determined by the Board.
- (2) The amount in any financial year must not be more than 35% of the amount standing to the credit of the General Account at the end of the previous financial year or less than the amount (if any) specified in relation to the financial year by the Attorney-General by notice served on the Board.
- (3) At the direction of the Attorney-General, the Board must pay out of the Public Purpose Fund to the Treasurer an amount determined by the Attorney-General by way of advance on account of an amount to which the Legal Aid Fund may become entitled under subsection (1).
- (4) An advance under subsection (3) is repayable to the Board by the Treasurer at the end of the period (not being less than 12 months) that the Board determines and bears interest at any rate that the Board determines.

s. 6.7.10

6.7.10 Funding of law-related services and activities

(1) The Board may pay out of the Public Purpose Fund to any person or body an amount determined by the Board with the approval of the Attorney-General to be applied by the person or body for any of the following purposes—

- (a) law reform;
- (b) legal education;

(ba) judicial education;

S.
6.7.10(1)(ba)
inserted by
No. 15/2012
s. 13.

(c) legal research;

(d) any purpose relating to the legal profession or the law that the Board considers appropriate.

S. 6.7.10(1A)
inserted by
No. 18/2005
s. 16(1).

(1A) The Attorney-General may each financial year direct the Board to pay an amount out of the Public Purpose Fund to the Victorian Law Reform Commission and the Board must comply with that direction.

S. 6.7.10(2)
repealed by
No. 79/2006
s. 41(c).

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S. 6.7.10(3)
amended by
No. 18/2005
s. 16(2)(a).

(3) If the Attorney-General refuses to give approval for a payment under subsection (1), he or she must give the Board a written statement of reasons for the refusal.

6.7.11 Board may take into account previous funding

S. 6.7.11(1)
amended by
No. 18/2005
s. 16(2)(b).

(1) In determining the amounts to be paid to a person or body under section 6.7.10(1), the Board may take into account the extent to which any amount

previously paid to the person or body has not been spent or committed to expenditure.

- (2) Nothing in subsection (1) limits the factors that the Board may take into account in determining amounts to be paid to a body under section 6.7.10(1).

S. 6.7.11(2)
amended by
No. 18/2005
s. 16(2)(b).

6.7.11A Further legal aid funding

S. 6.7.11A
inserted by
No. 79/2006
s. 42.

- (1) This section applies if, in a financial year, there is any amount standing to the credit of the Distribution Account (including any amount carried over from a previous financial year) after all amounts have been debited to that account for that year under section 6.7.5(2)(a) and (b).
- (2) The Board may pay out of the Public Purpose Fund and into the Legal Aid Fund established under the **Legal Aid Act 1978** an amount determined by the Board with the approval of the Attorney-General, not exceeding the amount standing to the credit of the Distribution Account referred to in subsection (1).
- (3) Subsection (2) applies despite anything to the contrary in section 6.7.9.

6.7.12 Timing of payments and instalments

Unless another provision of this Division provides to the contrary, the Board may—

- (a) determine the timing of the crediting of an amount to an account or the payment of an amount to another person or body under this Division; and
- (b) credit or pay the amount in a single sum or by instalments.

6.7.13 Payments to Fidelity Fund

The Board may at any time pay out of the Public Purpose Fund and into the Fidelity Fund such amount as it thinks fit if it is of the opinion—

- (a) that the income of the Fidelity Fund from contributions and levies paid or payable under Division 3 is or is likely to be insufficient to satisfy claims made against the Fidelity Fund as and when they fall due; or
- (b) that the Fidelity Fund is or is likely to become insolvent; or
- (c) that it is appropriate to do so in order to establish the solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 6.7.19.

6.7.14 Payments to professional associations for continuing legal education programs etc.

- (1) The Board may at any time pay an amount out of the Public Purpose Fund to a professional association as a contribution towards the costs incurred by the association in providing—
 - (a) continuing legal education programs for Australian legal practitioners; or
 - (b) other programs aimed at improving the quality of legal services provided by law practices or access by the public to legal services provided by law practices.
- (2) The Board determines the amount to be paid under subsection (1) and may decide to make the payment of that amount to a professional association subject to a condition or conditions determined by the Board and notified to the association.

Division 2—Fidelity Fund

6.7.15 Requirement for Fidelity Fund

- (1) The Board must maintain a fund called the Legal Practitioners Fidelity Fund.
- (2) Subject to this Division, the amount in the Fidelity Fund must—
 - (a) be kept separate from any other money held by the Board;
 - (b) be held in trust for the purposes set out in this Division.
- (3) The Board may invest any money in the Fidelity Fund that is not immediately required for the purposes of that Fund in the manner in which money may be invested under the **Trustee Act 1958**.

6.7.16 Purpose of Fidelity Fund

Subject to this Part and Part 3.6, the Fidelity Fund is to be applied by the Board for the purpose of compensating claimants in respect of claims allowed under Part 3.6 in respect of defaults to which that Part applies.

6.7.17 Payments into the Fidelity Fund

There must be paid into the Fidelity Fund—

- (a) all contributions and levies paid under Division 3;
- (b) any money received by or on behalf of the Board as a result of the exercise of any right or remedy conferred on it by Part 3.6;
- (c) any money paid into the Fidelity Fund from the Public Purpose Fund under section 6.7.13;
- (d) any money derived from any investment of the Fidelity Fund;

- (e) any profit arising on the realisation or revaluation of any investment of the Fidelity Fund.

6.7.18 Payments out of the Fidelity Fund

There must be paid out of the Fidelity Fund—

- (a) any claim (including interest, costs and disbursements) allowed or established against the Fidelity Fund;
- (b) all legal and other expenses incurred—
 - (i) by the Board in investigating or defending claims made against the Fidelity Fund;
 - (ii) in the exercise by the Board of the rights, powers and authorities vested in it by Part 3.6 in relation to the Fidelity Fund;
- (c) any amounts required to be paid out of the Fidelity Fund under section 6.7.20;
- (d) any amount required to be transferred to the Public Purpose Fund under section 6.7.21;
- (e) any loss incurred on the realisation or revaluation of any investment of the Fidelity Fund;
- (f) any amount determined by the Auditor-General to defray the reasonable costs and expenses of an audit of the accounts of the Fidelity Fund.

S. 6.7.18(f)
amended by
No. 18/2005
s. 19(i).

6.7.19 Solvency

- (1) The Governor in Council may from time to time, by Order made on the recommendation of the Attorney-General and published in the Government Gazette, fix a solvency level for the Fidelity Fund.

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- (2) The Attorney-General may only make a recommendation under subsection (1) at any time if he or she has had regard to the advice of an actuary engaged by the Attorney-General to advise him or her on the appropriate provision to be made at that time for the solvency level of the Fidelity Fund.
 - (3) The Attorney-General may engage an actuary who has been engaged by the Board under section 6.7.25(4)(a).

6.7.20 Payments to liquidators etc.

- (1) This section applies if—
 - (a) an Australian legal practitioner who, in the opinion of the Board, has committed a default, becomes an insolvent under administration; or
 - (b) an incorporated legal practice that, in the opinion of the Board, has committed a default, becomes an externally-administered body corporate within the meaning of the Corporations Act.
- (2) The Board may pay out of the Fidelity Fund to the trustee in bankruptcy, trustee or liquidator (as the case requires) any amount or amounts and on any terms and conditions that the Board from time to time thinks fit for the purpose of enabling legal proceedings to be commenced or defended by the trustee in bankruptcy, trustee or liquidator.

6.7.21 Public Purpose Fund

- (1) The Board may at any time pay out of the Fidelity Fund and into the Public Purpose Fund an amount determined by the Board if it is of the opinion—
 - (a) that the income of the Fidelity Fund from contributions and levies paid or payable under Division 3 and the net assets of the

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- Fidelity Fund are or are likely to be sufficient to satisfy claims made against the Fidelity Fund as and when they fall due; and
- (b) that the Fidelity Fund is not or is not likely to become insolvent; and
 - (c) that the appropriate solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 6.7.19 has been established and will be maintained after the payment.
- (2) The amount paid under subsection (1) at any time must not be of such an amount as, when added to amounts previously paid under subsection (1), would be more than the cumulative amounts paid up to that time into the Fidelity Fund under section 6.7.13.

6.7.22 Insurance

- (1) The Board may arrange with an insurer for the insurance of the Fidelity Fund.
- (2) Without limiting subsection (1), the Board may arrange for the insurance of the Fidelity Fund against particular claims or particular classes of claims.
- (3) The proceeds paid under a policy of insurance against particular claims or particular classes of insurance 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 them.
- (4) No liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of arranging for the insurance of the Fidelity Fund.

(5) In this section—

protected person means—

- (a) the Board or a member of the Board; or
- (b) a person acting at the direction of the Board or a member of the Board.

6.7.23 Borrowing

The Board cannot borrow money for the purposes of the Fidelity Fund.

Division 3—Fidelity Fund contributions and levies

6.7.24 Determination of contributor classes

- (1) For the purposes of this Division, the Board may from time to time determine different classes of—
 - (a) local legal practitioners;
 - (b) interstate legal practitioners who are authorised to withdraw money from a local trust account;
 - (c) community legal centres;
 - (d) approved clerks.
- (2) In determining the contributor classes, the Board may take into account any or all of the following factors, as may be relevant—
 - (a) the type of practising certificate held by members of the class;
 - (b) the date on which any of the following are made by members of the class—
 - (i) applications for the grant or renewal of a local practising certificate; or
 - (ii) notifications of establishing an office in this jurisdiction;

S. 6.7.24
(2)(b)(i)
amended by
No. 18/2005
s. 19(j).

s. 6.7.25

S. 6.7.24(2)(d)
amended by
No. 15/2012
s. 15(8).

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- (c) the number and type of practising certificates (if any) previously held by members of the class;
 - (d) whether members of the class received at any time in a specified period money or property referred to in section 3.6.6;
 - (e) whether members of the class were at any time in a specified period associates of a law practice that was authorised to receive trust money;
 - (f) the amount of trust money received in a specified period by—
 - (i) a member of the class; or
 - (ii) a law practice of which a member of the class was an associate;
 - (g) whether the principal place of practice of members of the class is in or outside Victoria;
 - (h) whether members of the class provide legal services only on a voluntary basis;
 - (i) the conditions, limitations or restrictions to which members of the class are subject in their home jurisdiction in respect of their legal practice.

6.7.25 Determination of contributions

- (1) On or before the relevant date in each year, the Board must determine the amount of the contribution to the Fidelity Fund payable in respect of the immediately following financial year by members of each contributor class.

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- (2) The relevant date is 30 April or such later date up to 31 May as the Board may fix by notice published in the Government Gazette before 30 April.
 - (3) The contribution for any member cannot exceed the amount prescribed by the regulations.
 - (4) In determining the amount of the contributions payable, the Board must have regard to—
 - (a) the advice of an actuary engaged by the Board to advise it on the appropriate provision to be made for all ascertained or contingent liabilities of the Fidelity Fund, including any contingent liability in respect of defaults that have occurred but have not yet been reported to the Board;
 - (b) the solvency level for the Fidelity Fund as then fixed by the Governor in Council under section 6.7.19.
 - (5) As soon as practicable after making a determination under subsection (1), the Board must—
 - (a) cause notice of the determination to be published in the Government Gazette; and
 - (b) give written notice of the determination to each professional association.
 - (6) A professional association must cause notice of the determination to be published in the association's next available official publication.

6.7.26 Payment of contributions in respect of local practising certificates

- (1) This section applies to—
 - (a) an applicant for the grant or renewal of a local practising certificate the holding of which would make him or her a member of a contributor class; or
 - (b) a local legal practitioner who requests the Board to amend his or her local practising certificate, if the effect of the amendment would be to make the practitioner a member of a contributor class.
- (2) The applicant or practitioner must pay the contribution determined by the Board under section 6.7.25(1) as the contribution payable by members of the relevant contributor class.
- (3) The contribution is payable to the Board—
 - (a) at the time of making the application or request; or
 - (b) if the amount of the contribution has not been determined by that time—at the time fixed by the Board.

6.7.27 Payment of contributions by interstate legal practitioners

- (1) An interstate legal practitioner—
 - (a) who notifies the Board under section 2.4.34 that he or she is authorised to withdraw money from a local trust account; and
 - (b) who is a member of a contributor class—must pay the contribution determined by the Board under section 6.7.25(1) as the contribution payable by members of that class.

S. 6.7.27(1)(a)
amended by
No. 12/2007
s. 74(a).

(2) An interstate legal practitioner who is a member of a contributor class must, in respect of each financial year in which he or she engages in legal practice in this jurisdiction after the financial year in which the practitioner notified the Board as referred to in subsection (1)(a), pay the contribution determined by the Board under section 6.7.25(1) as the contribution payable in respect of that year by members of that class.

S. 6.7.27(2)
amended by
No. 12/2007
s. 74(b).

(3) A contribution is payable to the Board—

(a) in the case of a contribution under subsection (1)—

(i) at the time of notifying the Board; or

S. 6.7.27(3)(a)(i)
amended by
No. 12/2007
s. 74(c).

(ii) if the amount of the contribution has not been determined by that time—at the time fixed by the Board;

(b) in the case of a contribution under subsection (2)—at the time, and in the manner, fixed by the Board.

6.7.28 Payment of contributions by community legal centres

(1) A community legal centre that is a member of a contributor class must, in respect of each financial year, pay the contribution determined by the Board under section 6.7.25(1) as the contribution payable in respect of that year by members of that class.

(2) A contribution referred to in subsection (1) is payable to the Board at the time, and in the manner, fixed by the Board.

6.7.29 Payment of contributions by approved clerks

- (1) An approved clerk who is a member of a contributor class must, in respect of each financial year, pay the contribution determined by the Board under section 6.7.25(1) as the contribution payable in respect of that year by members of that class.
- (2) A contribution referred to in subsection (1) is payable to the Board at the time, and in the manner, fixed by the Board.

6.7.30 Persons who are members of more than one class

- (1) If—
 - (a) a person is eligible to be a member of more than one contributor class depending on the amount of trust money received by them or by the law practice of which they are an associate; and
 - (b) the amount of contribution payable by members of each of those classes is different; and
 - (c) the person wishes to claim membership of one of those classes other than the one whose members pay the highest contribution—the person must give the Board a statutory declaration stating that the contributor class of which membership is claimed is the appropriate class.
 - (2) Despite anything to the contrary in this Division, if a person required by subsection (1) to give the Board a statutory declaration does not do so before or at the time of paying the contribution, the contribution payable by that person is the contribution payable by members of the class referred to in subsection (1)(c) who pay the highest contribution.
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6.7.31 Determination of levy

- (1) If the Board is at any time of the opinion that the amount standing to the credit of the Fidelity Fund is likely to be insufficient to meet the liabilities to which it is subject, the Board may determine the amount of a levy to be paid to the Fidelity Fund by members of the contributor classes who are authorised to receive trust money or to withdraw money from a trust account in this jurisdiction.
- (2) The amount of the levy may differ for different classes and must not exceed the amount per member prescribed by the regulations.
- (3) As soon as practicable after making a determination under subsection (1), the Board must—
 - (a) cause notice of the determination to be published in the Government Gazette; and
 - (b) give written notice of the determination to each professional association.
- (4) A professional association must cause notice of the determination to be published in the association's next available official publication.

6.7.32 Who must pay a levy?

- (1) If the Board makes a determination under section 6.7.31, a member of a contributor class to whom the determination applies must pay the amount determined by the Board as the levy payable by members of that class.
- (2) If—
 - (a) a person is eligible to be a member of more than one contributor class depending on the amount of trust money received by them; and
 - (b) the amount of levy payable by members of each of those classes is different; and

- (c) the person wishes to claim membership of one of those classes other than the one whose members pay the highest levy—

the person must give to the Board a statutory declaration stating that the contributor class of which membership is claimed is the appropriate class.

- (3) Despite anything to the contrary in this Division, if a person required by subsection (2) to give a statutory declaration to the Board does not do so before or at the time of paying the levy, the levy payable by that person is the levy payable by members of the class referred to in subsection (2)(c) who pay the highest levy.
- (4) The regulations may prescribe the maximum amount a person may be required to pay by way of levies imposed under this Division—
- (a) in any prescribed period;
- (b) in total.
- (5) A levy payable by a person under this section is in addition to any contribution paid or payable by them under this Division.

6.7.33 When is a levy payable?

- (1) A levy is payable at the time, and in the manner, fixed by the Board.
- (2) The Board may, in a special case, allow further time for the payment of a levy or of a part of a levy.

6.7.34 Board may recover contribution or levy

The amount of a contribution or levy that is not paid by a person in accordance with this Division is recoverable in the Magistrates' Court from that person by the Board as a debt.

6.7.35 Employer must pay contribution or levy or reimburse employee

- (1) The employer of a person who is required to pay a contribution or levy under this Division may pay the contribution or levy on behalf of the person.
- (2) If the employer does not pay the contribution or levy on behalf of the person, the employer must, at the request of the person, reimburse the person the amount of the contribution or levy paid by the person within 21 days after the request.

Penalty: 120 penalty units.

- (3) If a person who is required to pay a contribution or levy under this Division has more than one employer for the purposes of subsection (2), the employer to whom that subsection applies is the employer who employs the person for the most number of hours in any week.
- (4) If—
 - (a) membership of a contributor class is determined under section 6.7.24 by reference to a specified period; and
 - (b) a member of that class has more than one employer during that period—

the employer of the member as at the end of that period is their employer for the purposes of this section.

CHAPTER 7—GENERAL

Pt 7.1
(Heading and
ss 7.1.1–7.1.6)
repealed by
No. 75/2006
s. 190.

* * * * *

PART 7.2—GENERAL PROVISIONS

Division 1—Notices and evidentiary matters

7.2.1 Service of notices on local legal practitioners, locally registered foreign lawyers and law practices

- (1) For the purposes of this Act, a notice or other document may be served on, or given to, a local legal practitioner or locally registered foreign lawyer by—
 - (a) delivering it personally to the practitioner or lawyer; or
 - (b) sending it by post to the practitioner or lawyer at his or her address for service appearing on the register under section 6.2.23.
- (2) For the purposes of this Act, a notice or other document may be served on, or given to, a law practice by—
 - (a) delivering it personally to a principal of the law practice; or
 - (b) sending it by post to the practice at its usual or last known business address; or
 - (c) leaving it at the practice's usual or last known business address with a person on the premises who is apparently at least 16 years of age and apparently employed there.

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- (3) A notice or other document may also be served on, or given to, an incorporated legal practice in any other way that service of documents may be effected on a body corporate.

7.2.2 Service on the Board and Commissioner

- (1) For the purposes of this Act, a notice or other document may be served on, lodged with or given to the Board—
- (a) by delivering it personally to the office of the Board; or
 - (b) by sending it by post to the office of the Board.
- (2) For the purposes of this Act, a notice or other document may be served on, lodged with or given to, the Commissioner—
- (a) by delivering it personally to the office of the Commissioner; or
 - (b) by sending it by post to the office of the Commissioner.

7.2.3 Service of notices on other persons

For the purposes of this Act, a notice or other document may be served on, or given to, a person (other than a person referred to in section 7.2.1 or 7.2.2)—

- (a) if the person is a natural person, by—
 - (i) delivering it personally to the person; or
 - (ii) sending it by post to the person at his or her usual or last known residential or business address; or

s. 7.2.4

- (iii) leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or
- (b) if the person is a company within the meaning of the Corporations Act—
 - (i) by delivering it personally to the registered office of the company; or
 - (ii) by sending it by post to the registered office of the company; or
 - (iii) in any other way that service of documents may be effected on a body corporate; or
- (c) if the person is an incorporated association within the meaning of the **Associations Incorporation Reform Act 2012**, in accordance with section 217 of that Act.

S. 7.2.3(c)
amended by
No. 20/2012
s. 226(Sch. 5
item 17(3)).

7.2.4 When is service effective?

For the purposes of this Act, a notice or other document must be taken to have been served on, or given to, a person or law practice—

- (a) in the case of delivery in person, at the time the document is delivered;
- (b) in the case of posting, 2 business days after the day on which the document was posted.

7.2.5 Evidentiary matters

- (1) A certificate sealed by, or signed on behalf of, the Board, specifying that, on a date or during a period specified in the certificate—
 - (a) a person held or did not hold a local practising certificate;

(b) the local practising certificate of a person was subject to a specified condition or restriction—

is, in the absence of proof to the contrary, proof of the matters stated in it.

- (2) A certificate sealed by, or signed on behalf of, the Board, specifying that a matter specified in the certificate is, or was at any time specified in the certificate, on the register kept under section 6.2.23 is, in the absence of proof to the contrary, proof that the matter is, or was at the specified time, on that register.
- (3) A document purporting to be a copy of the legal profession rules and certified as such by the Board is, in the absence of proof to the contrary, proof of the due making, existence and content of the rules.

S. 7.2.5(2)
amended by
No. 18/2005
s. 19(k).

Division 2—Investigation and prosecution of offences

7.2.6 Board may appoint person to investigate

If the Board reasonably suspects that an offence has been committed under this Act (other than an offence under Part 3.3), the Board may appoint a person—

- (a) who is an employee referred to in section 6.4.1; or
- (b) who in the opinion of the Board is an appropriate person to conduct an investigation under this Division—

to investigate the offence.

S. 7.2.6(a)
amended by
No. 15/2012
s. 15(9).

7.2.7 Assistance with investigation

- (1) For the purposes of an investigation under this Division, a person must—
 - (a) produce for inspection or copying by the investigator any records reasonably required by the investigator; and
 - (b) give the investigator any other information he or she reasonably requires.

Penalty: 60 penalty units.

- (2) A person may not refuse to comply with subsection (1)—
 - (a) on the ground of any duty of confidence, including any duty of confidence owed by a law practice or legal practitioner to a client; or
 - (b) on the ground that the production of the record or giving of the information may tend to incriminate them.
- (3) If a person, before producing a record or giving information, objects to the investigator on the ground that the production of the record or giving of the information may tend to incriminate them, the record or information is inadmissible in evidence in any proceeding against them for an offence, other than an offence in relation to the giving of false or misleading information.
- (4) An investigator may retain for a reasonable period and may make copies of, or take extracts from, any documents produced or given to the investigator in the course of an investigation under this Division.

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- (5) A financial institution, despite any duty of confidence to the contrary, must without charge—
- (a) produce for inspection or copying by the investigator any records held by it that are reasonably required by the investigator for the purposes of an investigation under this Division; and
 - (b) give the investigator any other information he or she reasonably requires for the purposes of the investigation.

Penalty: 60 penalty units.

- (6) It is not an offence under subsection (1) or (5) if the investigator did not, at the time of making the requirement or as soon as practicable afterwards—
- (a) clearly identify himself or herself as an investigator; and
 - (b) advise the person or financial institution that failure to comply with the requirement could constitute an offence against this Act.

7.2.8 Investigator must report on investigation

As soon as practicable after completing an investigation under this Division, an investigator must give a written report on the investigation to the Board.

7.2.9 Secrecy

- (1) An investigator must not disclose information acquired in the course of an investigation under this Division except—
- (a) as is necessary for the purpose of conducting the investigation and making the report of the investigation; or
 - (b) as is permitted by subsection (2); or

(c) with the consent of the person to whom the information relates.

Penalty: 60 penalty units.

- (2) An investigator may disclose information acquired in the course of an investigation—
- (a) to a member of the police force, if the investigator reasonably suspects that an offence has been committed;
 - (b) to the Board, in connection with any proceedings arising out of the investigation or concerning a person who was the subject of the investigation;
 - (c) to the Commissioner, in connection with any function of the Commissioner arising out of the investigation or concerning a person who was the subject of the investigation;
 - (d) to an external administrator of a person who was the subject of the investigation;
 - (e) to any officer, employee, agent or delegate of a person referred to in paragraph (b), (c) or (d);
 - (f) to a court or tribunal;
 - (g) to the Australian Securities and Investments Commission.
- (3) In addition to any penalty and any civil liability to a law practice, an Australian legal practitioner or an Australian-registered foreign lawyer, an investigator who contravenes subsection (1) is liable to a client of the practice, practitioner or lawyer to the same extent (if any) that the practice, practitioner or lawyer, would have been liable had they disclosed the information.

7.2.10 Who may prosecute offences?

- (1) A charge-sheet charging a person with an offence under this Act or the regulations may only be filed—
 - (a) by the Board; or
 - (b) by a member of the police force; or
 - (c) by the Director of Public Prosecutions.
- (2) The Board, on behalf of the Attorney-General, may apply to the Supreme Court for punishment of a person for a contravention of a provision of this Act that, by force of this Act, constitutes a contempt of the Supreme Court.

S. 7.2.10(1)
amended by
No. 68/2009
s. 97(Sch.
item 77.4).

Division 3—General

7.2.11 Liability for negligence etc.

- (1) Nothing in this Act abrogates any immunity from liability for negligence enjoyed by Australian lawyers before the commencement of this section.
- (2) A law practice, an Australian lawyer or an Australian-registered foreign lawyer must not make any agreement or arrangement with a client to the effect that the practice (or any member or employee of the practice) or lawyer will not be liable to the client for any loss or damage caused to the client in connection with legal services to be provided on or after the date of the agreement or arrangement to the client for which, but for the agreement or arrangement, the practice, member, employee or lawyer would be liable.
- (3) Any agreement or arrangement that contravenes subsection (2) is void.

s. 7.2.12

S. 7.2.11(4)
amended by
No. 18/2005
s. 19(l).

- (4) Subsection (2) does not apply to the extent that another Act authorises a law practice, Australian lawyer or Australian-registered foreign lawyer to make an agreement or arrangement that, but for this subsection, would contravene subsection (2).

7.2.12 Liability of principals

- (1) If a law practice contravenes, whether by act or omission, any provision of this Act or the regulations 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.

7.2.13 Injunctions

- (1) The Board may apply to the Supreme Court for an injunction under this section if a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute—

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|---|---|
| (a) a contravention of this Act, the regulations or the legal profession rules; or | S. 7.2.13(1)(a)
amended by
No. 12/2007
s. 75(1). |
| (b) attempting to contravene this Act, the regulations or the legal profession rules; or | S. 7.2.13(1)(b)
amended by
No. 12/2007
s. 75(1). |
| (c) aiding, abetting, counselling or procuring a person to contravene this Act, the regulations or the legal profession rules; or | S. 7.2.13(1)(c)
amended by
No. 12/2007
s. 75(1). |
| (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act, the regulations or the legal profession rules; or | S. 7.2.13(1)(d)
amended by
No. 12/2007
s. 75(1). |
| (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act, the regulations or the legal profession rules; or | S. 7.2.13(1)(e)
amended by
No. 12/2007
s. 75(1). |
| (f) conspiring with others to contravene this Act, the regulations or the legal profession rules. | S. 7.2.13(1)(f)
amended by
No. 12/2007
s. 75(1). |
- (2) On an application under subsection (1), the Supreme Court may grant an injunction, on any terms the Court thinks appropriate, restraining the person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring the person to do any act or thing.
- (3) If an application has been made under subsection (1), the Supreme Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceeding, whether or not the Court is satisfied that subsection (1) applies.

s. 7.2.14

S. 7.2.13(4)
inserted by
No. 12/2007
s. 75(2).

(4) If in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

S. 7.2.13(5)
inserted by
No. 12/2007
s. 75(2).

(5) The Supreme Court may discharge or vary an injunction granted under subsection (1) or (4).

S. 7.2.13(6)
inserted by
No. 12/2007
s. 75(2).

(6) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

S. 7.2.13(7)
inserted by
No. 12/2007
s. 75(2).

(7) The Supreme Court must not require the Board or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

7.2.14 Disclosure of information by local regulatory authorities

- (1) A local regulatory authority may disclose information to another local regulatory authority about any matter relating to or arising under this Act or a corresponding law.
- (2) A local regulatory authority may disclose information to an interstate regulatory authority about any matter relating to or arising under this Act or a corresponding law.

(3) In this section—

interstate regulatory authority means—

- (a) an authority having functions under a corresponding law; or
- (b) a person or body prescribed, or of a class prescribed, by the regulations;

local regulatory authority means—

- (a) an authority having functions under this Act; or
- (b) a person or body prescribed, or of a class prescribed, by the regulations.

S. 7.2.14(3)
amended by
No. 18/2005
s. 19(m).

7.2.15 Confidentiality of personal information

- (1) A relevant person must not disclose to any other person, whether directly or indirectly, any personal information obtained by reason of being a relevant person.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information—

- (a) to the extent that the disclosure is reasonably required to perform functions under this Act, the regulations or the legal profession rules, or under any other Act or regulations; or
- (b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Act, the regulations or the legal profession rules, or under any other Act or regulations; or
- (c) with the prior consent in writing of the person to whom the information relates; or
- (d) to a court or tribunal in the course of legal proceedings; or

S. 7.2.15(1)
substituted by
No. 12/2007
s. 76.

S. 7.2.15(2)
substituted by
No. 12/2007
s. 76.

- (e) pursuant to an order of a court or tribunal under any Act or law; or
 - (f) to the extent the disclosure is reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter.
- (3) Subsection (1) extends to the disclosure of information that was disclosed under a corresponding law to a local regulatory authority or a relevant person.
- (4) In this section—

local regulatory authority means—

- (a) an authority having functions under this Act; or
- (b) a person or body prescribed, or of a class prescribed, by the regulations;

personal information means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about a natural person whose identity is apparent, or can be reasonably ascertained, from the information or opinion, but does not include information or an opinion of a kind specified in the regulations;

relevant person means—

- (a) a local regulatory authority; or
- (b) a member or former member of a regulatory authority; or
- (c) a person currently or previously employed by or acting at the direction of a local regulatory authority.

7.2.16 Destruction of documents

A law practice or Australian legal practitioner may destroy or dispose of any documents held by the practice or practitioner relating to a matter after a period of 7 years has elapsed since the completion of the matter if the practice or practitioner has been unable, despite making reasonable efforts, to obtain instructions from the client to whom the documents relate as to the destruction or disposal of the documents.

Division 4—Regulations

7.2.17 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting the generality of subsection (1), the Governor in Council may make regulations for or with respect to—
 - (a) prescribing a general fee and a library fee to be paid before admission to legal practice;
 - (b) prescribing fees to be paid for practising certificates;
 - (c) prescribing persons or classes of persons as financial institutions;
 - (d) penalties for contraventions of the regulations, not exceeding—
 - (i) 20 penalty units in the case of a natural person;
 - (ii) 120 penalty units in any other case.

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- (3) Regulations under subsection (2)(b) are to be made on the recommendation of the Board.
- (4) In making a recommendation, the Board must take into account—
- (a) the costs of regulating different classes of legal practitioners; and
 - (b) any representations made to the Board by a professional association regarding appropriate levels for fees for classes of local legal practitioners who are members of that association.
- (5) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.

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- (6) Regulations under this Act may be made—
- (a) so as to apply at all times or at a specified time; and
 - (b) so as to require matters affected by the regulations to be—
 - (i) in accordance with specified standards or specified requirements; or
 - (ii) approved by or to the satisfaction of specified persons or bodies or specified classes of persons or bodies; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time; and
 - (d) so as to confer a discretionary authority or impose a duty on specified persons or bodies or specified classes of persons or bodies; and
 - (e) so as to provide in specified cases or classes of case for the exemption of persons or things or classes of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
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**CHAPTER 8—REPEALS, AMENDMENTS AND
TRANSITIONAL PROVISIONS**

Part 8.1
(Heading and
ss 8.1.1–8.1.3)
repealed by
No. 28/2007
s. 3(Sch.
item 38).

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PART 8.2—TRANSITIONAL PROVISIONS

8.2.1 Transitional provisions

Schedule 2 has effect.

SCHEDULES

SCHEDULE 1

Section 6.2.8

LEGAL SERVICES BOARD ELECTIONS

1 Electoral rolls

- (1) The Board must keep the following rolls of electors—
 - (a) a roll of advocates;
 - (b) a roll of non-advocates.
- (2) Subject to the regulations, the rolls are to be kept in the manner and form determined by the Board, and may be kept as part of the register under section 6.2.23.

2 Enrolment

- (1) A local legal practitioner is taken to be enrolled on the roll of advocates if—
 - (a) his or her name is on the register under section 6.2.23; and
 - (b) the register indicates that he or she is a barrister.
- (2) A local legal practitioner is taken to be enrolled on the roll of non-advocates if—
 - (a) his or her name is on the register under section 6.2.23; and
 - (b) the register indicates that he or she is not a barrister.

Sch. 1 cl. 2
substituted by
No. 12/2007
s. 77(1).

Sch. 1

Sch. 1 cl. 3
substituted by
No. 12/2007
s. 77(1).

3 Eligibility to stand and vote

- (1) Each local legal practitioner of not less than 5 years' standing who is on the roll of advocates is eligible to stand for election for the advocate member of the Board.
- (2) Each local legal practitioner of not less than 5 years' standing who is on the roll of non-advocates is eligible to stand for election for the non-advocate members of the Board.
- (3) Each local legal practitioner who is on the roll of advocates is eligible to vote in an election for the advocate member of the Board.
- (4) Each local legal practitioner who is on the roll of non-advocates is eligible to vote in an election for the non-advocate members of the Board.

4 Elections

The first election must be held on or before 31 May 2006 and subsequent elections must be held in March, April or May in every 4th calendar year.

Sch. 1 cl. 5
(Heading)
substituted by
No. 14/2006
s. 29(1).

5 Preferential voting for advocate member

- (1) If there are only 2 candidates for election of a member the result is to be determined as follows—
 - (a) the candidate who has received the greater number of first preference votes is to be declared elected;
 - (b) if the 2 candidates have received an equal number of votes the result is to be determined by lot.
- (2) If there are more than 2 candidates for election of a member, the result is to be determined as follows—

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- (a) the candidate who has received the greatest number of first preference votes, if that number constitutes an absolute majority of votes, is to be declared elected;
 - (b) if no candidate has received an absolute majority of votes—
 - (i) the candidate who has received the fewest first preference votes is to be declared a defeated candidate; and
 - (ii) the ballot-papers counted to the defeated candidate are to be distributed amongst the non-defeated candidates next in order of the voters' preference; and
 - (iii) after the distribution, the total number of votes given to each non-defeated candidate is to be ascertained;
 - (c) the candidate who has then received the greatest number of votes, if that number constitutes an absolute majority of votes, is to be declared elected;
 - (d) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference is to be repeated until one candidate has received an absolute majority of votes and is declared elected;
 - (e) if on any count 2 or more candidates have an equal number of votes and one of them has to be declared a defeated candidate the result is to be determined by lot;
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Sch. 1

(f) if on the final count 2 candidates have received an equal number of votes the result is to be determined by lot.

Sch. 1 cl. 5(3)
inserted by
No. 14/2006
s. 29(2).

(3) This clause applies to the election of the advocate member.

Sch. 1 cl. 5A
inserted by
No. 14/2006
s. 29(3).

5A Exhaustive preferential voting for non-advocate members

- (1) This clause applies to the election of the non-advocate members if there are more than 2 candidates.
- (2) The first vacancy is to be filled in the manner specified in clause 5(2) for determining the result if there are more than 2 candidates for election of a member and, for that purpose, a reference in clause 5(2) to a "defeated candidate" or a "non-defeated candidate" is to be construed as a reference to an "excluded candidate" or a "continuing candidate" as the case may be.
- (3) The second vacancy is to be filled as follows—
 - (a) all the ballot-papers (other than the ballot-papers which are rejected) are to be rearranged under the names of the respective candidates for which a first preference is indicated;
 - (b) the ballot-papers on which a first preference is indicated for the elected candidate are to be placed in the parcel of the continuing candidate next in order of the voter's preference;
 - (c) the total number of votes given to each continuing candidate is to be ascertained;

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- (d) the candidate who has received the greatest number of votes, if that number constitutes an absolute majority of votes, is to be declared elected;
 - (e) if no candidate has an absolute majority of votes—
 - (i) the candidate who has received the fewest votes is to be declared an excluded candidate; and
 - (ii) the ballot-papers counted to the excluded candidate are to be distributed amongst the continuing candidates next in order of the voters' preference; and
 - (iii) the total number of votes given to each continuing candidate is to be ascertained; and
 - (iv) the candidate who then has received the greatest number of votes, if that number constitutes an absolute majority of votes, is to be declared elected;
 - (f) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes an excluded candidate and distributing the ballot-papers amongst the continuing candidates next in order of the voter's preference is to be repeated until one candidate has received an absolute majority of votes and is declared elected.
- (4) If on any count 2 or more candidates have an equal number of votes and one of them has to be declared an excluded candidate the result is to be determined by lot.

- (5) If on the final count 2 candidates have received an equal number of votes the result is to be determined by lot.
- (6) In this clause, *continuing candidate* means a candidate not already elected or excluded from the count.

6 Elections to fill casual vacancies

The provisions of this Schedule apply, with any necessary modifications, to an election to fill a casual vacancy in the office of an elected member.

7 Arrangements with Victorian Electoral Commission

The Board may enter into arrangements with the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002** in relation to the conduct of elections for the purposes of this Schedule.

8 Regulations

- (1) For the purposes of section 6.2.8 and this Schedule, the regulations may make provision for or with respect to—
 - (a) nomination of candidates for election;
 - (b) polling places;
 - (c) hours of polling;
 - (d) appointment of scrutineers;
 - (e) ballot-papers;
 - (f) postal voting;
 - (g) any other matter or thing required or permitted by section 6.2.8 or this Schedule to be prescribed or necessary to be prescribed to give effect to section 6.2.8 or this Schedule.

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- (2) The regulations may—
- (a) require a nomination for election—
 - (i) to be supported by a specified number of electors;
 - (ii) to be accompanied by a deposit of a specified amount not exceeding \$500;
 - (b) make provision for the forfeiture and return of deposits.
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SCHEDULE 2

Section 8.2.1

TRANSITIONAL PROVISIONS

PART 1—INTRODUCTION

1.1 Definitions

In this Schedule—

commencement day means the day on which section 8.2.1 of this Act comes into operation;

Legal Profession Tribunal means the Legal Profession Tribunal established by Part 17 of the old Act;

new Board means the Legal Services Board;

old Act means the **Legal Practice Act 1996**;

old Board means the Legal Practice Board established by section 347 of the old Act;

VCAT means Victorian Civil and Administrative Tribunal established by the VCAT Act;

VCAT Act means the **Victorian Civil and Administrative Tribunal Act 1998**.

1.2 General transitional provisions

- (1) Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a provision of the old Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to the provision—
 - (a) any other provisions of the old Act necessary to give effect to that continued provision;
 - and

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- (b) any regulation made under the old Act for the purposes of that continued provision.

1.3 Savings and transitional regulations

The regulations may contain provisions of a savings and transitional nature consequent on the repeal of the old Act.

PART 2—LEGAL PRACTICE

2.1 Admission

- (1) On the commencement day, a person admitted to legal practice as a barrister and solicitor of the Supreme Court becomes a local lawyer as if he or she had been admitted to the legal profession under this Act.
- (2) Despite anything to the contrary in subclause (1), the day of admission of a person referred to in that subsection is the day he or she was admitted by the Supreme Court to legal practice as a barrister and solicitor.
- (3) Until the regulations provide otherwise, the prescribed general fee for admission is \$100 and the prescribed library fee for admission is \$560.

2.2 Practising certificates

- (1) A practising certificate in force under the old Act immediately before the commencement day is taken, on and after that day, to be a local practising certificate issued under this Act and may be renewed, suspended or cancelled accordingly.
- (2) If an application made under the old Act for a practising certificate has not been determined before the commencement day—
 - (a) the application is to be determined as if it were an application under this Act for a local practising certificate; and

Sch. 2

Sch. 2
cl. 2.2(4)
amended by
No. 18/2005
s. 17(1).

- (b) the practising certificate already held by the applicant remains in force as if it were a local practising certificate issued under this Act until a new certificate is issued or the application is refused.
- (3) Any conditions or restrictions attaching to a practising certificate issued under the old Act continue to attach to the certificate on and after the commencement day.
- (4) Despite anything to the contrary in this Act (except subclause (4A)), the prescribed fee for a local practising certificate for all or part of the financial year commencing on 1 July 2005 is—
 - (a) for a practising certificate authorising the receipt of trust money, \$320;
 - (b) for a practising certificate not authorising the receipt of trust money, valid for the whole financial year—
 - (i) if the applicant is an Australian legal practitioner, \$200;
 - (ii) if the applicant is not an Australian legal practitioner, \$160;
 - (c) for a practising certificate valid for part of the financial year only, an amount that bears the same proportion to the relevant fee in paragraph (a) or (b) as the period of validity of the certificate bears to the whole year, rounded to the nearest dollar.

Sch. 2
cl. 2.2(4A)
inserted by
No. 18/2005
s. 17(2),
substituted by
No. 79/2006
s. 43(1).

- (4A) Subclause (4) does not apply to a local practising certificate that authorises the holder to engage in legal practice only as a volunteer at a community legal centre.

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Sch. 2
cl. 2.2(5)(6)
repealed by
No. 79/2006
s. 43(2).

2.3 Unqualified practice

- (1) An order made under section 316 of the old Act in force immediately before the commencement day continues in force on and after that day according to its tenor as if it were an injunction under section 7.2.13 of this Act.
- (2) An authorisation that was in force under section 320 of the old Act immediately before the commencement day is taken, on and after that day, to be an approval of the person to whom the authorisation relates under section 2.2.8 of this Act.
- (3) An order that was in force under section 321 of the old Act immediately before the commencement day continues in force on and after that day according to its tenor as if it were an order under section 2.2.6 of this Act.

2.4 Incorporated legal practices

An incorporated legal practice that was, immediately before the commencement day, an incorporated practitioner within the meaning of the old Act is taken to have complied with section 2.7.7(1) of this Act.

2.5 Practice rules

- (1) Any practice rules made by The Victorian Bar Incorporated under Division 2 of Part 3 of the old Act that were in force immediately before the commencement day are taken, on and after that day, to be legal profession rules made by the Victorian Bar with the approval of the new Board under section 3.2.9(2) of this Act, and may be amended or revoked accordingly.

- (2) Any practice rules made by Victorian Lawyers RPA Limited A.C.N. 075 475 731 under Division 2 of Part 3 of the old Act that were in force immediately before the commencement day are taken, on and after that day, to be legal profession rules made by the Law Institute with the approval of the new Board under section 3.2.9(3) of this Act, and may be amended or revoked accordingly.

PART 3—RELATIONS WITH CLIENTS

3.1 Client information and legal costs

- (1) Subject to subclause (2) and clause 3.2, Part 3.4 of this Act applies to a matter if the client first instructs the law practice on or after the commencement day and Part 4 of the old Act continues to apply to a matter if the client first instructed the law practice in the matter before the commencement day.
- (2) Part 3.4 of this Act does not apply in respect of a law practice that is retained by another law practice on behalf of a client on or after the commencement day in relation to a matter in which the other law practice was retained by the client before the commencement day and in that case Part 4 of the old Act continues to apply.

Sch. 2 cl. 3.2
repealed by
No. 18/2005
s. 17(3)(a).

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3.3 Practitioner remuneration orders and Legal Costs Committee

- (1) A practitioner remuneration order made under section 111 of the old Act that was in force immediately before the commencement day continues in force on and after that day as if it

were a practitioner remuneration order made under section 3.4.22 of this Act.

- (2) A person who was a member of the Legal Costs Committee under section 114 of the old Act immediately before the commencement day continues on and after that day to be a member of the Legal Costs Committee under section 3.4.25 of this Act.

PART 4—TRUST ACCOUNTS AND TRUST MONEY

4.1 Arrangements with ADIs

Section 3.3.59 of this Act applies to any arrangement under section 176 of the old Act that was in force immediately before the commencement day as if it were an arrangement under that section 3.3.59.

4.2 Approved clerks

A person who, immediately before the commencement day, was an approved clerk within the meaning of the old Act is taken, on and after that day, to be an approved clerk within the meaning of this Act as if he or she had been approved by the Victorian Bar under section 3.3.70 of this Act.

4.3 Approved external examiners

- (1) A person who, immediately before the commencement day, was an approved auditor within the meaning of the old Act is taken, on and after that day, to be an approved external examiner for the purposes of this Act until 30 June 2006, whether or not the person meets the requirements of section 3.3.51 of this Act.
- (2) A reference in section 3.3.51(e) of this Act to an examination of a trust account of a law practice or an approved clerk includes a reference to an audit

Sch. 2

Sch. 2
cl. 4.3(3)
amended by
No. 12/2007
s. 78(a).

of the trust account of a firm, legal practitioner or approved clerk under the old Act.

- (3) A person who was a member of the Australian Society of Certified Practising Accountants, the National Institute of Accountants or the Institute of Chartered Accountants Australia immediately before 1 January 1997 need not comply with paragraph (c) of the definition of *approved external examiner* in section 3.3.51 to be an approved external examiner for the purposes of this Act.
- (4) An approval of a course of education that was in force under section 187(1)(a) or (b) of the old Act immediately before the commencement day is taken, on and after that day, to be an approval of the course under section 3.3.58(1)(a) or (b) of this Act (as the case requires).
- (5) This clause applies despite anything to the contrary in section 3.3.51 of this Act.

4.4 Deficiencies in trust accounts

Sections 3.3.21, 3.3.22 and 3.3.23 of this Act apply to a deficiency in a trust account or a failure to pay or deliver trust money whether the deficiency or failure to pay or deliver relates to money received before, on or after the commencement day.

4.5 Investigations

- (1) Division 5 of Part 6 of the old Act continues to apply to any investigation in respect of which an inspector has been appointed under section 192 or 193 of the old Act before the commencement day and, for that purpose—
 - (a) a reference in that Division to the RPA, Board or Legal Ombudsman (or to the body that appointed the inspector) is taken to be a reference to the new Board.

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- (b) the new Board may recover the cost of investigation under section 197 of the old Act as if the new Board had initiated the investigation.
- (2) If the new Board recovers the cost of an investigation referred to in subclause (1)(b) that was initiated by a body that, at the relevant time, was an RPA, the new Board must account to the body or its successor in title for that cost.
- (3) An investigation may be undertaken under Division 3 of Part 3.3 of this Act in relation to a trust account or trust money received by a law practice or an approved clerk whether that account was established, or that money was received, before, on or after the commencement day.

PART 5—FIDELITY COVER

5.1 Contributions

A determination made before the commencement day by the old Board under section 201 of the old Act of a contribution payable to the Fidelity Fund that relates to any period on or after the commencement day is taken, on and after that day, to be a determination by the new Board under section 6.7.25 of this Act.

5.2 Levies

In calculating the aggregate amount by way of levy paid by a member of a contribution class for the purposes of section 6.7.32(4) of this Act, account must be taken of any levy paid by the person under section 204 of the old Act or under any previous enactment corresponding to that section.

5.3 Defaults and defalcations

- (1) Division 2 of Part 7 of the old Act continues to apply to a claim made against the Fidelity Fund under that Division before the commencement day that had not been finalised before that day as if a reference in that Division to the old Board were a reference to the new Board.
- (2) Part 3.6 of this Act applies to—
 - (a) a default occurring on or after the commencement day; and
 - (b) a default occurring before the commencement day if a claim had not been made under Division 2 of Part 7 of the old Act in respect of the default before that day.

PART 6—DISPUTES AND DISCIPLINE

6.1 Current disputes

- (1) This clause applies to a dispute referred to in Division 1 of Part 5 of the old Act if—
 - (a) the request under section 123 of the old Act was made before the commencement day; and
 - (b) the dispute had not been settled or referred to the Legal Profession Tribunal before that day.
- (2) On and after the commencement day, the dispute is to continue to be dealt with in accordance with the old Act as if—
 - (a) a reference in Division 1 of Part 5 of the old Act to the Legal Ombudsman, an RPA or the Board were a reference to the Commissioner; and

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- (b) a reference to the Legal Profession Tribunal were a reference to VCAT; and
 - (c) a reference to a conciliator were a reference to a mediator.

6.2 Current complaints

- (1) This clause applies to a complaint referred to in Division 2 of Part 5 of the old Act if—
 - (a) the complaint was made before the commencement day; and
 - (b) the complaint had not been dismissed or referred to the Legal Profession Tribunal before that day.
- (2) On and after the commencement day the complaint is to be dealt with by the Commissioner under Part 5 of the old Act as if—
 - (a) the complaint had been made to the Legal Ombudsman; and
 - (b) a reference in Division 2 of Part 5 of the old Act to the Legal Ombudsman, an RPA or the Board were a reference to the Commissioner; and
 - (c) a reference to the Legal Profession Tribunal were a reference to VCAT.
- (3) Nothing in Division 4 of Part 5 of the old Act applies to a complaint to which this clause applies.

6.3 Current investigations

- (1) This clause applies to an investigation referred to in Division 3 of Part 5 of the old Act that had begun but had not been completed before the commencement day.

- (2) On and after the commencement day the investigation is to be conducted by the Commissioner under Division 3 of Part 5 of the old Act as if—
 - (a) a reference in that Division to the Legal Ombudsman, an RPA or the Board were a reference to the Commissioner; and
 - (b) a reference to the Legal Profession Tribunal were a reference to VCAT.
- (3) For the purposes of an investigation referred to in subclause (2), the Commissioner may have regard to anything done by an RPA or the old Board before the commencement day.
- (4) Nothing in Division 4 of Part 5 of the old Act applies to an investigation referred to in subclause (2).

6.4 Reviews outstanding under old Act

- (1) This clause applies to a decision in respect of a complaint that was the subject of an application for a review under Division 4 of Part 5 of the old Act if the review had not been completed before the commencement day.
- (2) On and after the commencement day the Commissioner may—
 - (a) confirm the decision under review; or
 - (b) investigate the matter that was the subject of the decision under Division 3 of Part 5 of the old Act as if—
 - (i) a reference in that Division to the Legal Ombudsman, an RPA or the Board were a reference to the Commissioner; and
 - (ii) a reference to the Legal Profession Tribunal were a reference to VCAT.

6.5 Tribunal hearings

Division 5 of Part 5 of the old Act applies to a charge brought as a result of an investigation referred to in clause 6.3 or 6.4 as if a reference in that Division to the Legal Profession Tribunal were a reference to VCAT.

6.6 Complaints and investigations under this Act of prior conduct

- (1) A complaint may be made under Chapter 4 of this Act on or after the commencement day in relation to conduct of a law practice or an Australian legal practitioner occurring before that day, so long as a complaint, or a request for dispute resolution, had not been made under Part 5 of the old Act in relation to the same conduct.
- (2) An investigation may be commenced under Chapter 4 of this Act on or after the commencement day in relation to conduct of an Australian legal practitioner occurring before that day, so long as the same conduct had not been investigated before that day under Division 3 of Part 5 of the old Act.

PART 7—EXTERNAL INTERVENTION

7.1 Receivers

- (1) Division 2 of Part 9 of the old Act continues to apply to an application for the appointment of a receiver made under that Division before the commencement day but which had not been determined before that day as if the application had been made by the new Board and, for that purpose, a reference in that Division to the old Board or an RPA is taken to be a reference to the new Board.

- (2) Chapter 5 of this Act applies in relation to the receivership after the commencement day of a receiver appointed under Division 2 of Part 9 of the old Act before that day or, in accordance with subclause (1), after that day as if the receiver had been appointed under that Chapter 5.

7.2 Managers

Chapter 5 of this Act applies in relation to a manager appointed under Division 3 of Part 9 of the old Act before the commencement day as if the manager had been appointed by the Board under that Chapter 5.

PART 8—REGULATORY BODIES AND FUNDING

Division 1—Legal Profession Tribunal

8.1 Abolition of Legal Profession Tribunal

- (1) On the commencement day, the Legal Profession Tribunal is abolished and its members go out of office as members.
- (2) On the commencement day, or as soon as practicable afterwards, all records of the Legal Profession Tribunal are to be given to the President of VCAT.
- (3) A reference in any Act (other than this Act), subordinate instrument, agreement, deed or other document to the Legal Profession Tribunal must be construed as a reference to VCAT so far as the reference relates to any period on or after the commencement day and if not inconsistent with the subject-matter.

8.2 Legal Profession Tribunal members become members of VCAT

- (1) On the commencement day—
 - (a) each person who, immediately before that day was the chairperson or a deputy chairperson of the Legal Profession Tribunal becomes a Vice President of VCAT as if he or she had been appointed under section 11 of the VCAT Act;
 - (b) the person who, immediately before that day was the registrar of the Legal Profession Tribunal becomes a senior member of VCAT as if he or she had been appointed under section 13 of the VCAT Act;
 - (c) each person who, immediately before that day was a deputy registrar, advocate member, non-advocate member or lay member of the Legal Profession Tribunal becomes an ordinary member of VCAT as if he or she had been appointed under section 14 of the VCAT Act.
- (2) A person referred to in subclause (1)—
 - (a) holds office as a member of VCAT for the balance of the term of his or her appointment to the Legal Profession Tribunal or for 5 years, whichever is the lesser period;
 - (b) holds office as a member of VCAT on the same terms and conditions as applied to his or her appointment to the Legal Profession Tribunal, but may resign or be removed in accordance with the VCAT Act;
 - (c) is eligible for re-appointment to VCAT at the expiry of his or her term.

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- (3) Subclauses (1)(a) and (2)(c) apply despite anything to the contrary in section 11(2) of the VCAT Act.
 - (4) Section 21(1) of the VCAT Act does not apply to a person referred to in subclause (1)(a).
 - (5) If a person referred to in subclause (1) was, immediately before the commencement day, an officer within the meaning of the **State Superannuation Act 1988** or any corresponding previous enactment, the person continues, subject to that Act, to be an officer within the meaning of that Act while he or she continues to be a member of VCAT by virtue of this section.

8.3 Pending matters in the Legal Profession Tribunal

- (1) This clause applies if, immediately before the commencement day, a matter was pending in the Legal Profession Tribunal and—
 - (a) the Tribunal had not begun to hear the matter; or
 - (b) the Tribunal had begun to hear the matter but had not heard any evidence on a material question of fact.
- (2) VCAT is to hear and determine the matter on or after the commencement day as if—
 - (a) the matter were a proceeding commenced in VCAT; and
 - (b) the old Act continued to apply in respect of the matter (both substantively and procedurally).
- (3) For the purposes of subclause (2)—
 - (a) VCAT has all the functions and powers of the Legal Profession Tribunal under the old Act in respect of the matter (including the functions and powers of the Tribunal at first

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- instance and the functions and powers of the Full Tribunal); and
- (b) a reference in the old Act to the Tribunal is to be taken to be a reference to VCAT; and
 - (c) anything done by the Legal Profession Tribunal in relation to the matter before the commencement day is taken to have been done by VCAT; and
 - (d) if the Legal Profession Tribunal had already been constituted for the hearing and the persons who constituted it are still available, the same persons are to constitute VCAT for the purposes of the proceeding; and
 - (e) section 108 of the VCAT Act (reconstitution of Tribunal) applies to the proceeding; and
 - (f) if the Society (within the meaning of clause 1 of Schedule 2 to the old Act) was a party to the proceeding immediately before the commencement day, the Law Institute is a party to the proceeding on and after that day, and has all the functions in relation to the proceeding that the Society had under the old Act; and
 - (g) if the Bar (within the meaning of clause 1 of Schedule 2 to the old Act) was a party to the proceeding immediately before the commencement day, the Victorian Bar is a party to the proceeding on and after that day, and has all the functions in relation to the proceeding that the Bar had under the old Act.

Sch. 2
cl. 8.3(3)(e)
amended by
No. 12/2007
s. 78(b).

Sch. 2
cl. 8.3(3)(f)
inserted by
No. 12/2007
s. 78(c).

Sch. 2
cl. 8.3(3)(g)
inserted by
No. 12/2007
s. 78(c).

8.4 Part heard matters in the Legal Profession Tribunal

- (1) This clause applies if, immediately before the commencement day, a matter was pending in the Legal Profession Tribunal and the Tribunal had heard any evidence on a material question of fact.
- (2) VCAT is to hear and determine the matter on or after the commencement day as if—
 - (a) the matter were a proceeding commenced in VCAT; and
 - (b) the old Act continued to apply in respect of the matter (both substantively and procedurally).
- (3) For the purposes of subclause (2)—
 - (a) VCAT has all the functions and powers of the Legal Profession Tribunal under the old Act in respect of the matter (including the functions and powers of the Tribunal at first instance and the functions and powers of the Full Tribunal); and
 - (b) a reference in the old Act to the Tribunal is to be taken to be a reference to VCAT; and
 - (c) anything done by the Legal Profession Tribunal in relation to the matter before the commencement day is taken to have been done by VCAT; and
 - (d) without limiting paragraph (c), VCAT may have regard to any evidence given to the Legal Profession Tribunal in the matter before the commencement day; and
 - (e) if available, the same persons who constituted the Legal Profession Tribunal for the purposes of the matter are to constitute VCAT for the purposes of the proceeding; and

(f) section 108 of the VCAT Act (reconstitution of Tribunal) applies to the proceeding; and

Sch. 2
cl. 8.4(3)(f)
amended by
No. 12/2007
s. 78(d).

(g) if the Society (within the meaning of clause 1 of Schedule 2 to the old Act) was a party to the proceeding immediately before the commencement day, the Law Institute is a party to the proceeding on and after that day, and has all the functions in relation to the proceeding that the Society had under the old Act; and

Sch. 2
cl. 8.4(3)(g)
inserted by
No. 12/2007
s. 78(e).

(h) if the Bar (within the meaning of clause 1 of Schedule 2 to the old Act) was a party to the proceeding immediately before the commencement day, the Victorian Bar is a party to the proceeding on and after that day, and has all the functions in relation to the proceeding that the Bar had under the old Act.

Sch. 2
cl. 8.4(3)(h)
inserted by
No. 12/2007
s. 78(e).

8.5 VCAT may make orders of a transitional nature

- (1) If any difficulty arises in a proceeding because of the operation of this Schedule, VCAT may make any order it considers appropriate to resolve the difficulty.
- (2) VCAT may make such an order on the application of any party to the proceeding or on its own initiative.

8.6 Orders and decisions of Legal Profession Tribunal

An order or decision made by the Legal Profession Tribunal in a proceeding finally determined before the commencement day may be enforced—

- (a) in accordance with any enforcement process prescribed for or in relation to that proceeding by or under any Act as in force immediately before that day if any step had been taken in accordance with that process before that day; or
- (b) in any other case—in accordance with the VCAT Act as if it were an order of VCAT.

Division 2—Legal Practice Board

8.7 New Board succeeds old Board

- (1) On the commencement day, but subject to this clause—
 - (a) the old Board is abolished and its members go out of office as members;
 - (b) all rights, property and assets that, immediately before the commencement day, were vested in the old Board are, by force of this subclause, vested in the new Board;
 - (c) all debts, liabilities and obligations of the old Board existing immediately before that day become, by force of this subclause, debts, liabilities and obligations of the new Board;
 - (d) the new Board is, by force of this subclause, substituted as a party to any proceeding pending in any court or tribunal to which the old Board was a party immediately before that day;
 - (e) the new Board is, by force of this subclause, substituted as a party to any arrangement or contract entered into by or on behalf of the old Board as a party and in force immediately before that day;

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- (f) any reference to the old Board in any Act (other than this Act), subordinate instrument, agreement, deed or other document must be construed as a reference to the new Board, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter.
- (2) Despite anything to the contrary in subclause (1), on the commencement day all rights, obligations and liabilities of the old Board with respect to any money lodged with it under section 125 of the old Act are vested in, or become, rights, obligations or liabilities of the Commissioner and the Commissioner is substituted for the old Board in any contract or arrangement with an authorised deposit-taking institution under section 125(5) of the old Act.

8.8 Annual report

- (1) If, before the commencement day, the old Board had not prepared the report of operations and financial statements required under Part 7 of the **Financial Management Act 1994** for the financial year ending before the commencement day, the new Board must prepare that report and financial statements.
- (2) The chief executive officer of VCAT must provide any information reasonably required by the Board to enable it to make the report and financial statements required by subclause (1).

Division 3—Legal Ombudsman

8.9 Commissioner succeeds Legal Ombudsman

- (1) On the commencement day—
- (a) the office of Legal Ombudsman is abolished and the Legal Ombudsman goes out of office as such;

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- (b) subject to subclause (2), all rights, property and assets that, immediately before the commencement day, were vested in the Legal Ombudsman as Legal Ombudsman are, by force of this subclause, vested in the Commissioner;
 - (c) all debts, liabilities and obligations of the Legal Ombudsman as Legal Ombudsman existing immediately before that day become, by force of this subclause, debts, liabilities and obligations of the Commissioner;
 - (d) the Commissioner is, by force of this subclause, substituted as a party to any proceeding pending in any court or tribunal to which the Legal Ombudsman was a party as Legal Ombudsman immediately before that day;
 - (e) the Commissioner is, by force of this subclause, substituted as a party to any arrangement or contract entered into by or on behalf of the Legal Ombudsman as Legal Ombudsman as a party and in force immediately before that day;
 - (f) any reference to the Legal Ombudsman in any Act (other than this Act), subordinate instrument, agreement, deed or other document must be construed as a reference to the Commissioner, so far as it relates to any period on or after that day and if not inconsistent with the context or subject-matter.
- (2) On the commencement day, or as soon as practicable afterwards, the person who immediately before that day was the Legal Ombudsman must ensure that—

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- (a) all of the records held in the office of the Legal Ombudsman immediately before that day relating to the Legal Ombudsman's functions under Part 5 of the old Act are given to the Commissioner; and
 - (b) subject to paragraph (c), all other records held in the office of the Legal Ombudsman immediately before that day are given to the new Board; and
 - (c) all personnel records held in the office of the Legal Ombudsman immediately before that day relating to staff who do not, on that day, become employees in the office of the Commissioner, are given to the Secretary to the Department of Justice.

8.10 Annual report

- (1) If, before the commencement day, the Legal Ombudsman had not prepared the report of operations and financial statements required under Part 7 of the **Financial Management Act 1994** for the financial year ending before the commencement day, the Commissioner must prepare that report and financial statements, including the matters referred to in section 426 of the old Act.
- (2) The person who was the Legal Ombudsman immediately before the commencement day must provide any information reasonably required by the Commissioner to enable the Commissioner to make the report and financial statements required by subclause (1).

Division 4—Legal Services Board

8.11 Initial membership

- (1) The initial membership of the new Board is—
 - (a) the chairperson appointed under section 6.2.6 of this Act; and
 - (b) the members appointed under section 6.2.9 of this Act; and;
 - (c) 2 local legal practitioners appointed by the Governor in Council on the recommendation of the Attorney-General following consultation between the Attorney-General and the Law Institute; and
 - (d) one local legal practitioner appointed by the Governor in Council on the recommendation of the Attorney-General following consultation between the Attorney-General and the Victorian Bar.
- (2) The members appointed under subclause (1)(c) and (d)—
 - (a) hold office until 30 June 2006; and
 - (b) are eligible to stand for election to the new Board in accordance with Schedule 1 (including at the first election of the new Board).
- (3) This clause applies despite anything to the contrary in Part 6.2 or Schedule 1.

Division 5—RPAs

8.12 Disputed legal costs held by RPA

On the commencement day all rights, obligations and liabilities of a body that, immediately before that day, was an RPA with respect to any money lodged with the RPA under section 125 of the old Act are vested in, or become, rights, obligations or

liabilities of the Commissioner and the Commissioner is substituted for the RPA in any contract or arrangement with an authorised deposit-taking institution under section 125(5) of the old Act.

8.13 RPA to give records to Commissioner or new Board

On the commencement day, or as soon as practicable afterwards, a body that, immediately before that day, was an RPA, or its successor in title, must ensure that—

- (a) all of the records held by the RPA immediately before that day relating to the RPA's functions under Part 5 of the old Act are given to the Commissioner; and
- (b) all other records held by the RPA immediately before that day relating to the RPA's other functions under the old Act are given to the new Board.

8.14 Law Institute and Victorian Bar may be delegates or prescribed investigatory bodies

- (1) Until regulations are made for the purposes of section 6.2.19(1)(d) or section 6.3.12(2) of this Act, the Law Institute and the Victorian Bar are taken to have been prescribed by the regulations for the purposes of each of those sections.
- (2) Until regulations are made for the purposes of the definition of *prescribed investigatory body* in section 1.2.1 of this Act, the Law Institute and the Victorian Bar are taken to have been prescribed by the regulations for the purposes of that definition.
- (3) A reference in subclause (1) or (2) to the Law Institute includes a reference to an officer or employee of the Law Institute.

Sch. 2
cl. 8.14(1)
amended by
No. 18/2005
s. 19(n).

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- (4) A reference in subclause (1) or (2) to the Victorian Bar includes a reference to an officer, employee or the members of a committee of the Victorian Bar.

Division 6—Council of Legal Education and Board of Examiners

8.15 Council of Legal Education

- (1) A person who was a member of the Council of Legal Education under the old Act immediately before the commencement day continues to be a member of the Council of Legal Education under this Act on the same terms and conditions of appointment, for the balance of his or her term.
- (2) A person holding office as honorary secretary to the Council of Legal Education under section 335(3) of the old Act immediately before the commencement day continues to hold office on and after that day as if he or she had been appointed under section 6.5.6(3) of this Act.
- (3) Despite the repeal of the old Act, the Legal Practice (Admission) Rules 1999 continue in force on and after the commencement day as if they were rules made under section 2.3.12 of this Act, and may be amended or revoked accordingly.

8.16 Board of Examiners

- (1) A person who was a member of the Board of Examiners for Legal Practitioners under the old Act immediately before the commencement day continues to be a member of the Board of Examiners under this Act on the same terms and conditions of appointment, for the balance of his or her term.
- (2) Any appeal made under section 342 of the old Act that had not been determined before the commencement day is to continue to be dealt with

on and after that day as if the old Act had not been repealed.

Division 7—Liability Committee

8.17 Liability Committee

- (1) The person who, immediately before the commencement day, was chairperson of the Liability Committee under the old Act continues, on and after that day, to be the chairperson of the Liability Committee on the same terms and conditions of appointment, for the balance of his or her term, as if he or she had been appointed under section 6.6.4 of this Act.
- (2) A person who was a member of the Liability Committee under the old Act immediately before the commencement day (other than the chairperson)—
 - (a) continues, on and after that day, to be a member of the Liability Committee on the same terms and conditions of appointment; and
 - (b) ceases to be a member of the Liability Committee 3 months after the commencement day, unless he or she is appointed to the Liability Committee by the new Board under section 6.6.4 of this Act.

8.18 Insurance terms and conditions and exemptions

- (1) A determination made before the commencement day by the Liability Committee under section 228 of the old Act of terms and conditions of insurance (including premiums) that relates to any period on or after the commencement day is taken, on and after that day, to be a determination by the Liability Committee under section 3.5.6 of this Act.

- (2) An exemption given under section 229A of the old Act by the old Board that was in force immediately before the commencement day continues in force on and after that day until 30 June 2006, as if it were an exemption given by the new Board under section 3.5.7 of this Act.

8.19 Liability Fund

All money forming part of the Liability Fund under Division 2 of Part 8 of the old Act immediately before the commencement day on and from that day forms part of the Legal Practitioners' Liability Fund under Division 2 of Part 6.6 of this Act.

Division 8—Funding

8.20 Public Purpose Fund

- (1) All money forming part of the Public Purpose Fund under Division 1 of Part 16 of the old Act immediately before the commencement day on and from that day forms part of the Public Purpose Fund under Division 1 of Part 6.7 of this Act.
- (2) On the commencement day—
- (a) all money standing to the credit of the General Account under section 374 of the old Act immediately before that day is to be credited to the General Account under section 6.7.3 of this Act; and
 - (b) all money standing to the credit of the Statutory Deposit Account under section 375 of the old Act immediately before that day is to be credited to the Statutory Deposit Account under section 6.7.4 of this Act; and

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- (c) all money standing to the credit of the Legal Practice Board Account under section 376 of the old Act immediately before that day is to be credited to the General Account under section 6.7.3 of this Act; and
- (d) all money standing to the credit of the Legal Profession Tribunal Account under section 377 of the old Act immediately before that day is to be credited to the General Account under section 6.7.3 of this Act; and
- (e) all money standing to the credit of the Trust Accounts Regulation Account under section 379 of the old Act immediately before that day is to be credited to the General Account under section 6.7.3 of this Act; and
- (f) all money standing to the credit of the Law Reform and Research Account under section 383 of the old Act immediately before that day is to be credited to the Distribution Account under section 6.7.5 of this Act.
- (3) Any advance paid out of the Public Purpose Fund under section 380(5), 381(5), 382(5) or 383(3) of the old Act before the commencement day that had not been repaid before that day is repayable on or after the commencement day to the new Board in accordance with the original terms of the advance and must be paid into the Public Purpose Fund under section 6.7.1 of this Act.
- (4) If the Attorney-General has given a direction under section 383(2) or (5) of the old Act and the old Board has not complied with it before the commencement day, the direction continues in force on and after that day and the new Board

Sch. 2
cl. 8.20(4)
amended by
No. 18/2005
s. 17(3)(b).

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must pay the money as directed out of the Public Purpose Fund and debit the Distribution Account.

- (5) On or after the commencement day, the new Board must pay out of the Public Purpose Fund (and debit to the General Account) any amount to which a body that, immediately before the commencement day was an RPA, would be entitled to be paid under section 379 of the old Act in respect of functions performed by that body before the commencement day and which it has not been paid, and for that purpose, the new Board has all the powers of the old Board under that section.
- (6) On or after the commencement day, the new Board may pay out of the Public Purpose Fund (and debit to the General Account) any refund under section 23A of the old Act in respect of applications referred to in that section made before the commencement day, and for that purpose, the new Board has all the powers of the old Board under that section.
- (7) For the purposes of section 6.7.11 of this Act, a reference to an amount previously paid to a person or body includes a reference to an amount paid to the person or body under Division 1 of Part 16 of the old Act.
- (8) For the purposes of section 6.7.21(2) of this Act—
 - (a) a reference in that section to an amount previously paid under subsection (1) of that section includes a reference to an amount paid out of the Fidelity Fund into the Public Purpose Fund under section 390 of the old Act; and

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- (b) a reference in that section to the cumulative amount paid into the Fidelity Fund under section 6.7.13 of this Act includes a reference to an amount paid into the Fidelity Fund under section 385 of the old Act.
- (9) Despite anything to the contrary in Part 6.7 of this Act, and in addition to any other amounts payable from the Public Purpose Fund under this Act, there are to be paid out of that fund, and debited to the General Account, any amounts determined by the Attorney-General for the costs incurred in establishing the new Board, the Commissioner and the office of the Commissioner, and the transfer of functions from the Legal Profession Tribunal to VCAT.

8.21 Fidelity Fund

- (1) All money forming part of the Legal Practitioners' Fidelity Fund under section 388 of the old Act immediately before the commencement day on and from that day forms part of the Fidelity Fund under Division 2 of Part 6.7 of this Act.
- (2) On and after the commencement day, the new Board must pay from the Fidelity Fund to a body that, immediately before the commencement day, was an RPA, or its successor in title, an amount to which the body would have been entitled under section 388(3)(b) of the old Act for anything done by the body before the commencement day.

8.22 Legal Practice Fund

All money forming part of the Legal Practice Fund under section 391 of the old Act immediately before the commencement day on and from that day forms part of the Public Purpose Fund under Division 1 of Part 6.7 of this Act.

8.23 Payments to RPAs

- (1) On or after the commencement day, the new Board must pay a body that, immediately before the commencement day, was an RPA, or its successor in title, an amount to which the body would have been entitled under section 392 of the old Act for anything done by the body before the commencement day.
- (2) A payment referred to in subclause (1) is to be made from the Public Purpose Fund and debited to the General Account.

Sch. 2 Pt 9
(Heading and
cl 9.1)
repealed by
No. 15/2012
s. 15(10).

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PART 10—GENERAL

10.1 References to old Act

A reference to the old Act in any Act (other than this Act) or in any subordinate instrument, agreement, deed or other document must be construed as a reference to this Act, so far as the reference relates to any period on or after the commencement day and if not inconsistent with the subject-matter.

10.2 Time limits

- (1) If the time for doing any act was fixed by or under the old Act, that time continues to apply on and after the commencement day in relation to any act that was required or permitted to be done, and could have been done, before that day and, unless the contrary intention appears, nothing in this Act or the VCAT Act has the effect of extending or abridging the time for doing that act.

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- (2) The time for doing an act to which subclause (1) applies may be extended or abridged on or after the commencement day in accordance with any provision made by or under the old Act as in force immediately before that day as if that provision had not been repealed, but subject to anything in this Schedule requiring a reference in that provision to be construed in a particular way.

**PART 11—JUSTICE LEGISLATION (FURTHER
AMENDMENT) ACT 2006**

Sch. 2 Pt 11
(Heading and
cls 11.1–11.3)
inserted by
No. 79/2006
s. 44.

11.1 Law firms

The definition of *law firm* in section 1.2.1 as amended by section 32 of the **Justice Legislation (Further Amendment) Act 2006** is taken to have applied at all times on and after the commencement day.

11.2 Conditions on local practising certificates

Sections 2.4.3(6) and 2.4.3(7) are taken to have applied at all times on and after the commencement day.

11.3 Supervised legal practice

- (1) The definition of *practical legal training* in section 1.2.1 as amended by section 32(c) of the **Justice Legislation (Further Amendment) Act 2006** is taken to have applied at all times on and after the commencement day.
- (2) Section 2.4.18 as amended by section 34 of the **Justice Legislation (Further Amendment) Act 2006** is taken to have applied at all times on and after the commencement day.

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- (3) A reference in section 2.4.18(5)(b) to an Australian practising certificate includes a reference to a practising certificate granted under the old Act or any preceding corresponding enactment, or under the law of another jurisdiction.

Sch. 2 Pt 12
(Heading and
cl. 12.1)
inserted by
No. 12/2007
s. 79.

PART 12—LEGAL PROFESSION AMENDMENT ACT 2007

12.1 Practising certificates

- (1) Section 2.4.3(8) does not apply in relation to an interstate practising certificate granted or renewed before the commencement day.
- (2) Subclause (1) has effect only in relation to the period commencing on the commencement day and ending on 30 June 2007.
- (3) In this clause—

commencement day means the day after the day on which the **Legal Profession Amendment Act 2007** received the Royal Assent.

Sch. 2 Pt 13
(Heading and
cls 13.1-13.3)
inserted by
No. 46/2007
s. 26.

**PART 13—LEGAL PROFESSION AMENDMENT
(EDUCATION) ACT 2007**

13.1 Council of Legal Education

- (1) A person who was a member of the Council immediately before 1 July 2008 (other than the Chief Justice or the chairperson of the Board) goes out of office at the beginning of that day unless he or she is appointed in accordance with subclause (2).

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- (2) An appointment may be made to the Council under section 6.5.1 as amended by the **Legal Profession Amendment (Education) Act 2007** at any time after the commencement of this Part but any such appointment made before 1 July 2008 takes effect on 1 July 2008.

13.2 Board of Examiners

- (1) A person who was a member of the Board of Examiners immediately before 1 July 2008 goes out of office at the beginning of that day unless he or she is appointed in accordance with subclause (2).
- (2) An appointment may be made to the Board of Examiners under section 6.5.9 as amended by the **Legal Profession Amendment (Education) Act 2007** at any time after the commencement of this Part but any such appointment made before 1 July 2008 takes effect on 1 July 2008.

13.3 Health assessments

Part 2.5, as amended by the **Legal Profession Amendment (Education) Act 2007**, insofar as it relates to an applicant for admission to the legal profession under this Act, applies only to a person who lodges his or her application for admission with the Board of Examiners on or after 1 July 2008.

PART 14—PROFESSIONAL STANDARDS AND LEGAL PROFESSION ACTS AMENDMENT ACT 2008

Sch. 2 Pt 14
(Heading and
cl. 14.1)
inserted by
No. 81/2008
s. 24.

14.1 Dealing with complaints

Sections 4.2.8(3) and 4.2.10(3), as inserted by section 23 of the **Professional Standards and Legal Profession Acts Amendment Act 2008**,

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apply to a complaint made on or after the commencement of that section 23.

Sch. 2 Pt 15
(Heading and
cls 15.1, 15.2)
inserted by
No. 15/2012
s. 14.

**PART 15—LEGAL PROFESSION AND PUBLIC NOTARIES
AMENDMENT ACT 2012**

15.1 Disciplinary complaints

Section 4.2.10(1)(f), as substituted by section 8 of the **Legal Profession and Public Notaries Amendment Act 2012**, applies to a disciplinary complaint made before, on or after the day on which section 8 of that Act comes into operation.

15.2 Investigations under Division 3 of Part 4.4

- (1) Section 4.4.12(1), as amended by section 9 of the **Legal Profession and Public Notaries Amendment Act 2012**, applies to an investigation under Division 3 of Part 4.4 commenced before, on or after the day on which section 9 of that Act comes into operation.
- (2) Sections 4.4.12A, 4.4.12B and 4.4.12C, as inserted by section 10 of the **Legal Profession and Public Notaries Amendment Act 2012**, apply to an investigation under Division 3 of Part 4.4 commenced before, on or after the day on which section 10 of that Act comes into operation.

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 16 November 2004

Legislative Council: 2 December 2004

The long title for the Bill for this Act was "to improve the regulation of the legal profession, principally by implementing national model provisions for the regulation of the profession and establishing new bodies responsible for regulating it, to facilitate the regulation of legal practice on a national basis across State and Territory borders, to repeal the **Legal Practice Act 1996**, to make consequential amendments to Acts and for other purposes."

The **Legal Profession Act 2004** was assented to on 14 December 2004 and sections 3.5.2(7)(9) and 8.1.1(1) came into operation on 15 December 2004; section 1.1.2(2); remainder of Act on 12 December 2005: Government Gazette 1 December 2005 page 2781.

Legal Profession Act 2004
No. 99 of 2004

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Legal Profession Act 2004** by Acts and subordinate instruments.

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 113) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: Ss 4–17, 19 on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 32) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Justice Legislation (Miscellaneous Amendments) Act 2006, No. 14/2006

Assent Date: 11.4.06
Commencement Date: S. 29 on 12.4.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 17) on 14.12.04: s. 2(2)(g)
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Conveyancers Act 2006, No. 75/2006

Assent Date: 10.10.06
Commencement Date: S. 190 on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: Ss 32–44 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006,
No. 80/2006**

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 59) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

Legal Profession Amendment Act 2007, No. 12/2007

Assent Date: 8.5.07
Commencement Date: S. 6(1) on 27.3.06: s. 2(2); ss 4, 5, 7–47, 50–79 on
9.5.07: s. 2(1); ss 48, 49 on 8.11.07: s. 2(5); s. 6(2) on
1.7.08: s. 2(4)
Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 38) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

Legal Profession Amendment (Education) Act 2007, No. 46/2007

Assent Date: 25.9.07
Commencement Date: Ss 19–27 on 26.9.07: s. 2(1); ss 4–18 on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 36) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

Courts Legislation Amendment (Associate Judges) Act 2008, No. 24/2008

Assent Date: 3.6.08
Commencement Date: S. 84 on 17.12.08: Special Gazette (No. 377) 16.12.08
p. 1
Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

**Courts Legislation Amendment (Costs Court and Other Matters) Act 2008,
No. 78/2008**

Assent Date: 11.12.08
Commencement Date: Ss 10–14 on 31.12.09: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

**Professional Standards and Legal Profession Acts Amendment Act 2008,
No. 81/2008**

Assent Date: 11.12.08
Commencement Date: Ss 23, 24 on 12.12.08: s. 2
Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

Legal Profession Act 2004
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Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 77) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Fair Work (Commonwealth Powers) Amendment Act 2009, No. 74/2009

Assent Date: 1.12.09
Commencement Date: S. 15 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 33) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Justice Legislation Further Amendment Act 2010, No. 64/2010

Assent Date: 28.9.10
Commencement Date: S. 21 on 12.12.05: s. 2(4); s. 22 on 1.7.11: s. 2(5)
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Civil Procedure and Legal Profession Amendment Act 2011, No. 1/2011

Assent Date: 29.3.11
Commencement Date: S. 11 on 30.3.11: s. 2
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Consumer Acts Amendment Act 2011, No. 36/2011

Assent Date: 23.8.11
Commencement Date: S. 37 on 24.8.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Legal Profession and Public Notaries Amendment Act 2012, No. 15/2012

Assent Date: 3.4.12
Commencement Date: Ss 3–15 on 2.5.12: Special Gazette (No. 140) 1.5.12 p. 1
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

Associations Incorporation Reform Act 2012, No. 20/2012

Assent Date: 1.5.12
Commencement Date: S. 226(Sch. 5 item 17) on 26.11.12: Special Gazette (No. 384) 20.11.12 p. 1
Current State: This information relates only to the provision/s amending the **Legal Profession Act 2004**

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No. 99 of 2004

Endnotes

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12

Commencement Date: S. 239(Sch. 6 item 24) on 1.7.12:Special Gazette
(No. 214) 28.6.12 p. 1

Current State: This information relates only to the provision/s
amending the **Legal Profession Act 2004**

Endnotes

3. Explanatory Details

No entries at date of publication.