

South Australia

# Legal Practitioners Act 1981

An Act to regulate the practice of law; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Legal Practitioners Act 1981*.

### **5—Interpretation**

- (1) In this Act, unless the contrary intention appears—

***amend*** includes—

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

***associate***—see section 5A;

***Australian Government Solicitor*** means the Australian Government Solicitor constituted under the *Judiciary Act 1903* of the Commonwealth and includes any person authorised by or under that Act to act in the name of the Australian Government Solicitor;

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

***Chief Executive*** of the Society means the principal executive officer employed by the Society and includes any person who is, for the time being, discharging the duties of that officer;

***Chief Justice*** means the Chief Justice of the Supreme Court and includes an acting Chief Justice of the Supreme Court;

***the combined trust account*** means the *Legal Practitioners Combined Trust Account* maintained by the Society under Part 4;

***Commissioner*** means the person holding or acting in the office of Legal Profession Conduct Commissioner under Part 6 Division 2;

***community legal centre*** means a body that provides legal services to the community, or a section of the community, on a non-profit basis, and includes the Aboriginal Legal Rights Movement, but does not include the Legal Services Commission;

***conduct*** of a legal practitioner includes any act or omission by the legal practitioner;

***conviction*** includes a formal finding of guilt;

**corporation** means—

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (b) any other body corporate, or body corporate of a kind, prescribed by the regulations;

**corresponding authority** means—

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

**corresponding disciplinary body** means—

- (a) a court or tribunal having powers or functions under a corresponding law that correspond to any of the powers and 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 legal practitioners; or
  - (ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction in relation to legal practitioners;

**corresponding law** means the following:

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

**the Council** means the council of the Law Society;

**director**, in relation to—

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth—means a director as defined in section 9 of that Act; or
- (b) any other body corporate, or body corporate of a kind, prescribed by the regulations—means a person specified or described in the regulations;

**document** means book, file, account, paper (including a security or any instrument) or any record of information, whether in writing or accessible only through the use of a computer or other device;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**elective officer** of the Society means an officer of the Society elected by the members of the Society in accordance with its rules;

**Fidelity Fund** means the Legal Practitioners Fidelity Fund maintained by the Society under Part 4;

**fiduciary or professional default** in relation to a legal practitioner means—

- (a) any defalcation, misappropriation or misapplication of trust money received in the course of legal practice by the legal practitioner or an incorporated legal practice or firm of which the legal practitioner is a member; or
- (b) any wrongful or negligent act or omission occurring in the course of the practice of the legal practitioner, or an incorporated legal practice or firm of which the legal practitioner is a member,

whether committed by the legal practitioner, an employee of the legal practitioner or any other person;

**foreign country** means—

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

**foreign law** means law of a foreign country;

**home jurisdiction**—see section 5B;

**incorporated legal practice** has the same meaning as in Schedule 1;

**interstate legal practitioner** means a natural person—

- (a) who has been admitted as a legal practitioner in a participating State; and
- (b) who holds an interstate practising certificate issued or given by a regulatory authority in that State or is entitled by admission or otherwise to practise the profession of the law in that State; and
- (c) who is not a local legal practitioner; and
- (d) whose principal place of legal practice is not this State;

**interstate practising certificate** means a certificate or other form of authorisation issued by a regulatory authority in a participating State that confers an authority to practise the profession of the law in that State, whether that authority is general or subject to limitations or conditions;

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

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

**law practice** means—

- (a) a legal practitioner who is a sole practitioner; or

- (b) a firm of—
  - (i) legal practitioners; or
  - (ii) incorporated legal practices; or
  - (iii) legal practitioners and incorporated legal practices; or
- (c) an incorporated legal practice that practises on its own account; or
- (d) a community legal centre;

***the Law Society*** or ***the Society*** means *The Law Society of South Australia*;

***legal costs*** includes disbursements;

***legal practitioner*** or ***practitioner*** means—

- (a) a person duly admitted and enrolled as a barrister and solicitor of the Supreme Court; or
- (ab) an interstate legal practitioner who practises the profession of the law in this State;

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

***legal profession rules*** means—

- (a) the Society's professional conduct rules;
- (b) any other rules prescribed by the regulations for the purposes of this definition;

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

***local legal practitioner*** means a legal practitioner who holds a practising certificate;

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

***LPEAC*** means the *Legal Practitioners Education and Admission Council* established under Division 1 of Part 2A;

***Master*** means a master of the Supreme Court;

***money*** includes any instrument for the payment of money that may be negotiated by an ADI;

***mortgage financing*** means facilitating a loan secured by mortgage by—

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

but does not include the provision of legal advice or the preparation of an instrument;

***officer*** means—

- (a) in relation to a company within the meaning of the *Corporations Act 2001* of the Commonwealth—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;

***participating State*** means a State in which a corresponding law is in force;

***partner*** includes—

- (a) an incorporated legal practice that engages in legal practice as a member of a firm of incorporated legal practices or a firm of legal practitioners and incorporated legal practices; and
- (b) a legal practitioner director of an incorporated legal practice referred to in paragraph (a);

***practise the profession of the law***, in relation to a legal practitioner or incorporated legal practice—see section 21 (and ***engage in legal practice*** and ***practise*** have the same meaning);

***practising certificate*** means a practising certificate issued under Part 3;

***principal***—see section 5A;

***professional mentoring agreement***—see section 90B;

***professional misconduct***—see section 69;

***professional obligations*** of a legal practitioner or an incorporated legal practice 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 legal practitioners;

***Regulator*** means—

- (a) in relation to this jurisdiction—the Commissioner; or
- (b) in relation to another jurisdiction—the person or body defined as the Regulator in relation to that jurisdiction by the corresponding law of that jurisdiction or, if there is no such definition, the person or body with functions or powers under the corresponding law that correspond to those of the Commissioner under this Act;

***regulatory authority*** means—

- (a) in relation to this State—the Supreme Court, LPEAC, the Society, the Commissioner or the Tribunal;
- (b) in relation to a participating State—a person or body in that State having a function conferred by legislation relating to regulation of legal practice that corresponds to a function exercised under this Act by a regulatory authority of this State;
- (c) in relation to another jurisdiction—
  - (i) if there is only 1 regulatory authority for the other jurisdiction—that regulatory authority, unless subparagraph (iii) applies; or

- (ii) if there are separate regulatory authorities for the other jurisdiction for different branches of the legal profession or for persons who practise in a particular style of legal practice—the regulatory authority relevant to the branch or style concerned, unless subparagraph (iii) applies; or
- (iii) if the regulations specify or provide for the determination of 1 or more regulatory authorities for the other jurisdiction either generally or for particular purposes—the regulatory authority or authorities specified or determined in accordance with the regulations;

***related body corporate*** means—

- (a) in relation to a company within the meaning of the *Corporations Act 2001* of the Commonwealth—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;

***serious offence*** means an offence, whether committed in or outside this State, that is—

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

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

- (a) 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) presenting (as a debtor) 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 presenting (as a debtor) such a petition under section 55 of that Act; or
- (c) 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) being convicted of a serious offence or a tax offence, whether or not—
  - (i) the offence was committed in or outside this State; or

- (ii) the offence was committed while the person was practising the law as a 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 a legal practitioner who practices the profession of the law on his or her own account;

***solicitor*** includes attorney and proctor;

***spouse***—a person is the spouse of another if they are legally married;

***State*** includes a Territory;

***the statutory interest account*** means the Statutory Interest Account maintained by the Society under Part 4;

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

***the Tribunal*** means the *Legal Practitioners Disciplinary Tribunal* established under Part 6;

***trust account*** has the meaning given in Schedule 2;

***trust money*** has the meaning given in Schedule 2;

***unqualified person*** means a person (including a body corporate) who is not entitled to practise the profession of the law;

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

***unsatisfactory professional conduct***—see section 68.

- (2) If under a corresponding law an interstate legal practitioner's right to practise does not derive from the holding of an interstate practising certificate, then a reference in this Act to an interstate practising certificate, or the endorsement of a condition on an interstate practising certificate, is to be read as a reference to the practitioner's right to engage in legal practice under that law or to the imposition of a condition on that right.
- (3) For the purposes of this Act, a legal practitioner establishes an office in a State when the practitioner offers or provides services in the course of legal practice to the public in the State from an office maintained by the practitioner, or by the employer or a partner of the practitioner, or by a corporation of which the practitioner is a director, for the purpose in the State.
- (4) Nothing in this Act or the legal profession rules affects the exercise by the Director of Public Prosecutions, the Crown Solicitor or a prosecutor instructed by the Director of Public Prosecutions or the Crown Solicitor of any discretion in the context of a prosecution.
- (6) The Governor may, by proclamation, declare a law of another State to be a corresponding law and may, by subsequent proclamation, vary or revoke any such declaration.

## 5A—Terms relating to associates and principals of law practices

- (1) For the purposes of this Act, an *associate* of a law practice is—
  - (a) a 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 firm of legal practitioners); or
    - (iii) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
    - (iiia) a legal practitioner director in an incorporated legal practice that is a member of the law practice (in the case of a firm of incorporated legal practices or a firm of legal practitioners and incorporated legal practices); or
    - (iv) an employee of, or consultant to, the law practice; or
  - (b) an agent of the law practice who is not a legal practitioner; or
  - (c) an employee of the law practice who is not a legal practitioner; or
  - (d) an Australian-registered foreign lawyer who is a partner in the law practice; 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 *legal practitioner associate* of a law practice is an associate of the practice who is a legal practitioner.
- (3) For the purposes of this Act, a *principal* of a law practice is a 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 firm of legal practitioners or of incorporated legal practices or of both); or
  - (c) a legal practitioner director in the law practice (in the case of an incorporated legal practice that is a law practice); or
  - (ca) a legal practitioner director of an incorporated legal practice that is a member of the law practice (in the case of a firm of incorporated legal practices); or
  - (d) a legal practitioner who is generally responsible for the provision of legal services by the law practice (in the case of a community legal centre).

## 5B—Home jurisdiction

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

## **6—Fusion of legal profession**

- (1) It is Parliament's intention that the legal profession should continue to be a fused profession of barristers and solicitors.
- (2) The voluntary establishment of a separate bar is not, however, inconsistent with that intention, nor is it inconsistent with that intention for legal practitioners voluntarily to confine themselves to practice as solicitors.
- (3) An undertaking by a legal practitioner to practise solely as a barrister or to practise solely as a solicitor is contrary to public policy and void (but this subsection does not extend to an undertaking contained in or implied by a contract or professional engagement to provide legal services of a particular kind for or on behalf of another person).
- (3a) Nothing in this section affects the validity of any undertaking given to the Supreme Court by a legal practitioner who receives the title "Queen's Counsel", "King's Counsel" or "Senior Counsel" relating to the use of that title in the course of legal practice.
- (4) Despite this section, an association of legal practitioners may be lawfully constituted on the basis that membership is confined to legal practitioners who practise solely in a particular field of legal practice or in a particular way.
- (5) No contractual or other requirement may be lawfully imposed on a legal practitioner to join an association of legal practitioners.



## **Part 2—The Law Society of South Australia**

### **Division 1—Establishment and administration of the Society**

#### **7—Incorporation and powers of Society**

- (1) The society formerly known as the "Law Society of South Australia Incorporated" continues in existence as a body corporate under the name *The Law Society of South Australia*.
- (2) The Society—
  - (a) has perpetual succession and a common seal; and
  - (b) is capable of suing and being sued.
- (2a) Where an apparently genuine document purports to bear the common seal of the Society, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Society was duly affixed to that document.
- (2b) The Society has the powers of a natural person.
- (3) The membership of the Society consists of all persons who have been admitted to membership of the Society, and who, for the time being, continue to be members of the Society, in accordance with the rules of the Society.

#### **8—Officers and employees of Society**

- (1) The following officers of the Society will be elected in accordance with the rules of the Society:
  - (a) the President; and
  - (ab) the President-Elect; and
  - (b) the Vice-Presidents (the number of whom will be determined by the rules); and
  - (c) such other elective officers as may be stipulated by the rules.
- (2) There will be a Chief Executive of the Society.
- (3) The Chief Executive and any other employees of the Society will be appointed and hold office on such terms and conditions as the Society may determine.

#### **9—Council of Society**

- (1) There will be a council of the Society.
- (2) The Council consists of—
  - (a) the Attorney-General; and
  - (b) the President of the Society; and
  - (ba) the President-Elect of the Society; and
  - (c) the Vice-Presidents of the Society; and
  - (d) the other elective officers of the Society; and

- (e) any persons who are, in accordance with the rules of the Society, members of the Council *ex officio*; and
- (f) any persons who are co-opted in accordance with the rules of the Society to membership of the Council; and
- (g) such other persons as are elected, in accordance with the rules of the Society, to be members of the Council.

## **10—Validation of acts of Council**

No act or proceeding of the Council is invalid by virtue of any vacancy in its membership or any defect in the appointment or election of any member of the Council.

## **11—Management of Society's affairs**

- (1) Subject to this Act, and to the rules of the Society, the Council has the management of all the affairs of the Society, and may exercise all the powers of the Society.
- (2) Subject to this Act, the Council may delegate any of its powers to—
  - (a) a committee consisting of such persons as the Council thinks fit; or
  - (ab) a company that is a subsidiary of the Society within the meaning of section 46 of the *Corporations Act 2001* of the Commonwealth; or
  - (b) any officer or employee of the Society.
- (3) A delegation under this section is revocable at will and does not derogate from the power of the Council to act itself in any matter.

## **12—Minutes of proceedings**

- (1) The Society must cause minutes of the proceedings of—
  - (a) all general meetings of the members of the Society; and
  - (b) all meetings of the Council,to be entered in a book or books kept for the purpose.
- (2) An apparently genuine document purporting to be verified by the Chief Executive and—
  - (a) purporting to be—
    - (i) minutes entered in pursuance of this section; or
    - (ii) an extract from any such minutes; or
  - (b) purporting to be—
    - (i) minutes of the proceedings of any committee established by the Council; or
    - (ii) an extract from any such minutes,

will be accepted in any legal proceedings as evidence of the proceedings to which the document relates.



- (3) Subject to subsection (4), the Society must at the request of any member of the Society produce for inspection the minutes of—
  - (a) any general meeting of the Society; and
  - (b) any meeting of the Council; and
  - (c) any meeting of any committee established by the Council.
- (4) The Society is not required to produce minutes for inspection under subsection (3) if the minutes are of a confidential nature and have been entered in a minute book kept specifically for the purpose of recording minutes of such a nature.
- (5) In any legal proceedings it will be presumed, in the absence of proof to the contrary, that any meeting of—
  - (a) the members of the Society; or
  - (b) the Council; or
  - (c) any committee established by the Council,was duly convened and constituted, and that the proceedings of any such meeting were regularly conducted.
- (6) An apparently genuine document purporting to be under the hand of the President, the President-Elect, a Vice-President, or the Chief Executive, of the Society and to certify that a person named in the document has been duly elected or appointed to a specified office in the Society, or in the employment of the Society, will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

### **13—Society's right of audience**

- (1) The Society may appoint a legal practitioner to appear before any court, commission or tribunal in any matter affecting the interests of the Society or the members of the Society, or in which the Society is directly or indirectly concerned or interested.
- (2) Without limiting the generality of subsection (1), a practitioner so appointed is entitled to appear—
  - (a) in any proceedings instituted by the Society; or
  - (b) in any proceedings in which a person seeks admission as a legal practitioner; or
  - (c) in any proceedings in which it is alleged that a practitioner is guilty of unsatisfactory professional conduct or professional misconduct; or
  - (d) in any proceedings under this Act.
- (3) The Society must, as soon as practicable after appointing a legal practitioner to appear before a court, commission or tribunal under subsection (1), notify the Attorney-General of the appointment.

### **14—Rules of Society**

- (1) The Society, in general meeting, may make rules—
  - (a) to define the objects of the Society; or

- (b) to provide for the election of a President, the President-Elect, Vice-Presidents and other elective officers of the Society and to define the conditions on which they hold office; or
  - (c) to provide for the election of members of the Council, and to define the conditions on which they hold office; or
  - (d) to provide for the filling of casual vacancies occurring in elective offices of the Society and in the membership of the Council; or
  - (e) to regulate the meetings and proceedings of, and the conduct of business by, the Council, or any committee to which it has delegated any of its powers; or
  - (f) to provide for the execution of documents by or on behalf of the Society; or
  - (g) to define the terms and conditions on which a person may be admitted to membership of the Society and to provide for the resignation, expulsion and re-admission of members of the Society; or
  - (h) to prescribe, and provide for the payment of, subscriptions by members of the Society; or
  - (i) to provide for the administration of any fund or ADI account under the control of the Society; or
  - (j) to make any other provision relating to the administration of the Society.
- (2) A member of the Society, or a legal practitioner, is entitled, on payment of such fee as may be prescribed by rules under this section, to receive a printed copy of the rules in force for the time being under this section.
- (3) The Attorney-General may, by instrument in writing, certify that a rule made by the Society under this section relates only to the internal administration of the Society and where such a certificate has been given under this section, section 10 of the *Subordinate Legislation Act 1978* does not apply in respect of the rule.

## **Division 2—The Litigation Assistance Fund**

### **14A—The Litigation Assistance Fund**

- (1) The Society is authorised and required to administer the Litigation Assistance Fund in accordance with the Deed of Trust.
- (2) The Society may, despite any other law, enter into an agreement with a party to legal proceedings to whom assistance is provided in accordance with the Deed of Trust, under which the party is required to make a payment to the Society, for the credit of the Litigation Assistance Fund, if those legal proceedings are resolved in favour of that party.
- (3) In this section—
- Deed of Trust** means the Deed of Trust dated 2 April 1992 under which the Litigation Assistance Fund is established, and includes that Deed as amended from time to time.
- (4) Any—
- (a) communication between the Society, or any officer, employee or agent of the Society, and an applicant for assistance from the Litigation Assistance Fund; or

- (b) document in the possession of the Society concerning the affairs of an applicant for assistance from the Fund,
- is privileged from production or disclosure in the same way and to the same extent as if it were a communication between legal practitioner and client.

### **Division 3—Reporting obligations**

#### **14AB—Certain matters to be reported by Society**

- (1) If—
  - (a) the Society appoints an investigator or external examiner under Schedule 2 or a supervisor or a manager under Division 9 of Part 3; or
  - (b) the Society determines that a claim made against the Fidelity Fund is valid; or
  - (c) a matter comes to the attention of the Society such that the Society decides that there are reasonable grounds to suspect that a legal practitioner or former legal practitioner has committed an act or omission that would constitute unsatisfactory professional conduct or professional misconduct,the Society must, as soon as practicable, provide a report to the Commissioner in relation to the matter.
- (2) The Society must comply with any reasonable request of the Commissioner for further information in relation to the subject matter of a report under this section.



## Part 2A—The Legal Practitioners Education and Admission Council and the Board of Examiners

### Division 1—The Legal Practitioners Education and Admission Council

#### 14B—Establishment of LPEAC

- (1) The *Legal Practitioners Education and Admission Council* (**LPEAC**) is established.
- (2) LPEAC—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued.
- (3) Where an apparently genuine document purports to bear the common seal of LPEAC, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of LPEAC was duly affixed to that document.
- (4) LPEAC has the powers of a natural person.
- (5) LPEAC consists of—
  - (a) the Chief Justice; and
  - (b) the Attorney-General; and
  - (c) three judges (each of whom is either a judge of the Supreme Court or a judge of the Federal Court) appointed by the Chief Justice; and
  - (d) the Dean (or acting Dean) of the faculty or school of law at The University of Adelaide; and
  - (e) the Dean (or acting Dean) of the faculty or school of law at The Flinders University of South Australia; and
  - (ea) the Dean (or acting Dean) of the faculty or school of law at the University of South Australia; and
  - (eb) the presiding member of the Board of Examiners; and
  - (f) a law student nominated in a manner determined by the Chief Justice and appointed by the Chief Justice; and
  - (g) a legal practitioner appointed by the Attorney-General; and
  - (h) four legal practitioners appointed by the Society (at least one of whom will, at the time of appointment, be a legal practitioner who is practising predominantly as a barrister).
- (6) The Chief Justice and the Attorney-General may each appoint a person to act as his or her deputy at any meeting of LPEAC that the Chief Justice or the Attorney-General is unable to attend.
- (7) The Chief Justice will be the presiding member of LPEAC.

## **14C—Functions of LPEAC**

- (1) LPEAC has the following functions:
  - (a) to make rules prescribing—
    - (i) the qualifications for admission of a person as a barrister and solicitor of the Supreme Court; and
    - (ii) the qualifications for the issue and renewal of practising certificates, including requirements for post-admission education, training or experience; and
    - (iii) the categories (if any) of practising certificate to be issued by the Supreme Court under Part 3 and the limitations on the practice of the profession of the law that apply in relation to those categories;
  - (b) to participate in the development of uniform national standards relating to the qualifications necessary for persons practising the profession of the law;
  - (c) to keep the effectiveness of legal education and training courses and post-admission experience under review so far as is relevant to qualifications for legal practice;
  - (d) to perform any other functions assigned to LPEAC by this Act or any other Act.
- (2) A rule made under this section may leave a matter to be determined according to the discretion of LPEAC or the Supreme Court.
- (3) Subject to subsection (4), a rule requiring legal practitioners to undertake further education or training or obtain further experience may only be made under this section with the concurrence of the Attorney-General.
- (4) A rule requiring legal practitioners who have been practising the profession of the law for less than two years to undertake further education or training or obtain further experience within a time specified in the rule, or providing for extensions of the specified time to be granted, may be made without the concurrence of the Attorney-General.

## **14D—Conditions of membership**

- (1) Subject to this Act, an appointed member of LPEAC (other than the member appointed as a law student) will be appointed for a term of office of three years and, on the expiration of a term of office, is eligible for reappointment.
- (2) The member of LPEAC appointed as a law student will hold office for a term of one year.
- (3) The Chief Justice may remove an appointed member of LPEAC from office for—
  - (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.
- (4) The office of an appointed member of LPEAC becomes vacant if the member—
  - (a) dies; or

- (b) completes a term of office; or
  - (c) resigns by written notice addressed to the Chief Justice; or
  - (d) in the case of a member who is a legal practitioner—ceases to be a legal practitioner or is disciplined under this Act or by the Supreme Court or under an Act or law of another State or Territory of the Commonwealth for regulating the conduct of persons practising the profession of the law; or
  - (e) in the case of a member appointed as a law student—ceases to be a law student; or
  - (f) is removed from office pursuant to subsection (3).
- (5) On the office of a member of LPEAC becoming vacant, a person may be appointed in accordance with this Act to the vacant office but, where the office of a member of LPEAC becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

#### **14E—Procedures of LPEAC**

- (1) Eight members of LPEAC (one of whom must be the presiding member or a judicial member of LPEAC) constitute a quorum of LPEAC, and no business may be transacted at a meeting of LPEAC unless a quorum is present.
- (2) A decision carried by a majority of the votes cast by the members present at a meeting of LPEAC is a decision of LPEAC.
- (3) Subject to this section, each member of LPEAC is entitled to one vote on any matter arising for decision by LPEAC and, in the event of an equality of votes, the person presiding at the meeting is entitled to a second or casting vote.
- (4) The member of LPEAC appointed as a law student is not to be counted for the purposes of determining whether a quorum is present and is not entitled to vote on any matter arising for decision by LPEAC.
- (5) The presiding member will preside at any meeting of LPEAC at which the member is present and, in the absence of the presiding member, a judicial member chosen in a manner determined by the Chief Justice, will preside at the meeting.
- (6) Subject to this Act, the business of LPEAC may be conducted in such manner as LPEAC may determine.

#### **14F—Validity of acts and immunity of members**

- (1) An act or proceeding of LPEAC is not invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.
- (2) No liability attaches to a member of LPEAC for any act or omission by the member, or by LPEAC, in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties, under this Act.

#### **14G—Advisory Committees**

- (1) LPEAC may appoint such advisory committees as LPEAC considers necessary for the purpose of providing LPEAC with expert advice on any matter to be determined by LPEAC.

- (2) A member of an advisory committee holds office on terms and conditions determined by LPEAC.
- (3) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by LPEAC; or
  - (b) insofar as the procedure is not determined under paragraph (a), as determined by the relevant committee.

#### **14H—Annual report**

- (1) LPEAC must, on or before 31 October in each year, prepare and present to the Attorney-General a report on the operations of LPEAC for the last financial year.
- (2) The Attorney-General must, within 12 sitting days after receiving a report from LPEAC, cause copies of the report to be laid before both Houses of Parliament.

### **Division 2—The Board of Examiners**

#### **14I—Establishment of Board of Examiners**

- (1) The *Board of Examiners* is established.
- (2) The Board of Examiners will consist of 15 members appointed by the Chief Justice of whom—
  - (a) one must be a Master of the Supreme Court; and
  - (b) two must be persons nominated by the Attorney-General; and
  - (c) 12 must be legal practitioners.
- (3) A member of the Board of Examiners holds office on terms and conditions determined by the Chief Justice.
- (4) The Chief Justice may appoint a person to be the deputy of the member of the Board of Examiners who is a Master of the Supreme Court and the deputy may, in the absence of the member, act in his or her place.
- (5) The member of the Board of Examiners who is a Master of the Supreme Court will be the presiding member.

#### **14J—Functions of Board of Examiners**

The Board of Examiners has the functions and powers conferred on it under this Act or by LPEAC.

#### **14K—Procedures of Board of Examiners**

- (1) Five members of the Board of Examiners (one of whom must be the presiding member or the presiding member's deputy) constitute a quorum of the Board, and no business may be transacted at a meeting of the Board of Examiners unless a quorum is present.
- (2) Subject to this Act, the procedures to be observed in relation to the conduct of the business of the Board of Examiners will be—
  - (a) as determined by LPEAC; or



- (b) insofar as the procedure is not determined under paragraph (a), as determined by the Board.

**14L—Validity of acts and immunity of members**

- (1) An act or proceeding of the Board of Examiners is not invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.
- (2) No liability attaches to a member of the Board of Examiners for any act or omission by the member, or by the Board, in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties, under this Act.



## Part 3—The practice of the law

### Division 1—Admission and enrolment of legal practitioners

#### 15—Entitlement to admission

- (1) A person who satisfies the Supreme Court—
- (a) that he or she is a fit and proper person to practise the profession of the law; and
  - (c) that—
    - (i) he or she has complied with—
      - (A) the rules of the Supreme Court relating to the admission of barristers and solicitors of the Supreme Court; and
      - (B) the rules made by LPEAC under this Act prescribing the qualifications for admission as a barrister and solicitor of the Supreme Court; or
    - (ii) insofar as there has been non-compliance with those rules, he or she should be exempted from such compliance,
- is entitled to be admitted and enrolled as a barrister and solicitor of the Supreme Court.
- (1a) The Supreme Court must refer each application for admission and enrolment by a person whose name has been removed from the roll of legal practitioners maintained under this Act to the Attorney-General, the Commissioner and the Society, each of whom is entitled to be heard by the Court on the application in accordance with the rules of the Court.
- (2) The Supreme Court must refer each application for admission and enrolment to the Board of Examiners for its report and recommendation on the application.
- (3) The Board of Examiners may refer any matter raised by an application to LPEAC for its advice or, if the rules so provide, its determination.
- (4) The Board of Examiners must, on or before the day on which its report and recommendation on an application is provided to the Supreme Court, provide the applicant with—
- (a) a copy of the report and recommendation; and
  - (b) if the recommendation is that the application be rejected—a statement of the reasons for the recommendation.
- (5) In this section—

**Board of Examiners** means the Board of Examiners established under Division 2 of Part 2A.

## **Division 2—Practising certificates**

### **16—Issue of practising certificate**

- (1) Where a legal practitioner who has been admitted and enrolled as a barrister and solicitor of the Supreme Court (not being a legal practitioner who has been suspended from practice) applies to the Supreme Court for a practising certificate, the Court will, subject to this Act, issue a practising certificate in the practitioner's name.
- (2) If LPEAC has made rules prescribing different categories of practising certificate and a legal practitioner has applied for a particular category of certificate under subsection (1), the practising certificate issued by the Supreme Court in the practitioner's name may be of that category.
- (5) An application for a practising certificate must be accompanied by the prescribed fee and levy.
- (6) If LPEAC has made rules prescribing different categories of practising certificate, the regulations may prescribe different fees and levies for different categories of certificate.

### **17—Restriction on issue of practising certificates in certain cases**

- (1) If, for a period exceeding one month, a legal practitioner has not held a practising certificate, the Supreme Court may, on application for a practising certificate, require the practitioner to furnish evidence satisfying it that the practitioner—
  - (a) has not practised the profession of the law without holding a practising certificate; or
  - (b) has not committed any other act that might constitute a proper ground for disciplinary action.
- (2) Where an applicant for a practising certificate has, without lawful excuse, practised the profession of the law while not holding a practising certificate, the Supreme Court may require the applicant to pay a prescribed fine before it issues a practising certificate to the applicant.
- (3) The Supreme Court may, in any case that it considers appropriate, issue a practising certificate that has effect from a date prior to the date of issue of the certificate.

### **17A—Conditions as to training etc**

- (1) A practising certificate will, if the rules made by LPEAC under this Act so require, be issued or renewed subject to conditions determined by LPEAC—
  - (a) requiring the holder of the certificate to undertake or obtain further education, training and experience required or determined under the rules; and
  - (b) limiting the rights of practice of the holder of the certificate until that further education, training and experience is completed or obtained.
- (2) LPEAC may, on such terms as it thinks fit, determine that such conditions will not apply, either wholly or in part, in relation to any practitioner or practitioners of a particular class.

- (3) If the holder of a practising certificate issued or renewed subject to conditions under subsection (1) fails to satisfy LPEAC, in accordance with the rules, of compliance with the conditions, LPEAC may determine—
- (a) that further conditions (determined by LPEAC) are to be imposed; or
  - (b) that the practising certificate is to be cancelled, or is not to be renewed, and no new practising certificate is to be issued to the person until stipulated conditions have been complied with,
- (and a determination under this subsection takes effect on a date fixed by LPEAC).
- (4) LPEAC may delegate any of its functions or powers under this section to the Board of Examiners.
- (5) A delegation under this section—
- (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not prevent LPEAC from acting in any matter.
- (6) A decision of LPEAC or the Board of Examiners under this section may be appealed against to the Supreme Court by the person in relation to whom the decision was made or the Attorney-General or the Society.
- (7) On such an appeal, the Supreme Court—
- (a) may confirm, vary or reverse the decision of LPEAC or the Board of Examiners; and
  - (b) may make any consequential or ancillary order.
- (8) For the purposes of this section insofar as it relates to a legal practitioner who is admitted and enrolled as a notary public under the *Notaries Public Act 2016*, a reference to rules made by LPEAC includes rules made by LPEAC under that Act.

## **18—Term and renewal of practising certificates**

- (1) Subject to this Act, the Supreme Court may issue a practising certificate for such period (not exceeding 12 months) as the Court thinks fit.
- (2) Subject to this Act, the Supreme Court will, on receipt of due application for the renewal of a practising certificate made before the date of expiration of the practising certificate, renew the practising certificate and the practising certificate then, subject to this Act, remains in force for the period stated in the practising certificate as renewed (which must not exceed 12 months).
- (2a) If the Supreme Court is satisfied that any particulars appearing on a practising certificate are incorrect, the Court may cancel the practising certificate and issue a replacement practising certificate.
- (3) Where a practising certificate that has been suspended under this Act for a period or until the happening of some event expires before the end of that period or before the happening of that event, the practising certificate may not be renewed until the expiration of that period or the happening of that event (as the case may be).

## **19—Insurance requirements**

- (1) Where a scheme under section 52 is in force requiring legal practitioners to be insured against liabilities that may arise in the course of, or in relation to, legal practice—
  - (a) the Supreme Court cannot issue or renew a practising certificate unless the applicant produces evidence to the satisfaction of the Court that the applicant has obtained the insurance against such liabilities required by the scheme for the term for which the certificate is to be issued or renewed; and
  - (b) if, at any time during the term of a practising certificate so issued or renewed, the holder of the certificate ceases to be insured against such liabilities as required by the scheme, the practising certificate will be taken to be suspended until the holder of the certificate obtains such insurance.
- (2) This section does not apply in relation to a legal practitioner of a class excluded by regulation from the provisions of this section.

## **20—Register of practising certificates**

- (1) The Supreme Court must cause a register of practising certificates to be kept.
- (2) A member of the public may inspect the register of practising certificates kept under this section.

## **20AA—Endorsement of conditions on practising certificates**

- (1) If, in accordance with this Act, a regulatory authority of this or any participating State makes a determination or order—
  - (a) imposing conditions on, or requiring the endorsement of conditions on, a legal practitioner's practising certificate; or
  - (b) varying or revoking conditions on, or requiring the variation or revocation of conditions on, a legal practitioner's practising certificate,the Supreme Court may record or give effect to the determination or order by revoking the practising certificate currently held by the legal practitioner and issuing the legal practitioner with a new practising certificate in the appropriate form.
- (2) A regulatory authority must notify the Supreme Court of the making of a determination or order referred to in subsection (1).
- (3) If a determination or order is made imposing, varying or revoking conditions on a practising certificate, the determination or order will be taken to have effect from the date it is made, or from a subsequent date specified in the determination or order, and not from the date of issue of a new practising certificate under this section.

## **Division 2A—Amendment, suspension or cancellation of practising certificates**

### **20AB—Application of Division**

This Division does not apply in relation to matters referred to in Division 2B.

**20AC—Grounds for amending, suspending or cancelling practising certificate**

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

- (a) the holder of the certificate is not a fit and proper person to hold the certificate;
- (b) if a condition of the certificate is that the holder of the certificate is or has been limited to legal practice specified in the certificate—the holder of the certificate is engaging in legal practice that the holder is not entitled to engage in under this Act.

**Note—**

Such conditions could be imposed under section 17A(1)(b) or by the Commissioner or the Tribunal under Part 6. A particular category of certificate may also limit the holder of the certificate to specified legal practice.

**20AD—Amending, suspending or cancelling practising certificates**

- (1) The Supreme Court may, on the application of the Attorney-General, the Society or the Commissioner, make an order amending, suspending or cancelling a practising certificate if the Court considers that a ground exists for the amendment, suspension or cancellation.
- (2) An application under this section—
  - (a) must be served on the holder of the certificate in accordance with the rules of the Supreme Court; and
  - (b) must—
    - (i) specify the order sought by the applicant (including details of any amendment or suspension period proposed in the application); and
    - (ii) state the ground for seeking the proposed order; and
    - (iii) invite the holder to make written representations to the Court, within a time specified by the Court of not less than 7 days and not more than 28 days, as to why the order should not be made.
- (3) If, after considering all written representations made within the specified time and, in its discretion, written representations made after the specified time, the Supreme Court considers that a ground exists to—
  - (a) make an order amending, suspending or cancelling the certificate as proposed in the application; or
  - (b) make an order for the amendment or suspension of the certificate that is less onerous than the order proposed in the application,the Court may make the order.
- (4) If the Supreme Court makes an order amending, suspending or cancelling the practising certificate, the Court must give the holder a written notice about the order setting out—
  - (a) the terms of the order; and
  - (b) the reasons for the order.

**Note—**

Under some provisions of this Act, a practising certificate is taken to be suspended by force of the provision. See, for example, section 19(1) and Schedule 1 clause 12(2).

This section does not derogate from the power of LPEAC to cancel a practising certificate under section 17A.

**20AE—Operation of amendment, suspension or cancellation of practising certificate**

- (1) This section applies if an order is made to amend, suspend or cancel a practising certificate under section 20AD.
- (2) Subject to subsections (3) and (4), the amendment, suspension or cancellation of the practising certificate takes effect on the later of the following:
  - (a) the day notice of the order is given to the holder of the certificate;
  - (b) the day specified in the notice.
- (3) If the practising certificate is amended, suspended or cancelled because the holder of the certificate has been convicted of an offence—
  - (a) the Supreme Court may, on the application of the holder, order that the operation of the amendment, suspension or cancellation of the practising certificate be stayed until—
    - (i) the end of the time to appeal against the conviction; and
    - (ii) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends; and
  - (b) the amendment, suspension or cancellation does not have effect during any period in respect of which the stay is in force.
- (4) If the practising certificate is amended, suspended or cancelled because the holder has been convicted of an offence and the conviction is quashed—
  - (a) the amendment or suspension ceases to have effect when the conviction is quashed; or
  - (b) the cancellation ceases to have effect when the conviction is quashed and the certificate is restored as if it had merely been suspended.

**20AF—Revocation of amendment, suspension or cancellation of practising certificate**

- (1) The holder of a practising certificate that has been amended, suspended or cancelled under section 20AD may make written representations to the Registrar of the Supreme Court about the amendment, suspension or cancellation and the Court must consider the representations.
- (2) The Supreme Court may revoke the amendment, suspension or cancellation at any time, whether or not in response to any written representations made to it by the holder.



## **Division 2B—Special powers in relation to practising certificates—show cause events**

### **20AG—Applicant for practising certificate—show cause event**

- (1) This section applies if—
  - (a) a person is applying for a 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 Supreme Court a written statement, in accordance with any prescribed requirements—
  - (a) setting out particulars of 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 practising certificate.
- (3) However, the applicant need not provide a statement under subsection (2) if the person (as a previous applicant for a practising certificate or as the holder of a practising certificate previously in force) has previously provided to the Supreme Court—
  - (a) a statement under this section; or
  - (b) a notice and statement under section 20AH,  
explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to hold a practising certificate.
- (4) A notice or written statement provided to the Supreme Court under this section must be served by the applicant on the Commissioner and the Society, each of whom may make written representations to the Court in relation to the holder of the practising certificate within the time, and in accordance with the procedure, prescribed by rules of the Court.

### **20AH—Holder of practising certificate—show cause event**

- (1) This section applies to a show cause event that happens in relation to the holder of a practising certificate.
- (2) The holder must provide to the Supreme Court both of the following:
  - (a) within 7 days after the happening of the event—notice, in the form approved by the Court, 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 practising certificate.
- (3) If a written statement is provided after the 28 days mentioned in subsection (2)(b), the Supreme Court may accept the statement and take it into consideration.

- (4) A notice and written statement provided to the Supreme Court under this section must be served by the holder on the Commissioner and the Society, each of whom may make written representations to the Court in relation to the holder of the practising certificate within the time, and in accordance with the procedure, prescribed by rules of the Court.

### **20AI—Refusal, amendment, suspension or cancellation of practising certificate—failure to show cause**

- (1) The Supreme Court may refuse to issue or renew, or may amend, suspend or cancel, a practising certificate if the applicant or holder—
- (a) is required by section 20AG or 20AH 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 20AG or 20AH but the Court 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 practising certificate.
- (1a) If an applicant for, or holder of, a practising certificate has provided a written statement in accordance with section 20AG or 20AH, the Supreme Court may make an order imposing conditions on the practising certificate—
- (a) relating to the legal practice of the applicant or holder; or
  - (b) requiring that the applicant or holder, within a specified time, complete further education or training, or receive counselling, of a specified type.
- (2) For the purposes of this section only, a written statement accepted by the Supreme Court under section 20AH(3) is taken to have been provided in accordance with section 20AH.
- (3) If the Supreme Court makes a determination under this section, the Court must, as soon as practicable, give the applicant or holder written notice of the determination.

## **Division 2C—Further provisions relating to practising certificates**

### **20AJ—Immediate suspension of practising certificate**

- (1) This section applies, despite Division 2A and Division 2B, if the Supreme Court considers, on application by the Attorney-General, the Society or the Commissioner, or on the Court's own initiative, that it is necessary in the public interest to immediately suspend a practising certificate on—
- (a) any of the grounds on which the certificate could be suspended or cancelled under Division 2A; or
  - (b) the ground of the happening of a show cause event in relation to the holder; or
  - (c) any other ground that the Court considers warrants suspension of the certificate in the public interest,

whether or not any action has been taken or commenced under Division 2A or Division 2B in relation to the holder.

- (2) The Supreme Court may, by written notice given to the holder, immediately suspend the practising certificate until the earlier of the following:
  - (a) the time at which the Court informs the holder of the Court's decision by notice under section 20AD;
  - (b) the end of the period of 56 days after the notice is given to the holder under this section.
- (3) The notice under this section must—
  - (a) include a statement of—
    - (i) the decision to suspend the practising certificate; and
    - (ii) the reasons for the decision; and
  - (b) state that the practitioner may make written representations to the Supreme Court about the suspension.
- (4) The holder may make written representations to the Supreme Court about the suspension, and the Court must consider the representations.
- (5) The Supreme Court may revoke the suspension at any time, whether or not in response to any written representations made to it by the holder.

## **20AK—Surrender and cancellation of practising certificate**

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

## **Division 3—Entitlement to practise etc**

### **21—Entitlement to practise**

- (1) A natural person must not practise the profession of the law, or hold himself or herself out, or permit another to hold him or her out, as being entitled to practise the profession of the law unless the person—

- (a) is a local legal practitioner; or
- (b) is an interstate legal practitioner.

Maximum penalty: \$50 000.

- (2) Without limiting the generality of subsection (1), but subject to subsection (3), a person practises the profession of the law, if acting for fee or reward on behalf of some other person he or she—
  - (a) prepares any will or other testamentary instrument; or
  - (b) prepares an instrument creating, transferring, assigning, modifying or extinguishing any estate or interest in real or personal property; or
  - (c) prepares any instrument relating to the formation of a body corporate, any amendment to the constitution, rules or regulations of a body corporate, any prospectus or take-over scheme relating to a body corporate, or any instrument affecting the rights of shareholders or debenture holders in a body corporate or any scheme of arrangement in respect of a body corporate; or

- (d) prepares any other instrument creating, transferring, assigning, modifying or extinguishing any right, power or liability at law or in equity; or
  - (e) represents any party to proceedings in a court or tribunal.
- (3) This section does not prevent—
  - (a) an employee whose employer is a party to an instrument or otherwise entitled to prepare an instrument and who is acting in the ordinary course of employment from preparing the instrument provided that no separate charge is made by the employer or the employee for the preparation of the instrument; or
  - (b) an unqualified person from charging a fee for the preparation of a bill of sale, stock mortgage or lien over wool or fruit to which the person is the party in whose favour the security is given or an instrument varying or discharging a bill of sale, stock mortgage or lien over wool or fruit to which the person is such a party; or
  - (c) an unqualified person from charging a fee for the preparation of a mortgage over land to which the person is the party in whose favour the security is given, or an instrument varying or discharging a mortgage over land to which the person is such a party, provided that the mortgage or other instrument is prepared by a legal practitioner or conveyancer registered under the *Conveyancers Act 1994*; or
  - (d) an unqualified person from charging a fee for the preparation of an instrument provided that—
    - (i) the instrument is prepared by a legal practitioner in the employment of that unqualified person; and
    - (ii) the legal practitioner has been in the employment of that unqualified person continuously since 1 July, 1980; or
  - (da) an unqualified person from reproducing, or completing the standard variables of, a pro forma loan instrument for fee or reward for an ADI or other commercial lending institution provided that—
    - (i) the substantive terms and conditions of the loan instrument are modified only by the parties or a legal practitioner or, where authorised by this or any other Act, by a conveyancer registered under the *Conveyancers Act 1994*; and
    - (ii) the pro forma loan instrument is an approved Lands Titles Office document or has been prepared by a legal practitioner or, where authorised by this or any other Act, by a conveyancer registered under the *Conveyancers Act 1994*; or
  - (e) an agent who has been commissioned to sell goods or let them out on hire, or to contract for the performance of services from preparing a contract for the sale or hire of goods or the provision of services provided that the agent is remunerated only by salary or commission and no separate charge is made by the agent or the principal for the preparation of the contract; or
  - (f) an unqualified person from engrossing an instrument for fee or reward; or

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- (g) an unqualified person from representing a party to proceedings in a court or tribunal for fee or reward, if the person is authorised by or under the Act by which the court or tribunal is constituted, or any other Act, to do so; or
  - (i) an unqualified person who is an employee or officer of an association of employers or employees from representing the association or any of its members in proceedings brought pursuant to an Act relating to industrial conciliation or arbitration provided that the unqualified person (as distinct from the association of which the person is an employee or officer) makes no charge for providing the representation; or
  - (j) an unqualified person who is an employee of a body corporate that is a party to proceedings brought pursuant to an Act relating to industrial conciliation or arbitration from representing the body corporate in the proceedings; or
  - (k) an unqualified person who was on 2 March, 1981, carrying on the business of representing parties to proceedings brought pursuant to an Act relating to industrial conciliation and arbitration from continuing to carry on that business; or
  - (l) an unqualified person from preparing, for fee or reward, any instrument relating to the transfer of shares or securities issued, or made available, by a body corporate; or
  - (m) an agent registered under the *Land Agents Act 1994* from preparing an instrument (other than an instrument registrable under the *Real Property Act 1886*) relating to the sale and purchase of any land or business that the agent has been commissioned to sell or buy, provided that the instrument is prepared by the agent personally or by a sales representative lawfully employed by the agent and no charge (apart from the commission payable to the agent in respect of the transaction) is made for the preparation of the instrument; or
  - (n) an agent registered under the *Land Agents Act 1994* from preparing for fee or reward—
    - (i) a tenancy agreement relating to residential premises—
      - (A) under which a rental not exceeding a maximum prescribed for the purposes of this subparagraph is payable; or
      - (B) in respect of which the agent has approved professional indemnity insurance; or
    - (ii) a tenancy agreement relating to non-residential premises arising from a transaction in respect of which the agent has acted as agent—
      - (A) under which a rental not exceeding a maximum prescribed for the purposes of this subparagraph is payable; or
      - (B) in respect of which the agent has approved professional indemnity insurance,

provided that the instrument is prepared by the agent personally or by a sales representative lawfully employed by the agent; or
  - (o) a conveyancer registered under the *Conveyancers Act 1994* from preparing for fee or reward—

- (i) an instrument registrable under the *Real Property Act 1886*, the *Community Titles Act 1996* or the *Strata Titles Act 1988*; or
  - (ii) an instrument that creates or records a bill of sale, stock mortgage or lien over wool or fruit; or
- (p) a conveyancer registered under the *Conveyancers Act 1994* from preparing for fee or reward—
  - (i) a contract for the sale and purchase of land or a business;
  - (ii) a tenancy agreement;
  - (iii) an assignment of the benefit of a contract for the sale and purchase of land or a business or of a tenancy agreement;
  - (iv) an instrument that arises from, and is incidental to, a contract, agreement or assignment of the kind mentioned in subparagraph (i), (ii) or (iii); or
- (q) an agent registered under the *Land Agents Act 1994*, being the employer of a legal practitioner or conveyancer registered under the *Conveyancers Act 1994* from charging a fee for the preparation of an instrument of a kind mentioned in paragraph (o) or (p) where—
  - (i) the instrument is prepared by the legal practitioner or conveyancer; and
  - (ii) the agent is authorised by the *Land and Business (Sale and Conveyancing) Act 1994* to charge a fee for the preparation by the legal practitioner or conveyancer of instruments registrable under the *Real Property Act 1886*; or
- (r) a notary public admitted and enrolled under the *Notaries Public Act 2016* acting in the ordinary course of business from preparing an instrument for fee or reward; or
- (s) an officer or employee of a body corporate authorised by a special Act of Parliament of this State to administer the estates of deceased persons from preparing a will or other testamentary instrument for fee or reward provided that, if the body corporate or a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) is to be named as the executor, or one of the executors, of the will or instrument, any commission or other remuneration that will, or might, become payable in consequence of that appointment must be disclosed to the person on whose instructions the will or instrument is to be prepared; or
- (sa) an officer or employee of a trustee company from providing for fee or reward traditional trustee company services (within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth); or
- (u) an unqualified person from serving any process for fee or reward where the person is authorised or permitted by statute to do so; or
- (v) a clerk employed by a legal practitioner from serving any process for fee or reward; or

- (w) the preparation for fee or reward of an opinion on a question of law by a member of the faculty of law of a university provided that the opinion is prepared at the request of a legal practitioner, the Attorney-General of the State or of the Commonwealth, the Crown Solicitor or the Australian Government Solicitor or the Director of Public Prosecutions; or
  - (x) the preparation for fee or reward of any prescribed instrument or the performance for fee or reward of any prescribed service.
- (3a) Subsection (1) does not apply to the practice of foreign law by an Australian-registered foreign lawyer in accordance with Schedule 1A.
- (4) For the purposes of this Act—
- (a) a person practises the profession of the law, or holds himself or herself out as entitled to practise the profession of the law, if the person does so personally, or through the agency or instrumentality of some other person;
  - (b) a person acts for fee or reward if the person acts for, or in expectation of, a pecuniary benefit or material advantage;
  - (ba) a person prepares an instrument if the person takes instructions for the preparation of such an instrument;
  - (c) a person represents a party to proceedings before a court or tribunal if the person—
    - (i) prepares, on behalf of that party, any legal process relating to the proceedings; or
    - (ii) takes instructions from or gives advice to that party in relation to the conduct of the proceedings; or
    - (iii) takes, on behalf of that party, any other step in the proceedings;
  - (d) an employed legal practitioner who provides legal advice, or legal services of a kind mentioned in subsection (2), for or on behalf of his or her employer or clients of his or her employer practises the profession of the law.
- (4a) In proceedings for an offence against subsection (1), a certificate purporting to be signed by the Chief Executive and stating that a person is not a local legal practitioner or not an interstate legal practitioner is, in the absence of proof to the contrary, prima facie evidence of that fact.

- (5) In this section—

***approved professional indemnity insurance*** means insurance—

- (a) that has been approved by the Attorney-General; or
- (b) that is of a class or kind that has been approved by the Attorney-General;

***business*** means a business as defined by the *Land and Business (Sale and Conveyancing) Act 1994*;

***loan instrument*** means a loan contract, mortgage, mortgage discharge, guarantee, or other instrument arising from, or incidental to, a loan transaction;

***member*** in relation to an association whose members include another association includes a member of that other association;

**tribunal** includes a royal commission, the Independent Commissioner Against Corruption, the Deputy Commissioner or an examiner conducting an examination under the *Independent Commissioner Against Corruption Act 2012* and an arbitrator who is a judge, special magistrate or legal practitioner;

**trustee company** means a trustee company within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth.

## **22—Practising while under suspension etc**

If a legal practitioner—

- (a) practises the profession of the law, or holds him or herself out as being entitled to practise the profession of the law, while his or her right to do so is under suspension; or
- (b) contravenes or fails to comply with any conditions imposed on the practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) by order of the Tribunal or the Supreme Court,

the practitioner is guilty of an offence.

Maximum penalty: \$10 000.

## **23—Unlawful representation**

- (1) If any person (whether or not a legal practitioner) with a view to attracting business, falsely pretends to be the holder of any degree, diploma or certificate in law or adopts any style that leads reasonably to the false inference that the person holds any degree, diploma or certificate in law, the person is guilty of an offence.

Maximum penalty: \$10 000.

- (2) If a person (whether or not a legal practitioner) holds out an unqualified person as being entitled to practise the profession of the law, the person is guilty of an offence.

Maximum penalty: \$10 000.

- (3) If a legal practitioner—

- (a) permits or aids an unqualified person to practise the profession of the law, or acts in collusion with an unqualified person so as to enable that person to practise the profession of the law; or
- (b) enters into an agreement or an arrangement with an unqualified person under which the unqualified person is entitled to share in the profits arising from the practice of the law (otherwise than as permitted by this Act, or as may be authorised by the Society),

the practitioner is guilty of an offence.

Maximum penalty: \$10 000.

## **23AA—Employment of disqualified person**

- (1) Subject to this section, if a legal practitioner is a party to an agreement or arrangement to employ or engage, in connection with the practitioner's legal practice—

- (a) a person whose practising certificate is under suspension (whether a practising certificate under this Act or an interstate practising certificate); or



- (b) a person whose name has been struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act (unless the person has been re-admitted),

the practitioner is guilty of an offence.

Maximum penalty: \$10 000.

- (2) It is a defence to a charge of an offence under subsection (1) to prove that the defendant did not know, and could not reasonably be expected to have known, that the person's practising certificate was under suspension or that the person's name had been struck off a roll of legal practitioners.
- (3) On application, the Tribunal may authorise a legal practitioner to be a party to an agreement or arrangement of a kind referred to in subsection (1), subject to conditions (if any) specified by the Tribunal.
- (4) An application for such an authorisation may be made to the Tribunal by—
  - (a) a legal practitioner; or
  - (b) a person whose practising certificate is under suspension or whose name has been struck off a roll of legal practitioners.
- (5) The Tribunal may grant such an authorisation in its discretion but only if satisfied—
  - (a) that the person to be employed or engaged will not practise the profession of the law; and
  - (b) that granting the authorisation on the specified conditions (if any) is not likely to create a risk to the public.
- (6) For the purposes of a hearing of an application under this section, the Tribunal is constituted of a panel of three of its members chosen by the presiding member (one of whom may be the presiding member).
- (7) The Tribunal must give to the Commissioner, and to any person on whose application a hearing is to be held, not less than seven days written notice of the time and place at which it intends to conduct the hearing, and must afford the Commissioner, and any such person, a reasonable opportunity to call and give evidence, to examine witnesses, and to make submissions to the Tribunal.
- (8) Subject to this section, sections 80, 84, 84B, 85, 86 and 88 apply to a hearing of an application under this section in the same way as to proceedings before the Tribunal under Part 6.
- (9) Where an application is granted by the Tribunal, and the Tribunal or the Supreme Court is satisfied that an appeal against the authorisation has been instituted, or is intended, it may suspend the operation of the authorisation until the determination of the appeal.
- (10) Where the Tribunal has suspended the operation of an authorisation under subsection (9), the Tribunal may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.
- (11) A legal practitioner must comply with any conditions imposed on an authorisation by the Tribunal or the Supreme Court.

Maximum penalty: \$10 000.

- (12) A legal practitioner is not guilty of an offence against this section in relation to an agreement or arrangement to which the practitioner is a party at the commencement of this section if—
- (a) the agreement or arrangement is authorised under this section on an application made within 12 months after that commencement; and
  - (b) the legal practitioner complies with any conditions imposed on the authorisation.

### **Division 3A—Provisions relating to interstate legal practice**

#### **23A—Interstate legal practitioners to be officers of Court**

An interstate legal practitioner who practises the profession of the law in this State is an officer of the Supreme Court.

#### **23B—Limitations or conditions on practice under laws of participating States**

- (1) An interstate legal practitioner must, in practising the profession of the law in this State—
- (a) observe any limitations in relation to the practitioner's entitlement to practise the profession of the law that apply under the law of a State in which the practitioner is admitted as a legal practitioner; and
  - (b) comply with any condition in respect of his or her practice imposed by a regulatory authority in a participating State.
- (2) A condition imposed on a person by a regulatory authority in this or any other participating State has no effect for the purposes of subsection (1) to the extent (if any) to which it is inconsistent with a more onerous condition imposed on the person by another regulatory authority.
- (3) An interstate legal practitioner practising the profession of the law in this State must give written notice to the Supreme Court of any conditions or limitations imposed on the practitioner's interstate practising certificate—
- (a) in relation to conditions or limitations imposed before the practitioner commenced practising the profession of the law in this State—within 14 days of the practitioner commencing practising the profession of the law in this State; or
  - (b) in relation to conditions or limitations imposed after the practitioner commenced practising the profession of the law in this State—within 28 days of the imposition of the conditions or limitations.
- (4) A contravention of or non-compliance with this section is professional misconduct.

#### **23C—Additional conditions on practice of interstate legal practitioners**

- (1) A regulatory authority of this State may, by notice in writing, at any time impose any condition on the practice of the profession of the law by an interstate legal practitioner in this State that it might impose by attaching a condition to the practising certificate of a local legal practitioner, as a result of disciplinary action or otherwise, and may at any time vary or revoke any such condition.

- (2) A regulatory authority of this State must not impose a condition that is more onerous than it would attach to the practising certificate of a local legal practitioner in the same or similar circumstances.

### **23D—Notification of establishment of office required**

- (1) An interstate legal practitioner who establishes an office in this State must, within the period after establishing the office prescribed by the regulations, give written notice to the Supreme Court.

Maximum penalty: \$10 000.

- (2) A notice under this section must contain the particulars prescribed by the regulations and be accompanied by the prescribed fee.
- (3) A person giving notice to the Supreme Court under this section must furnish to the Supreme Court any evidence or information that the Supreme Court may require in relation to the practitioner's legal practice in this or any other State.
- (4) If an interstate legal practitioner fails to give notice, or furnish evidence or information, in accordance with this section, the Supreme Court may, on application by the Commissioner, the Attorney-General or the Society, suspend the practitioner's right to practise the profession of the law in this State until this section is complied with.
- (5) The Supreme Court must give notice of a suspension imposed under subsection (4) to any regulatory authority that is authorised to seek or impose a corresponding suspension in a State in which the practitioner is admitted as a legal practitioner.
- (6) The Supreme Court must cause a register to be kept of the interstate legal practitioners who have given notice under this section.
- (7) A member of the public may inspect the register kept under subsection (6).

## **Division 3B—Provisions relating to community legal centres**

### **23E—Community legal centres**

- (1) A community legal centre does not contravene this Act merely because—
  - (a) it employs, or otherwise uses the services of, legal practitioners to provide legal services; or
  - (b) it has a contractual relationship with a person to whom those legal services are provided.
- (2) The regulations may modify or exclude the application of a provision of this Act to community legal centres or legal practitioners employed by community legal centres.
- (3) This section has effect despite anything to the contrary in this Act.

### **23F—Obligations and privileges of practitioners who are officers or employees**

- (1) A legal practitioner who provides legal services on behalf of a community legal centre—
  - (a) is not excused from compliance with professional obligations as a legal practitioner, or any obligations as a legal practitioner under any law; and
  - (b) does not lose the professional privileges of a legal practitioner.

- (2) The regulations may make further provision in relation to the application of the professional obligations and professional privileges of a legal practitioner for the purposes of subsection (1).
- (3) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because a legal practitioner is providing legal services on behalf of a community legal centre.
- (4) A legal practitioner who is providing legal services on behalf of a community legal centre may, for any proper purpose, disclose a matter to the officers of the centre (whether or not those officers are legal practitioners) and such disclosure will be taken not to affect the operation of client legal privilege (or other legal professional privilege).

### **23G—Undue influence**

A person must not cause or induce or attempt to cause or induce a legal practitioner who is providing legal services on behalf of a community legal centre to contravene this Act, the regulations, the legal profession rules or his or her professional obligations as a legal practitioner.

Maximum penalty: \$50 000.

### **23H—Application of legal profession rules**

The legal profession rules, so far as they apply to legal practitioners, also apply to legal practitioners who provide legal services on behalf of a community legal centre, unless the rules otherwise provide.

### **23I—Costs**

If legal assistance has been provided to a person by a community legal centre, the centre is subrogated to the rights of the assisted person to costs in respect of that legal assistance.

## **Division 4—Provisions regulating legal practice by corporations**

### **24—Application of Schedule 1**

The provisions set out in Schedule 1 apply in relation to a corporation that engages in legal practice in this jurisdiction.

## **Division 4A—Provisions regulating the practise of foreign law**

### **24A—Application of Schedule 1A**

The provisions set out in Schedule 1A apply in relation to the practise of foreign law in this jurisdiction.

## **Division 5—Provisions regulating trust money and trust accounts**

### **25—Application of Schedule 2**

The provisions set out in Schedule 2 apply to law practices in respect of trust money and associated matters as specified in clause 4 of the Schedule.

## **Division 6—Delivery up of legal papers**

### **39—Delivery up of legal papers**

- (1) A court may, on the application of any person, order a person to whom this section applies to deliver up documents—
  - (a) held by the person; or
  - (b) relating to proceedings taken or work done by the person on behalf of the applicant.
- (2) The powers conferred by subsection (1) may be exercised notwithstanding the existence of a lien on the documents.
- (3) An order may be made under this section on such terms and conditions as the court thinks fit and, in particular, on conditions protecting the rights of the person against whom the order is made to costs for legal work done by the person on behalf of the applicant.
- (4) This section applies to—
  - (a) a legal practitioner; and
  - (b) a former legal practitioner; and
  - (c) an Australian-registered foreign lawyer; and
  - (d) a former Australian-registered foreign lawyer; and
  - (e) an incorporated legal practice.

## **Division 7—Authority of a legal practitioner to act on behalf of a person of unsound mind**

### **40—Authority of legal practitioner or foreign lawyer to act on behalf of person of unsound mind**

- (1) The authority of a legal practitioner or Australian-registered foreign lawyer to act on behalf of a person is not abrogated by reason only of the fact that that person becomes of unsound mind.
- (2) When the mental unsoundness of a person on behalf of whom a legal practitioner or Australian-registered foreign lawyer is acting comes to the knowledge of the practitioner or lawyer, the authority of the practitioner or lawyer to act on behalf of that person ceases, subject to subsection (3), and determines.
- (3) Where it is necessary for the purpose of protecting the interests of a person of unsound mind in any legal proceedings or other business, the authority of a legal practitioner or Australian-registered foreign lawyer, notwithstanding that the practitioner or lawyer knows of the mental unsoundness of the person on behalf of whom the practitioner or lawyer is acting, continues for the purpose of completing those proceedings or that business.

## Division 8—Costs disclosure and adjudication

### 41—Application of Schedule 3

The provisions set out in Schedule 3 apply in relation to the recovery of legal costs and adjudication of legal costs.

## Division 9—Appointment of supervisors and managers

### 43A—Interpretation

In this Division—

*legal practitioner* means—

- (a) a local legal practitioner; or
- (b) an interstate legal practitioner who has established an office in this State; or
- (ba) an Australian-registered foreign lawyer who has established an office in this State; or
- (c) an incorporated legal practice.

### 44—Control over trust accounts of legal practitioners

- (1) If the Society knows, or suspects on reasonable grounds, that—
  - (a) a legal practitioner has died (or in the case of a company, has been dissolved or is being wound up); or
  - (b) a legal practitioner is for any reason not attending properly, or unable to attend properly, to the affairs of his or her practice; or
  - (c) a legal practitioner has committed a serious irregularity in the course of practice, or a serious irregularity has occurred in the course of practice; or
  - (d) a person has ceased to be a legal practitioner without making proper provision for winding up the affairs of his or her practice; or
  - (e) any other proper cause exists for the appointment of a supervisor under this section,

the Society may, by resolution of the Council, appoint a supervisor to exercise the powers conferred by this section.

- (2) A person appointed under subsection (1) has power to—
  - (a) ascertain and verify entitlements to trust money; and
  - (b) dispose of trust money to persons entitled to the money or in accordance with the *Unclaimed Moneys Act 1891*; and
  - (c) execute cheques or other instruments for the purpose.
- (3) As soon as practicable after any such resolution has been passed, the Society must cause a written copy of the resolution to be served on—
  - (a) the legal practitioner or former legal practitioner or his or her personal representative; and

- (b) any other person authorised to operate the trust account of the legal practitioner; and
  - (c) the auditor (if any) of the trust account maintained by the legal practitioner or former legal practitioner; and
  - (d) the manager or other principal officer of the office or branch of the ADI at which the legal practitioner or former legal practitioner maintained the trust account.
- (4) After service of the notice on the ADI, and until the resolution ceases to be effective—
  - (a) no payment may be made by the ADI of any cheque or other instrument drawn on the trust account to which the resolution relates unless it bears the signature of the person appointed pursuant to this section; and
  - (b) if it bears the signature of the person so appointed (whether or not it bears the signature of any other person) it is lawful for the ADI to make a payment in accordance with the cheque or other instrument.
- (5) A person on whom a copy of the resolution has been served must not sign any cheque or other instrument drawn on the trust account to which the resolution relates unless that cheque or instrument is signed by the person appointed pursuant to this section.
- (6) A person who contravenes this section is guilty of an offence.  
Maximum penalty: \$1 250.
- (7) A resolution under this section is effective for a term of 12 months or such lesser term as may be fixed by the Society but the Society may, from time to time, renew the resolution for a term not exceeding 12 months.
- (8) The Society may, at any time, revoke an appointment under this section.

#### **45—Appointment of manager**

- (1) If the Society knows or suspects on reasonable grounds that—
  - (a) a legal practitioner has died (or in the case of a company, has been dissolved or is being wound up); or
  - (b) a legal practitioner is for any reason not attending properly, or unable to attend properly, to the affairs of his or her practice; or
  - (c) a legal practitioner has committed a serious irregularity in the course of practice, or a serious irregularity has occurred in the course of practice; or
  - (d) a person has ceased to be a legal practitioner without making proper provision for winding up the affairs of his or her practice; or
  - (e) any other proper cause exists for the appointment of a manager under this section,the Society may, by resolution of the Council, appoint a legal practitioner as a manager in respect of the practice of the practitioner or former practitioner.
- (2) As soon as practicable after any such resolution has been passed, the Society must cause notice of the resolution to be served on—
  - (a) the legal practitioner or former legal practitioner or his or her personal representative; and

- (b) any partner of the legal practitioner or former legal practitioner; and
  - (ba) any other person authorised to operate the trust account of the legal practitioner; and
  - (c) the auditor (if any) of the trust account maintained by the legal practitioner or former legal practitioner; and
  - (d) the manager or other principal officer of the office or branch of the ADI at which the legal practitioner or former legal practitioner maintained the trust account.
- (3) A manager appointed under this section has full power—
  - (a) to transact any urgent business of the legal practitioner or former legal practitioner; and
  - (ab) to dispose of trust money to persons entitled to the money, or in accordance with the *Unclaimed Moneys Act 1891*, and to execute cheques or other instruments for the purpose; and
  - (ac) to pay to the Society any amounts that the Society is entitled to recover from the legal practitioner or former legal practitioner under section 48; and
  - (b) with the approval of clients of the legal practitioner, or former legal practitioner, to transact any other business on their behalf; and
  - (c) to perform any other act relating to the practice of the legal practitioner or former legal practitioner that the manager may be authorised to perform by the Society.
- (4) A manager may take possession of any documents relating to the practice and for that purpose may enter any place or premises where the manager reasonably suspects any such documents to be, using such force as may be necessary to enter that place or those premises.
- (5) The Society may, at any time, revoke an appointment under this section.

#### **46—Appeal against appointment of supervisor or manager**

- (1) A legal practitioner or former legal practitioner may, within 28 days after the appointment of a supervisor or manager, appeal to the Supreme Court against the appointment.
- (2) On an appeal under this section the Supreme Court may confirm or annul the appointment.

#### **47—Application for directions**

- (1) A supervisor or manager appointed under this Division may apply to the Supreme Court for directions in relation to any matter affecting his or her duties or functions under this Division.
- (2) The costs of any application under subsection (1) are payable out of the Fidelity Fund.



#### **48—Remuneration etc of persons appointed to exercise powers conferred by this Division**

- (1) A supervisor or manager appointed under this Division is, subject to subsection (3), entitled to such remuneration, allowances and expenses as may be determined by the Society.
- (2) Any such remuneration, allowances and expenses will be paid out of the Fidelity Fund.
- (3) The account of a supervisor or manager for remuneration, allowances and expenses may, on the application of the Attorney-General or the Society, be adjudicated and settled by the Supreme Court.
- (4) The Society may recover, as a debt due to it, the costs, charges and disbursements appropriate to legal work performed by a manager appointed under this Division.
- (5) The Society may recover as a debt from a legal practitioner or former legal practitioner any expenditure (other than expenditure recouped under subsection (4)) from the Fidelity Fund in consequence of the appointment of a supervisor or manager for the practice of that practitioner or former practitioner.
- (5a) A manager must, in dealing with money in the course of the management of the practice of a legal practitioner or former legal practitioner, give priority to payment of amounts recoverable by the Society under subsections (4) or (5).
- (6) Any amount recovered by the Society under subsection (4) or (5) must be paid into the Fidelity Fund.
- (7) A supervisor or manager incurs no liability by reason of an act or omission in good faith and in the exercise of powers or functions under this Division.

#### **Division 10—Restriction on practice if corporation wound up**

##### **49—Supreme Court may grant authority permitting director to practise**

- (1) A legal practitioner or Australian-registered foreign lawyer who is or has been a director of an incorporated legal practice, or a corporate entity entitled to engage in legal practice in a foreign country, during the winding up of the corporation or other corporate entity for the benefit of creditors must not, without the authority of the Supreme Court, practise the profession of the law.  
Maximum penalty: \$10 000.
- (1a) Authority may be granted under this section on the application of a legal practitioner or Australian-registered foreign lawyer who is or has been a director of an incorporated legal practice or other corporate entity that is being or is about to be wound up for the benefit of creditors.
- (1b) An application for an authority under this section must be served on the Commissioner and the Society, each of whom is entitled to be heard by the Supreme Court on the application in accordance with the rules of the Court.
- (2) The Supreme Court may grant an authority under this section on such conditions as it thinks fit.

- (3) A legal practitioner or Australian-registered foreign lawyer must not contravene or fail to comply with any condition of an authority granted by the Supreme Court under this section.

Maximum penalty: \$10 000.

## **Division 11—Right of personal representative etc to carry on legal practice**

### **50—Supreme Court may authorise personal representative etc to carry on legal practice**

- (1) The personal representative of a deceased legal practitioner may, with the authority of the Supreme Court, carry on the practice of the deceased legal practitioner for a period not exceeding 12 months (or such longer period as the Supreme Court may allow) from the date of death.
- (2) The trustee in bankruptcy of a legal practitioner may, with the authority of the Supreme Court, carry on the practice of the legal practitioner for a period not exceeding 12 months, or such longer period as the Supreme Court may allow.
- (3) A receiver or liquidator appointed in respect of an incorporated legal practice may, with the authority of the Supreme Court, carry on the practice of the incorporated legal practice for a period not exceeding 12 months, or such longer period as the Supreme Court may allow.
- (4) An authority under this section will be subject to such conditions as the Supreme Court considers appropriate.
- (5) A person to whom an authority has been granted under this section must not contravene, or fail to comply with, any condition of the authority.

Maximum penalty: \$10 000.

## **Division 12—Right of audience**

### **51—Right of audience**

- (1) Subject to this Act and any other Act, the following persons are entitled to practise before any court or tribunal established under the law of the State:
- (a) the Attorney-General and the Solicitor-General of the State or of the Commonwealth, the Crown Solicitor and the Australian Government Solicitor and the Director of Public Prosecutions; and
  - (b) a legal practitioner acting on the instructions of—
    - (i) the Attorney-General of the State; or
    - (ii) the Attorney-General of the Commonwealth; or
    - (iii) the Crown Solicitor; or
    - (iv) the Australian Government Solicitor; or
    - (v) the Director of Public Prosecutions; and
  - (c) a legal practitioner acting on the instructions of the Corporate Affairs Commission; and

- (ca) a legal practitioner acting on the instructions of the Australian Securities and Investments Commission; and
  - (d) a legal practitioner employed by the Legal Services Commission and acting in the course of that employment; and
  - (da) a legal practitioner employed by a community legal centre and acting in the course of that employment; and
  - (e) a legal practitioner who is practising the profession of law as a principal or a legal practitioner who is acting in the course of employment by such a legal practitioner; and
  - (f) a legal practitioner employed by the Society; and
  - (g) the Commissioner (if he or she is a legal practitioner) and a legal practitioner employed by the Commissioner; and
  - (h) the Independent Commissioner Against Corruption and a legal practitioner engaged by the Independent Commissioner Against Corruption.
- (2) A legal practitioner who is an employee of another legal practitioner who is practising the profession of law as a principal is not entitled to appear on instructions from the principal before a court or tribunal as counsel or solicitor for any other person by whom the practitioner is employed or for any client of that other person.
- (3) Where a legal practitioner who is an employee appears as counsel or solicitor before a court or tribunal, any undertaking given by the practitioner in the course of the proceedings is binding on the employer.

## **Division 13—Professional indemnity insurance scheme**

### **52—Professional indemnity insurance scheme**

- (1) The Society may, with the approval of the Attorney-General, establish a scheme providing professional indemnity insurance, to an extent provided by the scheme, for the benefit of legal practitioners and law practices.
- (2) The scheme—
- (a) will operate for the benefit of a class, or classes, of legal practitioners or law practices defined in the scheme;
  - (b) will provide for insurance indemnity partially under a master policy negotiated between the Society and insurers participating in the scheme and partially from a professional indemnity fund to be established, administered and applied in accordance with the scheme;
  - (c) may provide for the determination and settlement of claims against legal practitioners or law practices covered by the scheme;
  - (d) may impose on legal practitioners or law practices obligations to pay premiums, levies, fees or other charges (which may vary according to factors stipulated in the scheme);
  - (e) may impose, or provide for the imposition of, civil or criminal sanctions or penalties against legal practitioners or law practices who fail to comply with their obligations under the scheme;

- (f) may confer discretionary powers on the Society in relation to the administration or enforcement of the scheme;
  - (g) may make any other provision reasonably necessary for, or incidental to, the administration or enforcement of the scheme.
- (3) The scheme, and any amendment to the scheme made by the Society with the approval of the Attorney-General, have the force of law and are binding on—
  - (a) the Society;
  - (b) the legal practitioners and law practices covered by the scheme;
  - (c) the insurers and other persons to whom the scheme applies.
- (4) The Society must keep a copy of the scheme and of any amendment to the scheme available for inspection at its public office and must, on request for a copy of the scheme or amendment and payment of a reasonable fee fixed by the Society, provide such a copy.
- (5) In this section—

***legal practitioner*** includes—

  - (a) a member of a faculty of law in a university; and
  - (b) a person who has ceased to be a legal practitioner but who was a legal practitioner when a liability covered by the scheme arose; and
  - (c) an interstate legal practitioner;

***professional indemnity insurance*** means insurance against—

  - (a) civil liability arising in connection with legal practice (whether the liability arises from an act or omission on the part of the insured legal practitioner or some other person);
  - (b) civil liability incurred by a legal practitioner or law practice in connection with the administration of a trust of which the practitioner is a trustee.

#### **52AA—Professional indemnity insurance required by interstate practitioners etc**

- (1) A prescribed practitioner or practice must not engage in legal practice in this jurisdiction unless there is in force approved professional indemnity insurance in respect of that practitioner or practice.

Maximum penalty:

  - (a) for an offence committed by an interstate legal practitioner—\$10 000;
  - (b) in any other case—\$50 000.
- (2) If an interstate legal practitioner fails to comply with this section, the Supreme Court may, on application by the Attorney-General or the Society, suspend the practitioner's right to practise the profession of the law in this State until this section is complied with.
- (3) If an incorporated legal practice fails to comply with this section, the Supreme Court may, on application by the Attorney-General or the Society, suspend any legal practitioner director's right to practise the profession of the law in this State until this section is complied with.

- (4) The Supreme Court must give notice of a suspension imposed under this section to any regulatory authority that is authorised to seek or impose a corresponding suspension in a State in which the practitioner is admitted as a legal practitioner.

- (5) In this section—

***approved professional indemnity insurance*** means insurance—

- (a) that has been approved by the Attorney-General; or
- (b) that is of a class or kind that has been approved by the Attorney-General;

***prescribed practitioner or practice*** means—

- (a) an interstate legal practitioner who—
  - (i) establishes an office in this State; and
  - (ii) if he or she were a local legal practitioner, would be covered by a scheme providing professional indemnity insurance; or
- (b) an incorporated legal practice that is not required to be insured under a scheme established under section 52.

#### **52AAB—Professional indemnity insurance where no office established in this State**

If the professional indemnity insurance in force in respect of an interstate legal practitioner who engages in legal practice in this State but has not established an office in this State is not approved professional indemnity insurance (within the meaning of section 52AA), the interstate legal practitioner must disclose that fact to a client before he or she is retained by the client.

Maximum penalty: \$10 000.

### **Division 14—Miscellaneous**

#### **52A—Rules of Supreme Court may assign functions or powers**

- (1) The Supreme Court may, by rules of court, assign any functions or powers conferred on or vested in it under this Part—
  - (a) to a specified person or body; or
  - (b) to a person occupying a specified office or position.
- (2) The rules of the Supreme Court may specify that an assignment of functions or powers under this section is subject to conditions and limitations.
- (3) A decision made by a person or body acting in pursuance of an assignment of functions or powers under this section may, subject to the rules of the Supreme Court, be appealed against to the Supreme Court by the person in relation to whom the decision was made.
- (4) On such an appeal, the Supreme Court—
  - (a) may confirm, vary or reverse the decision; and
  - (b) may make any consequential or ancillary order.



## Part 4—The combined trust account and other related accounts

### Division 1—The combined trust account

#### 52B—Application to incorporated legal practices

The regulations may provide that specified provisions of this Division, and any other provisions of this Act, the regulations or the legal profession rules relating to this Division, do not apply to incorporated legal practices (or a specified class of incorporated legal practices) or apply to them with specified modifications.

#### 53—Duty to deposit trust money in combined trust account

- (1) A law practice must, within 14 days after 31 May, and within 14 days after 30 November, in each year, out of trust money held in the practice's general trust account, deposit the appropriate amount in the combined trust account.
- (2) The appropriate amount is the amount (if any) necessary to ensure that the following formula is satisfied:

$$A_1 \geq \frac{2}{3} A_2$$

Where—

$A_1$  is the amount held on the practice's behalf in the combined trust account

$A_2$  is the lowest aggregate (determined by reference to the relevant ADI statements) of the amount held in the practice's general trust account and the amount (if any) simultaneously held in the combined trust account on the practice's behalf during the period of 6 months ending on 31 May or 30 November (as the case requires).

- (3) The combined trust account is a composite account consisting of separate accounts established by the Society at each approved ADI.
- (4) If a law practice maintains 2 or more general trust accounts, those accounts will, for the purposes of this section, be taken to be a single trust account the balance of which is the aggregate of the respective balances of each of those trust accounts.
- (5) A law practice—
  - (a) may withhold money from deposit under subsection (1) if—
    - (i) the money is necessary to meet an immediate claim on the practice's general trust account or to establish or maintain a reasonable balance in the general trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future; and
    - (ii) the practice has, on or before the day on which a deposit under subsection (1) is required to be made, given written notice to the Society accordingly; and
  - (b) is not obliged to deposit money under subsection (1) in relation to a particular period of 6 months if the lowest aggregate referred to in subsection (2) was, during that period, less than \$10 000 (or some other sum fixed by regulation for the purposes of this subsection).

- (6) If a general trust account is maintained by a firm of legal practitioners or a firm of incorporated legal practices or a firm of legal practitioners and incorporated legal practices, the general trust account will, for the purposes of this section, be taken to be the general trust account of each member of the firm, and the members of the firm are each liable to perform the obligations imposed by this section, but the discharge by 1 member of the firm of the obligations under this section in relation to the general trust account will be taken as a discharge by all the members of the firm of their obligations in relation to that general trust account.
- (7) If the Council has reasonable cause to suspect that a law practice has not complied with the obligations of this section, it may, by notice in writing served on the practice, require the practice to attend before it and to produce evidence of the trust money received by the practice, the amount from time to time standing to the credit of the general trust account, and such other relevant matters as may be specified in the notice.
- (8) If a law practice establishes a general trust account and has, at the time of establishing the account, no other trust account, the balance of the general trust account during the first month after its establishment is, for the purposes of this section, to be ignored.
- (9) A law practice that fails to make the appropriate deposit by the last date for payment is liable to pay the Society, for the credit of the statutory interest account, interest on the outstanding amount at the prescribed rate for the period of the default but, if the appropriate deposit is made within 7 days after that date, no liability for interest arises under this subsection.
- (10) A law practice may withdraw money held on the practice's account in the combined trust account if, and only if, the withdrawal is necessary to meet an immediate claim on the practice's general trust account or to establish a reasonable balance in the general trust account sufficient to meet claims reasonably expected in the ordinary course of legal practice in the near future.
- (11) If a law practice withholds money from deposit under subsection (5)(a) or withdraws money under subsection (10), the external examiner for the law practice must, in the external examiner's report for the relevant year, express an opinion on whether the withholding or withdrawal was justified, and if the amount exceeds the amount that could, in the external examiner's opinion, be reasonably justified, on the amount of the excess (but before the external examiner includes a statement expressing such an opinion in the report, the external examiner must allow the practice a reasonable opportunity to comment on the proposed statement and may make any modification to the proposed statement that the external examiner considers justified in the light of the practice's comments).
- (12) If the withholding or withdrawal of money is not justified, or exceeds an amount that could be reasonably justified, the law practice is liable to pay to the Society, for the credit of the statutory interest account, interest at the prescribed rate on the amount withheld or withdrawn, or the amount of the excess, (as the case requires), from the date of the withholding or withdrawal until the amount on deposit in the combined trust account is restored to the level required by this section.
- (13) The Society may, for any proper reason, remit interest payable under subsection (9) or (12) wholly or in part.



- (14) The Society—
- (a) may approve an ADI for the purposes of this section if satisfied that the ADI is prepared to pay a reasonable rate of interest on money deposited in the combined trust account; and
  - (b) may revoke an approval previously given under this subsection.
- (15) If the Society revokes the approval of an ADI under subsection (14) the combined trust account, so far as it was kept at that ADI, must be transferred to an ADI that continues as an approved ADI.
- (16) In this section—
- general trust account* has the same meaning as in Schedule 2.

## **55—Immunity from liability**

- (1) No action at law or in equity lies against the Society or a legal practitioner for any action done in compliance with this Division.
- (2) This Division does not affect the interest or claim of any person beneficially entitled to trust money and any such interest or claim may be asserted and enforced as effectually as if this Division had not been enacted.

## **Division 2—The statutory interest account**

### **56—Statutory interest account**

- (1) The Society must continue to maintain the statutory interest account.
- (2) The Society must pay into the statutory interest account all interest earned from deposits in the combined trust account.
- (3) The Society may invest any money contained in the statutory interest account in any manner in which trustees are authorised by statute to invest trust funds and must pay the income derived from any such investment into the statutory interest account.
- (4) The amount held in the statutory interest account may be applied to defraying any management fee or other expenditure relating to the management or administration of the combined trust account and the statutory interest account.
- (5) After making such provision for defraying expenditure under subsection (4) as the Society thinks fit, the Society must pay the balance of the money comprised in the statutory interest account (excepting money advanced to the statutory interest account for the purpose of investment), as to five-eighths to the Legal Services Commission, and, subject to subsection (6), as to three-eighths, to the Fidelity Fund.
- (6) If at any time the amount of the Fidelity Fund (including the value of any investments in which any of its money has been invested) exceeds an amount calculated by multiplying \$7 500 by the number of legal practitioners who held practising certificates on the last preceding 30 June, the Society must hold the excess in the statutory interest account, to be paid or applied by the Society to the Legal Services Commission, or for any purpose approved by the Attorney-General and the Society.

## **Division 3—Legal Practitioners Fidelity Fund**

### **57—Fidelity Fund**

- (1) The Society must continue to maintain the Legal Practitioners Fidelity Fund (formerly known as the legal practitioners' guarantee fund).
- (2) The Society may from time to time invest any of the money constituting, or forming part of, the Fidelity Fund in any manner in which trustees are authorised by statute to invest trust funds, and may advance, on such terms and conditions as the Society thinks fit, money from the Fidelity Fund to the statutory interest account.
- (3) The Fidelity Fund consists of—
  - (a) the money paid into it from the statutory interest account; and
  - (b) all money recovered by the Society under Part 5; and
  - (c) the money credited by the Society to the Fidelity Fund under section 95; and
  - (d) costs recovered by the Attorney-General, the Commissioner or the Society in disciplinary proceedings against legal practitioners, former legal practitioners, Australian-registered foreign lawyers or former Australian-registered foreign lawyers; and
  - (da) any fee paid to the Commissioner; and
  - (e) any money that the Society thinks fit to include in the Fidelity Fund; and
  - (f) the income and accretions arising from the investment of the money constituting the Fidelity Fund.
- (4) Subject to subsection (5), money in the Fidelity Fund may be applied for any of the following purposes:
  - (a) meeting any expenses incurred by LPEAC or members of LPEAC in exercising functions and powers under this Act;
  - (b) meeting any expenses incurred by the Board of Examiners or members of the Board of Examiners in exercising functions and powers under this Act;
  - (c) meeting any expenses incurred by the Tribunal or members of the Tribunal in exercising functions and powers under this Act;
  - (d) meeting any expenses incurred by the Commissioner in exercising the Commissioner's functions and powers under this Act;
  - (e) the costs incurred by the Society in appointing a legal practitioner to appear in proceedings in which a person seeks admission as a legal practitioner;
  - (f) the costs of investigating complaints under this Act and of disciplinary proceedings under this Act;
  - (g) the costs of conducting an audit or bringing proceedings under Schedule 1;
  - (h) the costs of proceedings instituted by the Commissioner for the adjudication of legal costs;
  - (i) the costs of prosecutions for offences against this Act;

- (j) costs consequent on the appointment of a supervisor or manager under this Act;
  - (k) the costs of an investigation or examination under Schedule 2 Part 3;
  - (l) the payment of honoraria, approved by the Attorney-General, to members of LPEAC and the Tribunal;
  - (la) the payment of the salaries and related expenses of the Commissioner and his or her staff;
  - (m) the legal costs payable by any person in relation to any action arising from an honest act or omission in the exercise or purported exercise of powers or functions under Schedule 2 or 4 or by the Commissioner or delegated by the Commissioner;
  - (n) the payment of money towards the costs of an arrangement under Part 3 Division 13 to the extent that those costs are, in accordance with the terms of the scheme and with the approval of the Attorney-General, to be paid from the Fidelity Fund;
  - (o) the costs of processing claims under Part 5 and of paying out those claims to the extent authorised by that Part;
  - (p) defraying any management fee or other expenditure relating to the management or administration of the Fidelity Fund;
  - (q) educational or publishing programs conducted for the benefit of legal practitioners or members of the public.
- (5) No payment may be made from the Fidelity Fund except with the authorisation of the Attorney-General.
- (6) The Attorney-General may, before authorising a payment from the Fidelity Fund, require the Society, the Tribunal, the Commissioner or any person engaged in the administration of this Act to provide such information and explanations as to the reason for the proposed payment as the Attorney-General may reasonably require.

## **Division 4—Miscellaneous**

### **57A—Payment of interest accruing on trust accounts**

- (1) Interest accruing on a trust account (other than a separate trust account maintained by a legal practitioner for the exclusive benefit of a particular client) must be paid by the ADI concerned to the Society.
- (2) Subject to subsection (3), the Society must deal with money received by it pursuant to subsection (1) as follows:
  - (a) 50 per cent of the money must be paid to one or more of the Legal Services Commission or one or more community legal centres in such shares and subject to such conditions as the Attorney-General directs; and
  - (b) 40 per cent of the money must be paid to the Fidelity Fund; and
  - (c) 10 per cent of the money must be paid to a person nominated by the Attorney-General subject to such conditions as the Attorney-General directs.

- (3) The Attorney-General may, from time to time, vary or revoke the conditions subject to which money is paid under subsection (2) and may, from time to time, with the approval of the Society, vary the portion of the money allocated for payment pursuant to each paragraph of that subsection.
- (4) The Attorney-General may, from time to time, without the approval of the Society, vary the shares in which money allocated for payment pursuant to subsection (2)(a) is distributed under that paragraph.
- (5) Money paid to a person pursuant to subsection (2)(c) must be applied in, or in relation to, the provision of legal services to the community, or to a section of the community, or must be applied for the purposes of legal research and education.

### **58—Accounts and audit**

- (1) The Society must keep proper accounts of all money received, disbursed, invested and otherwise dealt with under this Part.
- (2) The Society must cause the combined trust account, the statutory interest account, and the Fidelity Fund to be audited at least once in every calendar year by a public accountant approved by the Attorney-General and must send copies of the duly audited accounts to the Attorney-General.

### **59—Power to borrow for purposes of this Part**

The Society may borrow money for the purposes of any account or fund maintained under this Part and may defray the interest and other expenditure resulting from the borrowing from the appropriate account or fund.

## Part 5—Claims against Fidelity Fund

### 60—Claims

- (1) Subject to this Part, where—
  - (a) a person suffers loss as a result of a fiduciary or professional default; and
  - (b) there is no reasonable prospect of recovering the full amount of that loss (otherwise than under this Part),the person may, by instrument in writing served on the Society, claim compensation under this Part.
- (1a) In determining whether there is a reasonable prospect of recovering the full amount of a loss for the purposes of subsection (1)(b), potential action for the recovery of the amount that would not be taken by an ordinarily prudent, self-funded litigant is to be disregarded.
- (2) The amount of a claim cannot exceed—
  - (a) the actual pecuniary loss suffered by the claimant in consequence of the fiduciary or professional default (including the reasonable costs of making the claim); less
  - (b) any amount that the claimant has received, or may reasonably be expected to recover (otherwise than under this Part) in reduction of that loss.
- (3) If a valid claim has not been satisfied as provided by this Part at the expiration of 12 months from the day on which it was lodged with the Society it is then, to the extent to which it has not been satisfied, increased by interest at a prescribed rate calculated from the expiration of that period.
- (4) No claim can be made under this Part—
  - (a) in respect of a fiduciary or professional default occurring before 4 December, 1969; or
  - (ab) in respect of a fiduciary or professional default occurring outside this State unless it occurs in the course of, or incidentally to—
    - (i) legal work arising from instructions taken in this State; or
    - (ii) legal work substantially carried out in this State; or
  - (b) in respect of a liability for which indemnity is provided under a scheme of professional indemnity insurance under Division 13 of Part 3.
- (5) Despite the other provisions of this section—
  - (a) a claim can only be made in relation to a fiduciary or professional default by—
    - (i) an interstate legal practitioner; or
    - (ii) an incorporated legal practice that is not required to be insured under a scheme established under section 52,in circumstances provided for by an agreement or arrangement made by the Society with the approval of the Attorney-General under section 95AA; and

- (b) an agreement or arrangement so made under section 95AA may prescribe limitations or conditions in respect of any such claim.

### **60A—Personal representative may make claim**

The personal representative of a person (including a deceased person) is entitled to make a claim under this Part on behalf of the person or the person's estate.

### **61—Limitation of claims**

- (1) The Society may, by notice published in a newspaper circulating generally throughout the State, fix a day, not earlier than 6 months after the publication of the notice, on or before which claims in respect of a fiduciary or professional default, or a series of professional or fiduciary defaults, referred to in the notice, must be made.
- (2) Where a notice is published under subsection (1), a claim that is not made within the time prescribed by the notice is barred unless the Society otherwise determines.
- (3) No action in defamation lies in respect of the publication, in good faith, of a notice under this section.

### **62—Power to require evidence**

- (1) The Society may, in considering any claim made under this Part, by notice in writing served on any person, require that person, within the time specified in the notice, to deliver up any document in his or her possession or power relevant to the determination of the claim.
- (2) A person must not fail duly to comply with a notice served on him or her pursuant to subsection (1).

Maximum penalty: \$1 250.

### **63—Establishment of validity of claims**

- (1) Where a claim is made under this Part, the Society must determine—
  - (a) whether the claim is a valid claim; and
  - (b) the amount payable under this Part in, or towards, satisfaction of the claim.
- (2) The Society must, by notice in writing, inform the claimant of any determination made by it under subsection (1).
- (3) A notice under subsection (2) must be served—
  - (a) on the claimant or the claimant's personal representative; or
  - (b) where the claimant is dead and has not left a personal representative known to the Society, or where the whereabouts of the claimant is unknown—by publication in the Gazette.
- (4) A claimant who is aggrieved by a determination of the Society under this section may appeal to the Supreme Court against the determination.
- (5) On an appeal under subsection (4), the Supreme Court may reverse or vary the determination of the Society and may make such further orders as it considers just in the circumstances.

- (6) An appeal against a determination of the Society under this section must be instituted within three months after the day on which notice of the determination is served under this section but the Court may, if satisfied that proper cause to do so exists, dispense with the requirement that the appeal be so instituted.
- (7) In any proceedings under this section, evidence of an admission or confession is admissible to prove a fiduciary or professional default, notwithstanding that the person by whom the admission or confession was made is not a party to the proceedings.
- (8) If in any proceedings under this section the Society is satisfied, on the balance of probabilities, that a fiduciary or professional default has been committed, it may determine the claim accordingly notwithstanding that the fiduciary or professional default constitutes a criminal offence and the evidence would not be sufficient to establish the guilt of a person charged with that offence.

#### **64—Satisfaction of claims**

- (1) The Society must satisfy any valid claim under this Part, to the extent determined by the Society or the Supreme Court, out of the Fidelity Fund.
- (2) Where the Society has published a notice under this Part in respect of a specified fiduciary or professional default, or a specified series of fiduciary or professional defaults, the maximum amount that may be applied towards satisfaction of all claims to which the notice relates is a percentage (which must not be less than 20%) prescribed by regulation for the purposes of this subsection of the balance of the Fidelity Fund (calculated to the nearest \$1 000) as disclosed in the accounts of the Fidelity Fund last audited before the proposed application of money towards satisfaction of the claims.
- (3) Where the maximum amount that may be applied to satisfy claims made in respect of a fiduciary or professional default, or a series of fiduciary or professional defaults, does not permit the full satisfaction of the claims, the Society must apportion that amount between the various claims in such manner as it thinks just.
- (4) The Society, in apportioning payments under this section, must take into account the relative degrees of hardship suffered or likely to be suffered by the various claimants as a result of non-payment of the full amount of the claim for compensation.
- (5) Where the Society apportions payments under this section, the claims in respect of which the payments are made are discharged notwithstanding that they may not have been satisfied in full.
- (6) The Society may, with the approval of the Attorney-General, make further payments to any person—
  - (a) whose claim has not been satisfied in full by reason of the operation of subsection (2), or for any other reason; or
  - (b) whose claim is barred,but any payment so made does not revive or reinstate a claim.

#### **64A—Advance payments**

- (1) The Society 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) A payment may be made under this section even if there is some prospect that the whole or a part of the claimant's pecuniary loss will be recovered from another source.
- (3) Any payments made in advance are to be taken into account when the claim is determined.
- (4) Payments under this section are to be made from the Fidelity Fund.
- (5) If the claim is disallowed, the amounts paid under this section are recoverable by the Society as a debt due to the Fidelity Fund.
- (6) 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 Society as a debt due to the Fidelity Fund.

## **65—Rights of the Society**

- (1) Subject to this section, where the Society has made any payment to a claimant under this Part, the Society is, to the extent of the payment, subrogated to the rights of the claimant against any person liable at law or in equity for the fiduciary or professional default in respect of which the payment was made.
- (2) This section does not confer on the Society any right to recover money from a person whose liability in respect of a fiduciary or professional default does not arise from a wrongful or negligent act or omission on that person's part.

## **66—Claims by legal practitioners and incorporated legal practices**

- (1) A legal practitioner or incorporated legal practice who has paid compensation to any person for pecuniary loss suffered in consequence of a fiduciary or professional default by a partner, director, clerk, officer or employee of the legal practitioner or legal practice may make a claim under this Part in respect of the payment provided that, in the case of a fiduciary or professional default by a partner or a legal practitioner director, the default consisted of a defalcation, misappropriation or misapplication of trust money or dishonest conduct.
- (2) A claim of a kind referred to in subsection (1) is not a valid claim for the purposes of this Part unless the Society is satisfied that—
  - (a) all legal or equitable claims in respect of the fiduciary or professional default (other than this claim against the Fidelity Fund) have been fully satisfied; and
  - (b) the legal practitioner or incorporated legal practice acted honestly and without negligence.

## **67—Insurance in respect of claims against Fidelity Fund**

- (1) The Society may, with the approval of the Attorney-General, insure the Fidelity Fund to such extent as the Society thinks fit against claims under this Part.
- (2) The premium on a policy of insurance entered into under this section must be paid out of the Fidelity Fund.



**67A—Annual report**

- (1) The Society must, on or before 31 October in each year, report to the Attorney-General on the administration of this Part during the preceding financial year.
- (2) The report must—
  - (a) state the amount of the payments from the Fidelity Fund during the financial year and the nature of the claims in respect of which payments were made; and
  - (b) contain the audited statement of accounts of the Fidelity Fund for the period to which the report relates.
- (3) The Attorney-General must, within 12 sitting days after receiving a report under this section, cause copies of the report to be laid before both Houses of Parliament.



## Part 6—Investigations, inquiries and disciplinary proceedings

### Division 1—Preliminary

#### 67B—Application of Part

This Part does not apply to the conduct of a legal practitioner or former legal practitioner—

- (a) who is a judicial officer (within the meaning of the *Judicial Conduct Commissioner Act 2015*) acting in his or her capacity as a judicial officer; or
- (b) who is the Commissioner acting in his or her capacity as Commissioner; or
- (c) insofar as the practitioner is exercising a function or power of the Commissioner in accordance with a delegation under section 77; or
- (d) who is—
  - (i) a member of the Commissioner's staff; and
  - (ii) acting in his or her capacity as a member of the Commissioner's staff,

(but nothing in this paragraph is to be taken to exclude the application of this Part to the conduct of a member of the Commissioner's staff that relates to the member's conduct in appearing on behalf of the Commissioner in proceedings before the Tribunal or the Supreme Court); or

- (e) holding or acting in the office of the Independent Commissioner Against Corruption or the office of the Deputy Commissioner under the *Independent Commissioner Against Corruption Act 2012*.

#### 68—Unsatisfactory professional conduct

In this Act—

***unsatisfactory professional conduct*** includes conduct of a 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 legal practitioner.

#### 69—Professional misconduct

In this Act—

***professional misconduct*** includes—

- (a) unsatisfactory professional conduct of a legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of a 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 practise the profession of the law.

## **70—Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

Without limiting section 68 or 69, 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 conviction for—
  - (i) a serious offence; or
  - (ii) a tax offence; or
  - (iii) an offence involving dishonesty;
- (d) conduct of a legal practitioner as or in becoming an insolvent under administration;
- (e) conduct of a legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the *Corporations Act 2001* of the Commonwealth;
- (f) conduct of a 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);
- (g) conduct of a legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law;
- (h) conduct of a legal practitioner in failing to comply with the terms of a professional mentoring agreement entered into with the Society.

## **Division 2—Legal Profession Conduct Commissioner**

### **Subdivision 1—Legal Profession Conduct Commissioner**

#### **71—Legal Profession Conduct Commissioner**

- (1) There will be a Legal Profession Conduct Commissioner.
- (2) The Commissioner will be appointed by the Governor, following consultation about the appointment by the Attorney-General with the Society and the South Australian Bar Association Incorporated, and is an agency of the Crown.
- (3) Although a person appointed as Legal Profession Conduct Commissioner need not be a legal practitioner, the Commissioner must be a person who, in the opinion of the Attorney-General—
  - (a) is familiar with the nature of the legal system and legal practice; and
  - (b) possesses sufficient qualities of independence, fairness and integrity.

## **72—Functions**

- (1) The functions of the Commissioner are—
  - (a) to investigate suspected unsatisfactory professional conduct or professional misconduct by legal practitioners in accordance with Subdivision 2; and
  - (b) following an investigation, to take action authorised under Subdivision 3 or to lay charges before the Tribunal; and
  - (c) to receive and deal with complaints of overcharging in accordance with Subdivision 4; and
  - (d) to arrange for the conciliation of complaints in accordance with Subdivision 5; and
  - (e) to commence disciplinary proceedings against legal practitioners or former legal practitioners in the Supreme Court on the recommendation of the Tribunal or under section 88A or 89; and
  - (f) to carry out such other functions as are assigned to the Commissioner under this Act.
- (2) The Commissioner may—
  - (a) with the approval of the Attorney-General, fix, and require the payment of, fees in connection with the performance of functions of the Commissioner under this Act; and
  - (b) waive the payment of, or refund, the whole or part of a fee fixed under paragraph (a).
- (3) The Commissioner may exercise any of his or her functions or powers in relation to a person who is a former legal practitioner if, at the time of the alleged unsatisfactory professional conduct, professional misconduct or overcharging, the person was a legal practitioner.
- (4) The Commissioner may be represented in proceedings before any court or tribunal by a legal practitioner employed or engaged by the Commissioner.

## **73—Terms and conditions of appointment**

- (1) The Commissioner will be appointed for a term not exceeding 5 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.
- (2) The appointment of the Commissioner may be terminated by the Governor on the ground that the Commissioner—
  - (a) has been guilty of misconduct; or
  - (b) has been convicted of an offence punishable by imprisonment; or
  - (c) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
  - (d) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
  - (e) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or

- (f) is incompetent or has neglected the duties of the position.
- (3) The appointment of the Commissioner is terminated if the Commissioner—
  - (a) becomes a member, or a candidate for election as a member, of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or of a Legislative Assembly of a Territory of the Commonwealth; or
  - (b) is sentenced to imprisonment for an offence.
- (4) The Commissioner may resign by notice in writing to the Minister of not less than 3 months (or such shorter period as is accepted by the Minister).

#### **74—Acting Commissioner**

- (1) The Minister may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which no person is for the time being appointed as the Commissioner or the Commissioner is absent from, or unable to discharge, official duties.
- (2) The terms and conditions of appointment of a person appointed to act as the Commissioner will be determined by the Minister.

#### **75—Honesty and accountability**

The Commissioner and any person appointed to act as the Commissioner are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

#### **76—Staff of Commissioner**

The Commissioner may appoint staff to assist in carrying out the Commissioner's functions.

#### **77—Delegation**

- (1) The Commissioner may delegate to a person (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power under this or any other Act.
- (2) A delegation—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in a matter; and
  - (d) is revocable at will.
- (3) A delegated function or power may, if the instrument of delegation so provides, be further delegated in accordance with that instrument.
- (4) For the purposes of section 17(1)(c)(ii) of the *Public Sector (Honesty and Accountability) Act 1995*, delegation by the Commissioner of a function or power under this section because of a pecuniary or other personal interest that conflicts or may conflict with the Commissioner's duties does not constitute taking action in relation to the matter the subject of the delegation.

### **77A—Exchange of information between Commissioner and Council**

- (1) The Commissioner and the Council may enter into an agreement or arrangement providing for the exchange of information relating to legal practitioners.
- (2) An agreement or arrangement must be reduced to writing and be approved by the Attorney-General.

### **Subdivision 2—Investigation of unsatisfactory professional conduct and professional misconduct**

#### **77B—Investigations by Commissioner**

- (1) The Commissioner may, on his or her own initiative, make an investigation into the conduct of a legal practitioner or former legal practitioner who the Commissioner has reasonable cause to suspect has been guilty of unsatisfactory professional conduct or professional misconduct.
- (2) Subject to this section and sections 67B and 77C, the Commissioner must make an investigation into the conduct of a legal practitioner or former legal practitioner if—
  - (a) the Commissioner has been directed to make the inquiry by the Attorney-General or the Society; or
  - (b) a written complaint that complies with subsection (3a) has been received in relation to the conduct of the legal practitioner or former legal practitioner.
- (3) No direction may be given to the Commissioner under this section unless the Attorney-General or the Society (as the case may require) has reasonable cause to suspect that the legal practitioner or former legal practitioner to whom the proposed investigation relates has been guilty of unsatisfactory professional conduct or professional misconduct.
- (3a) A complaint must—
  - (a) identify the complainant; and
  - (b) if possible, identify the legal practitioner or former legal practitioner about whom the complaint is made; and
  - (c) describe the alleged conduct the subject of the complaint.
- (3b) A person who is subject to an order under section 39 of the *Supreme Court Act 1935* prohibiting him or her from instituting proceedings (or proceedings of a particular class) may not make a complaint under this section.
- (3c) A complaint must be made to the Commissioner within 3 years of the conduct that is the subject of the complaint or such longer period as the Commissioner may allow.
- (4) The provisions of Schedule 4 apply in relation to an investigation under this section.

#### **77C—Closure of whole or part of complaint**

- (1) At any stage after receipt of a complaint, the Commissioner may close the complaint without further consideration of its merits for any of the following reasons to the extent they are applicable:
  - (a) the complaint is vexatious, misconceived, frivolous or lacking in substance;

- (b) the complainant has not responded, or has responded inadequately, to a request for further information or has unreasonably failed to cooperate in the investigation or conciliation of the complaint;
  - (c) the subject-matter of the complaint has been or is already being investigated, whether by the Commissioner or another authority;
  - (d) the subject-matter of the complaint would be better investigated or dealt with by police or another investigatory or law enforcement body;
  - (e) the subject-matter of the complaint is the subject of civil proceedings, except so far as it is a disciplinary matter;
  - (f) the complaint is not one that the Commissioner has power to deal with;
  - (g) the Commissioner is satisfied that it is otherwise in the public interest to close the complaint.
- (2) A complaint may be closed under this section without an investigation or without completing an investigation.
- (3) The Commissioner is not required to give a complainant, a legal practitioner, a former legal practitioner, a law practice or the Legal Services Commission an opportunity to be heard or make a submission to the Commissioner before determining whether or not to close a complaint under this section.
- (4) The power to close a complaint under this section extends to closure of part of a complaint.

#### **77D—Notification of complaint to practitioner**

- (1) The Commissioner—
- (a) may, after receiving a complaint about a legal practitioner or former legal practitioner, notify the practitioner or former practitioner of the complaint or give the practitioner or former practitioner a summary or details of the complaint; and
  - (b) subject to section 77F, must, as soon as practicable after the Commissioner decides to investigate a complaint about a legal practitioner or former legal practitioner under section 77B and if he or she has not already done so, give the practitioner or former practitioner a summary or details of the complaint and a notice informing the practitioner or former practitioner of the right to make submissions; and
  - (c) must, before making a determination (other than a determination not to investigate, or to close, a complaint) and if he or she has not already done so, give the legal practitioner or former legal practitioner a summary or details of the complaint and a notice informing the practitioner or former practitioner of the right to make submissions.



- (2) The Commissioner must—
  - (a) subject to section 77F, as soon as practicable after deciding on his or her own initiative to make an investigation into the conduct of a legal practitioner or former legal practitioner or being directed to make an inquiry into the conduct of a legal practitioner or former legal practitioner by the Attorney-General or the Society, give the practitioner or former practitioner a summary or details of the reasons for the investigation and a notice informing the practitioner or former practitioner of the right to make submissions; and
  - (b) before making a determination and if he or she has not already done so, give the legal practitioner or former legal practitioner a summary or details of the reasons for the investigation and a notice informing the practitioner or former practitioner of the right to make submissions.
- (3) A notice informing the legal practitioner or former legal practitioner of the right to make submissions must specify a period of 21 days in which submissions must be received or a shorter or longer period if the Commissioner reasonably believes a different period is warranted in the circumstances.

#### **77E—Submissions by legal practitioner**

- (1) A legal practitioner or former legal practitioner who has received a notice of a decision or direction to make an investigation into his or her conduct may, within the period specified under section 77D, make submissions to the Commissioner about the subject-matter of the investigation, unless the matter has been closed.
- (2) The Commissioner may, at his or her discretion, extend the period in which submissions may be made.
- (3) The Commissioner must consider any submissions made by the legal practitioner or former legal practitioner within the specified period in response to the notice before deciding what action is to be taken in relation to the matter, and may consider submissions received afterwards.

#### **77F—Exceptions to requirement for notification of complaint**

- (1) Section 77D(1)(b) and (2)(a) do not require the Commissioner to give a legal practitioner or former legal practitioner a summary or details of a complaint or the reasons for an investigation or a notice about making submissions if the Commissioner reasonably believes that to do so will or is likely to—
  - (a) prejudice the investigation; or
  - (b) prejudice an investigation by the police or another investigatory or law enforcement body of any matter with which the Commissioner's investigation is concerned; or
  - (c) in the case of an investigation of a complaint—place the complainant or another person at risk of intimidation or harassment; or
  - (d) prejudice pending court proceedings.
- (2) In that case, the Commissioner—
  - (a) may postpone giving the legal practitioner or former legal practitioner the summary or details and the notice until of the opinion that it is appropriate to do so; or

- (b) may at his or her discretion give the legal practitioner or former legal practitioner the notice and a statement of the general nature of the complaint or reasons for investigation.

### **Subdivision 3—Action following investigation**

#### **77G—Interpretation**

In this Subdivision—

*complainant* means—

- (a) in the case of an investigation made into the conduct of a legal practitioner or former legal practitioner because of a direction by the Attorney-General or the Society—the Attorney-General or the Society, as required; and
- (b) in the case of an investigation made into the conduct of a legal practitioner or former legal practitioner because of a complaint—the person who made the complaint.

#### **77H—Report on investigation**

- (1) If, in the course or in consequence of an investigation under this Division, the Commissioner is satisfied that there is evidence of professional misconduct by a legal practitioner or former legal practitioner, the Commissioner must make a report on the matter to the Attorney-General and the Society.
- (2) If, in the course or in consequence of an investigation under this Division, the Commissioner comes into possession of information or evidence suggesting to the Commissioner that a criminal offence may have been committed by a legal practitioner or former legal practitioner, the Commissioner may pass the information or evidence on to the Crown Solicitor.
- (2a) However, if the information or evidence suggests that a serious offence has been committed, the Commissioner must pass the information or evidence on to the Crown Solicitor.
- (3) The Commissioner must, at the request of the Crown Solicitor or a prosecution authority, furnish the Crown Solicitor or authority with any material in the Commissioner's possession relevant to the investigation or prosecution of the suspected offence.
- (4) If it appears to the Crown Solicitor or a prosecution authority from a report or material furnished under this section that criminal proceedings should be taken against a person, the Crown Solicitor or authority may take any action that may be appropriate for that purpose.

#### **77I—Commissioner to notify persons of suspected loss**

If, in the course or in consequence of an investigation under this Division, the Commissioner has reason to believe that a person has suffered loss as a result of unsatisfactory professional conduct or professional misconduct by a legal practitioner or former legal practitioner, the Commissioner may notify the person.

**77J—Powers of Commissioner to deal with certain unsatisfactory professional conduct or professional misconduct**

- (1) If, after conducting an investigation into conduct by a legal practitioner under this Division, the Commissioner is satisfied that there is evidence of unsatisfactory professional conduct and that the conduct in question can be adequately dealt with under this subsection—
- (a) the Commissioner may determine not to lay a charge before the Tribunal and may instead exercise any 1 or more of the following powers:
    - (i) the Commissioner may reprimand the legal practitioner;
    - (ii) the Commissioner may order the legal practitioner to apologise to any person affected by the practitioner's conduct;
    - (iii) the Commissioner may order the legal practitioner—
      - (A) to redo the work that is the subject of the investigation at no cost or to waive or reduce the fees for the work; or
      - (B) to pay the costs of having the work that is the subject of the investigation redone;
    - (iv) the Commissioner may order the legal practitioner to undertake training, education or counselling or be supervised;
    - (v) the Commissioner may order the legal practitioner to pay a fine not exceeding \$5 000;
    - (vi) the Commissioner may make an order imposing specified conditions on the practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—
      - (A) relating to the practitioner's legal practice; or
      - (B) requiring that the practitioner, within a specified time, complete further education or training, or receive counselling, of a type specified by the Commissioner;
    - (vii) the Commissioner may, with the consent of the legal practitioner, make any other order the Commissioner considers appropriate in the circumstances; or
  - (b) the Commissioner may, if the legal practitioner consents to such a course of action, determine not to lay a charge before the Tribunal and may instead exercise any 1 or more of the following powers:
    - (i) if the Commissioner believes that the legal practitioner may be suffering from an illness or a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that has detrimentally affected his or her ability to practise the law, the Commissioner may order the legal practitioner to—
      - (A) submit to a medical examination by a medical practitioner nominated by the Commissioner and to undertake any treatment recommended by the medical practitioner; or

- (B) receive counselling of a type specified by the Commissioner; or
    - (C) participate in a program of supervised treatment or rehabilitation designed to address behavioural problems, substance abuse or mental impairment;
  - (ii) the Commissioner may order the legal practitioner to enter into a professional mentoring agreement with the Commissioner and to comply with all conditions of the agreement;
  - (iii) the Commissioner may make orders with respect to the examination of the legal practitioner's files and records by a person approved by the Commissioner (at the expense of the legal practitioner) at the intervals, and for the period, specified in the order;
  - (iv) the Commissioner may order the legal practitioner to pay a fine not exceeding \$10 000;
  - (v) the Commissioner may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order (not exceeding 3 months);
  - (vi) the Commissioner may make an order requiring that the legal practitioner make a specified payment (whether to a client of the practitioner or to any other person) or do or refrain from doing a specified act in connection with legal practice.
- (2) If, after conducting an investigation into conduct by a legal practitioner under this Division, the Commissioner is satisfied that there is evidence of professional misconduct and that the misconduct in question can be adequately dealt with under this subsection, the Commissioner may, if the legal practitioner consents to such a course of action, determine not to lay a charge before the Tribunal and may instead exercise any 1 or more of the following powers:
  - (a) the Commissioner may reprimand the legal practitioner;
  - (b) the Commissioner may order the legal practitioner to apologise to any person affected by the practitioner's conduct;
  - (c) if the Commissioner believes that the legal practitioner may be suffering from an illness or a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that has detrimentally affected his or her ability to practise the law, the Commissioner may order the legal practitioner to—
    - (i) submit to a medical examination by a medical practitioner nominated by the Commissioner and to undertake any treatment recommended by the medical practitioner; or
    - (ii) receive counselling of a type specified by the Commissioner; or
    - (iii) participate in a program of supervised treatment or rehabilitation designed to address behavioural problems, substance abuse or mental impairment;

- (d) the Commissioner may order the legal practitioner to enter into a professional mentoring agreement with the Commissioner and to comply with all conditions of the agreement;
  - (e) the Commissioner may make orders with respect to the examination of the legal practitioner's files and records by a person approved by the Commissioner (at the expense of the legal practitioner) at the intervals, and for the period, specified in the order;
  - (f) the Commissioner may order the legal practitioner to pay a fine not exceeding \$20 000;
  - (g) the Commissioner may make an order imposing specified conditions on the practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—
    - (i) relating to the practitioner's legal practice; or
    - (ii) requiring that the practitioner, within a specified time, complete further education or training, or receive counselling, of a type specified by the Commissioner;
  - (h) the Commissioner may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order (not exceeding 6 months);
  - (i) the Commissioner may make an order requiring that the legal practitioner make a specified payment (whether to a client of the practitioner or to any other person) or do or refrain from doing a specified act in connection with legal practice.
- (3) Despite section 72(3), subsections (1) and (2) do not apply in relation to a former legal practitioner, but if, after conducting an investigation into conduct by a former legal practitioner under this Division, the Commissioner is satisfied that there is evidence of unsatisfactory professional conduct or professional misconduct that occurred while the former legal practitioner remained a legal practitioner and that the conduct in question can be adequately dealt with under this subsection—
- (a) in the case of unsatisfactory professional conduct, the Commissioner may—
    - (i) determine not to lay a charge before the Tribunal and may instead order the former legal practitioner to pay a fine not exceeding \$5 000; or
    - (ii) if the former legal practitioner consents to such a course of action, determine not to lay a charge before the Tribunal and may instead order the former legal practitioner to pay a fine not exceeding \$10 000; and
  - (b) in the case of professional misconduct, the Commissioner may, if the former legal practitioner consents to such a course of action, determine not to lay a charge before the Tribunal and may instead order the former legal practitioner to pay a fine not exceeding \$20 000.

- (4) If the Commissioner proposes to exercise a power under subsection (1), (2) or (3), the Commissioner—
  - (a) must provide the complainant (if any) and, in the case of the exercise of a power that does not require the consent of the legal practitioner or former legal practitioner, the legal practitioner or former legal practitioner with details of the proposal and invite them to make written submissions to the Commissioner within a specified period; and
  - (b) must take into consideration any written submissions made to the Commissioner within the specified period, and may but need not consider submissions received afterwards; and
  - (c) is not required to repeat the process if the Commissioner decides to exercise the power in a different way, or exercise a different power, after taking into account any written submissions received during the specified period.
- (5) The Commissioner may, in determining whether to exercise a power under this section in relation to a legal practitioner or former legal practitioner, take into account—
  - (a) any previous action relating to the practitioner under this section or a corresponding previous enactment; or
  - (b) any finding relating to the practitioner by the Tribunal, the Supreme Court or a corresponding disciplinary body of—
    - (i) professional misconduct or unsatisfactory professional conduct; or
    - (ii) unprofessional conduct or unsatisfactory conduct (within the meaning of this Act as in force before the commencement of this Division).
- (6) An order under this section must be reduced to writing and be signed—
  - (a) by or on behalf of the Commissioner; and
  - (b) if it is an order requiring the consent of the legal practitioner or former legal practitioner—by the legal practitioner or former legal practitioner to whom it applies.
- (7) A condition imposed on a practising certificate by an order under this section may be varied or revoked at any time on application by the legal practitioner to the Tribunal.
- (8) The Commissioner must, as soon as possible after determining to exercise a power under this section, provide the complainant with written notification of the determination.
- (9) An apparently genuine document purporting to be a copy of an order under this section and providing for the payment of a monetary sum by a legal practitioner (other than a fine), will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of such a debt.
- (10) A contravention of an order under this section is professional misconduct.
- (11) If the Commissioner has ordered payment of a fine, a certificate of the fine must be filed in the Supreme Court.
- (12) If a certificate has been filed under subsection (11), proceedings may be taken for the recovery of the fine as if the certificate were a judgment of the Supreme Court.

- (13) The cost of a medical examination, medical treatment, counselling or a program of supervised treatment or rehabilitation undertaken by a legal practitioner pursuant to an order of the Commissioner is to be borne by the practitioner.
- (14) In this section—  
*medical practitioner* means a person registered under the *Health Practitioners Regulation National Law* to practise in the medical profession (other than as a student).

### **77K—Appeal against determination of Commissioner**

- (1) Subject to subsection (3), an appeal to the Tribunal against a determination of the Commissioner under section 77J(1)(a) or (3)(a)(i) may be instituted by—
  - (a) the legal practitioner or former legal practitioner in relation to whom the determination was made; or
  - (b) the complainant.
- (2) Subject to subsection (3), an appeal to the Tribunal against a determination of the Commissioner under section 77J(1)(b), (2) or (3)(a)(ii) or (b) after conducting an investigation into the conduct of a legal practitioner or former legal practitioner following receipt of a complaint may be instituted by the person who made the complaint.
- (3) An appeal must be instituted within 1 month of the date on which the appellant is notified of the determination unless the Tribunal is satisfied that there is good reason to dispense with the requirement that the appeal should be so instituted.
- (3a) Subject to subsections (3b) and (3c), the Tribunal will, in exercising its review jurisdiction, examine the determination of the Commissioner by way of rehearing.
- (3b) On a rehearing, the Tribunal must reach the correct or preferable decision but in doing so must have regard to, and give appropriate weight to, the determination of the Commissioner.
- (3c) A procedure on a rehearing will include—
  - (a) an examination of the evidence or material before the Commissioner (unless any such evidence or material is to be excluded under another provision of this Act or under any other law); and
  - (b) a consideration of any further evidence or material that the Tribunal decides, in the circumstances of the particular case, to admit for the purposes of rehearing the matter.
- (4) The Tribunal may, on the hearing of the appeal—
  - (a) affirm, vary, quash or reverse the determination subject to the appeal and administer any reprimand, or make any order, that should have been administered or made in the first instance; and
  - (b) make such orders as to costs as it considers appropriate.
- (5) Section 85(2) to (4) (inclusive) apply in relation to an order as to costs made under subsection (4).

### **77L—Commissioner must lay charge in certain circumstances**

If, after conducting an investigation into conduct by a legal practitioner or former legal practitioner under this Division, the Commissioner is satisfied that—

- (a) there is evidence of unsatisfactory professional conduct or professional misconduct by the practitioner or former practitioner; and
- (b) the conduct in question cannot be adequately dealt with under section 77J,

the Commissioner must, subject to section 82(2a), lay a charge before the Tribunal in relation to the conduct unless the Commissioner determines that it would not be in the public interest to do so.

### **77M—Commissioner to provide reasons**

If the Commissioner determines—

- (a) not to investigate a complaint; or
- (b) to close a complaint under section 77C; or
- (c) after conducting an investigation into conduct by a legal practitioner or former legal practitioner under this Division that is the subject of a direction from the Attorney-General or the Society or a complaint—
  - (i) that there is no evidence of unsatisfactory professional conduct or professional misconduct; or
  - (ii) that there is evidence of unsatisfactory professional conduct or professional misconduct but—
    - (A) the conduct in question cannot be adequately dealt with under section 77J; and
    - (B) it would not be in the public interest to lay a charge in relation to the conduct before the Tribunal,

the Commissioner must provide the complainant and the legal practitioner or former legal practitioner with written reasons for the determination.

## **Subdivision 4—Complaints of overcharging**

### **77N—Investigation of allegation of overcharging**

- (1) Subject to subsections (2) and (3) and section 77C, if a complaint of overcharging is made against a legal practitioner or former legal practitioner, the Commissioner must investigate the complaint unless the complaint is received by the Commissioner more than 2 years after the final bill to which the complaint relates was delivered to the client or the complaint is resolved before the Commissioner commences an investigation.
- (2) The Commissioner may require a complainant to pay a reasonable fee, fixed by the Commissioner, for investigation of the complaint and decline to proceed with the investigation unless the fee is paid.
- (3) The Commissioner may not proceed with the investigation of a complaint of overcharging while the bill to which the complaint relates is the subject of an application for adjudication of costs before the Supreme Court under Schedule 3.



- (4) For the purposes of an investigation the Commissioner may do either or both of the following:
- (a) by notice in writing—
    - (i) require the legal practitioner or former legal practitioner to make a detailed report to the Commissioner, within the time specified in the notice, on the work carried out for the client to whom the bill was delivered; and
    - (ii) require the legal practitioner or former legal practitioner to produce to the Commissioner, within the time specified in the notice, documents relating to the work;
  - (b) arrange for the costs that are the subject of the complaint of overcharging to be assessed by a legal practitioner who is, in the opinion of the Commissioner, qualified to make such an assessment.
- (4a) The Commissioner—
- (a) may require a complainant to pay the reasonable costs of an assessment by a legal practitioner arranged under subsection (4)(b); and
  - (b) may, if the complaint is upheld, refund those costs to the complainant.
- (5) A legal practitioner or former legal practitioner must comply with a requirement under subsection (4)(a).
- Maximum penalty: \$10 000 or imprisonment for 1 year.
- (6) At the conclusion of the investigation, the Commissioner—
- (a) must report to the complainant, the client to whom the bill was delivered (if that client is not the complainant) and the legal practitioner or former legal practitioner on the results of the investigation; and
  - (b) may recommend that the legal practitioner or former legal practitioner reduce a charge or refund an amount to the complainant or the client to whom the bill was delivered.
- (7) If—
- (a) the amount in dispute in a complaint of overcharging is no more than \$50 000; and
  - (b) the costs the subject of the complaint have been assessed by a legal practitioner in accordance with subsection (4)(b); and
  - (c) the Commissioner has, by written notice, given the complainant, the client to whom the bill was delivered (if that client is not the complainant) and the legal practitioner or former legal practitioner details of the assessment and invited them to make written submissions within the period (which must be at least 7 days) specified in the notice,
- the Commissioner may, after the end of the specified period and after having regard to any submissions received, make a determination as to whether or not there has been overcharging and, if so, the amount that has been overcharged.

- (8) If the Commissioner makes a determination under subsection (7)—
- (a) the Commissioner must give the complainant, the client to whom the bill was delivered (if that client is not the complainant) and the legal practitioner or former legal practitioner a certificate certifying the determination; and
  - (b) the determination is binding on, and enforceable by or against, the legal practitioner or former legal practitioner in relation to whom the complaint was made and the client to whom the bill was delivered.
- (9) Subsection (8)(b) does not apply if the Supreme Court has adjudicated and settled the bill that is the subject of the complaint of overcharging.
- (10) If a complaint of overcharging made against a legal practitioner or former legal practitioner results in a determination or finding that there has been overcharging or a recommendation, order or agreement that the legal practitioner or former legal practitioner reduce a charge or refund an amount to the complainant—
- (a) the complainant is entitled to a refund of any fee paid to the Commissioner for investigation of the complaint; and
  - (b) the amount of the fee refunded to the complainant is recoverable from the legal practitioner or former legal practitioner as a debt due to the Commissioner; and
  - (c) the costs of any assessment undertaken by a legal practitioner under subsection (4)(b) for the purposes of investigating the complaint are recoverable from the legal practitioner or former legal practitioner as a debt due to the Commissioner.
- (11) The provisions of Schedule 4 apply to an investigation under this section.

## **Subdivision 5—Conciliation**

### **77O—Commissioner may conciliate complaints**

- (1) The Commissioner may, at any time, arrange for a conciliation to be conducted in relation to a matter before the Commissioner.
- (2) Nothing said or done in the course of a conciliation under this section can subsequently be given in evidence in any proceedings (other than proceedings for a criminal offence).
- (3) A person who has been involved in a conciliation in relation to a matter under this section is disqualified from investigating or further investigating the matter and from otherwise dealing with the matter.
- (4) If agreement is reached through a conciliation under this section—
  - (a) the agreement must be recorded in writing and signed by the parties to the agreement and the Commissioner or on behalf of the Commissioner by a person authorised by the Commissioner for the purpose; and
  - (b) a copy of the agreement must be given to each of the parties.
- (5) An apparently genuine document purporting to be an agreement signed in accordance with this section and providing for the payment of a monetary sum by a party to the agreement, will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of such a debt.

- (6) If a legal practitioner contravenes or fails to comply with the terms of an agreement reached following conciliation under this section, the contravention or non-compliance is professional misconduct.
- (7) The fact that a conciliation is conducted or an agreement is reached in relation to a matter does not prevent investigation or further investigation or the laying of a charge in relation to conduct to which the matter relates.

## **Division 3—The Legal Practitioners Disciplinary Tribunal**

### **78—Establishment of Tribunal**

- (1) The *Legal Practitioners Disciplinary Tribunal* is established.
- (2) There will be 15 members of the Tribunal appointed by the Governor on the nomination of the Chief Justice of whom—
  - (a) 10 must be legal practitioners; and
  - (b) 5 must be persons who are not legal practitioners but who are familiar with the nature of the legal system and legal practice.
- (3) A person is not eligible for appointment as a member of the Tribunal under subsection (2)(a) unless that person is a legal practitioner of at least 5 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State).
- (4) One member of the Tribunal who is a legal practitioner will be appointed, on the nomination of the Chief Justice, to be the presiding member of the Tribunal, and another member who is a legal practitioner will be appointed by the Governor, on the nomination of the Chief Justice, to be the deputy of that member.
- (5) The deputy may, in the absence of the presiding member, exercise any powers conferred by this Act on the presiding member.

### **79—Conditions of membership**

- (1) Subject to this Act, a member of the Tribunal will be appointed for a term of office of three years and, on the expiration of a term of office, is eligible for reappointment.
- (3) The Governor may remove a member of the Tribunal from office for—
  - (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.
- (4) The office of a member of the Tribunal becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office; or
  - (c) resigns by written notice addressed to the Attorney-General; or
  - (d) ceases to be a legal practitioner or is disciplined under this Act or by the Supreme Court or under an Act or law of another State or Territory of the Commonwealth for regulating the conduct of persons practising the profession of the law; or

- (e) is removed from office by the Governor pursuant to subsection (3).
- (5) On the office of a member of the Tribunal becoming vacant a person will be appointed, in accordance with this Act, to the vacant office.
- (6) A member of the Tribunal who completes his or her term of office and is not reappointed may continue to act as a member of the Tribunal for the purpose of completing the hearing and determination of proceedings part-heard at completion of the term.

## **80—Constitution and proceedings of Tribunal**

- (1) Subject to subsection (1a), in relation to proceedings instituted before the Tribunal alleging professional misconduct by a legal practitioner, the Tribunal consists of a panel of three of its members chosen by the presiding member to constitute the Tribunal for the purposes of those proceedings (one of whom may be the presiding member).
- (1a) In relation to—
  - (a) proceedings instituted before the Tribunal alleging professional misconduct by a legal practitioner where—
    - (i) the charge is laid by the Commissioner; and
    - (ii) the Commissioner indicates to the Tribunal when laying the charge that, in the opinion of the Commissioner, the alleged misconduct does not warrant any of the following orders:
      - (A) an order that the legal practitioner's name be struck off the roll of legal practitioners;
      - (B) an order suspending the practitioner's practising certificate for a period exceeding 3 months;
      - (C) an order that the legal practitioner pay a fine exceeding \$10 000; or
  - (b) proceedings instituted before the Tribunal alleging only unsatisfactory professional conduct by a legal practitioner; or
  - (c) proceedings on an appeal against a determination of the Commissioner under section 77J,the Tribunal consists of 1 of its members chosen by the presiding member to constitute the Tribunal for the purposes of those proceedings (and that member may be the presiding member).
- (1b) Despite subsections (1) and (1a), the Tribunal may, for the purposes of dealing with a procedural or interlocutory matter or an application for an extension of time, consist of 1 of its members chosen by the presiding member to constitute the Tribunal or be otherwise constituted as determined by the presiding member.
- (1ba) The Tribunal may, if it thinks fit, hear and determine an application for an extension of time for the laying of a charge when it hears and determines proceedings in relation to the charge.

- (1c) The Tribunal when constituted of a panel of 3 of its members must include at least 1 member who is a legal practitioner and at least 1 member who is not a legal practitioner but when the Tribunal consists of only 1 of its members the member constituting the Tribunal must be a legal practitioner.
- (2) Where the presiding member is a member of a panel chosen under subsection (1), the member will preside at the proceedings, and in any other case a member of the panel nominated by the presiding member will preside.
- (3) The Tribunal separately constituted under this section in respect of separate proceedings may sit contemporaneously to hear and determine those separate proceedings.
- (4) If, before proceedings are finalised, a member of a panel chosen under subsection (1) dies or is otherwise unable to continue acting, the two remaining members of the panel may continue to hear and determine the proceedings.
- (4a) The Tribunal, when constituted of a panel of three, may decide matters by majority decision of its members.
- (4b) If the Tribunal is completing the hearing and determination of proceedings in relation to a charge with two members only under subsection (4), a decision of the Tribunal must be arrived at unanimously (and if a decision cannot be arrived at unanimously the charge may be relaid).
- (5) Subject to this Act, the proceedings of the Tribunal will be conducted in such manner as the Tribunal determines.

## **81—Validity of acts of the Tribunal and immunity of its members**

- (1) An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.
- (2) No liability attaches to a member of the Tribunal for any act or omission by the member, or by the Tribunal, in good faith and in the exercise or purported exercise of functions, or in the discharge or purported discharge of duties under this Act.

## **Division 4—Proceedings before the Tribunal**

### **82—Inquiries**

- (1) Subject to this section, a charge may be laid under this section alleging unsatisfactory professional conduct or professional misconduct—
  - (a) on the part of any legal practitioner; or
  - (b) on the part of any former legal practitioner who was at the time of the alleged unsatisfactory professional conduct or professional misconduct a legal practitioner.
- (1a) A charge may not be laid before the Tribunal relating to conduct by a legal practitioner or former legal practitioner if the Commissioner has exercised a power under section 77J in relation to the conduct.

- (2) A charge may be laid under this section by—
  - (a) the Attorney-General; or
  - (b) the Commissioner; or
  - (c) the Society; or
  - (d) a person claiming to be aggrieved by reason of the alleged unsatisfactory professional conduct or professional misconduct.
- (2a) A charge may not be laid before the Tribunal more than 5 years after the day on which the person laying the charge became aware of the conduct to which the charge relates unless—
  - (a) the charge is laid by the Attorney-General; or
  - (b) the Tribunal allows an extension of time.
- (2c) A charge may be laid before the Tribunal despite the fact that criminal proceedings have been or are to be commenced in relation to a matter to which the charge relates.
- (3) A charge laid under this section must be in the form prescribed by rules under this Division.
- (4) Where a charge has been laid under this section, the Tribunal must, subject to subsection (5), inquire into the conduct of the legal practitioner or former legal practitioner to whom the charge relates.
- (5) The Tribunal may summarily dismiss any charge that it considers frivolous or vexatious and may, for the purpose of dealing with such a charge, consist of 1 member.
- (6) If after conducting an inquiry under this section the Tribunal is satisfied—
  - (a) that a legal practitioner is guilty of unsatisfactory professional conduct or professional misconduct it may exercise any one or more of the following powers:
    - (i) it may reprimand the legal practitioner;
    - (ib) it may make orders with respect to the examination of the legal practitioner's files and records by a person approved by the Tribunal (at the expense of the legal practitioner) at the intervals, and for the period, specified in the order;
    - (ii) it may order the legal practitioner to pay a fine not exceeding—
      - (A) \$50 000; or
      - (B) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—\$10 000;
    - (iii) it may make an order imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—
      - (A) relating to the practitioner's legal practice (provided that, in the case of an order made without the consent of the practitioner, such conditions must not operate for a period exceeding 12 months); or

- (B) requiring that the legal practitioner, within a specified time, complete further education or training, or receive counselling, of a specified type;
- (iv) it may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order, not exceeding—
  - (A) 12 months; or
  - (B) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—3 months;
- (v) it may, unless constituted of 1 member in accordance with section 80(1a)(a), recommend that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court; or
- (b) that a former legal practitioner was, while he or she remained a legal practitioner, guilty of professional misconduct—it may order the former legal practitioner to pay a fine not exceeding—
  - (i) \$50 000; or
  - (ii) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—\$10 000; or
- (c) that a former legal practitioner was, while he or she remained a legal practitioner, guilty of unsatisfactory professional conduct—it may order the former legal practitioner to pay a fine not exceeding—
  - (i) \$25 000; or
  - (ii) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—\$5 000.
- (6b) A condition imposed on a practising certificate or interstate practising certificate pursuant to an order under this section may be varied or revoked at any time on application by the legal practitioner.
- (7) After completing an inquiry under this section, the Tribunal must transmit the evidence taken by the Tribunal on the inquiry together with a memorandum of its findings to the Attorney-General, the Society and the Commissioner.
- (8) If, after conducting an inquiry into a charge alleging professional misconduct by a person who is a legal practitioner or former legal practitioner, the Tribunal—
  - (a) is not satisfied that the person is guilty of professional misconduct; but
  - (b) is satisfied that the person is guilty of unsatisfactory professional conduct,the Tribunal must find the person not guilty of professional misconduct, but may find the person guilty of unsatisfactory professional conduct.

### **83—Notice of inquiry**

- (1) The Tribunal must give to a legal practitioner or former legal practitioner whose conduct is subject to inquiry under this Part, and to any person on whose application an inquiry is to be held, not less than seven days written notice of the time and place at which it intends to conduct the inquiry, and must afford any such person a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.
- (2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed with the inquiry in the person's absence.
- (3) A person whose conduct is subject to an inquiry under this Part is entitled to be represented at the inquiry by counsel.

### **84—Powers of Tribunal**

- (1) For the purposes of an inquiry under this Part, the Tribunal may—
  - (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the attendance before the Tribunal of any person (including a party to the proceedings) whom the Tribunal thinks fit to call before it; or
  - (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, require the production of documents; or
  - (c) inspect any documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents; or
  - (d) require any person to make an oath or affirmation to truly answer all questions put by the Tribunal, or by any person appearing before the Tribunal, relevant to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by any member of the Tribunal); or
  - (e) require any person appearing before the Tribunal (whether summoned to appear or not) to answer any relevant question put by any member of the Tribunal, or by any other person appearing before the Tribunal; or
  - (f) require any person appearing before the Tribunal (whether summoned to appear or not) to prepare a document (including an itemised bill (within the meaning of Schedule 3)) as reasonably directed by the Tribunal, or to comply with any other reasonable direction issued by the Tribunal in furtherance of the inquiry.
- (2) A summons may be issued under subsection (1) on the application of a party to proceedings before the Tribunal, notwithstanding that the Tribunal has not met to authorise the issue of the summons.
- (3) If a person—
  - (a) who has been served with a summons to attend before the Tribunal, neglects or fails without reasonable excuse to attend in obedience to the summons; or
  - (b) who has been served with a summons to produce any documents neglects or fails without reasonable excuse to comply with the summons; or



- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal; or
- (d) refuses to be sworn or to affirm or to answer any relevant question when required to do so by the Tribunal; or
- (e) neglects or fails without reasonable excuse to comply with any other reasonable requirement of the Tribunal,

the person is guilty of an offence.

Maximum penalty: \$10 000.

- (4) If a person summoned as mentioned in subsection (1) refuses or fails to attend before the Tribunal as required by the summons, or having attended refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Tribunal, a certificate of the refusal or failure, signed by a member of the Tribunal, may be filed in the Supreme Court.
- (5) Where a certificate has been filed under subsection (4), a party requiring the attendance of the person may apply to the Supreme Court for an order directing that person to attend, or to be sworn or to affirm, or to answer questions (as the case may require), and on that application the Court may make such orders as it thinks fit (including orders for costs).
- (6) The Court may require that notice be given of an application under subsection (5) to the person against whom the order is sought or any other person (but an order may be made, if the Court thinks fit, although no notice has been given of the application).
- (7) In the course of an inquiry, the Tribunal may—
  - (a) receive in evidence a transcript of evidence taken in proceedings before a court or tribunal of any State or the Commonwealth (and any exhibits referred to in such a transcript), and draw any conclusions of fact from the evidence that it considers proper;
  - (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court or tribunal that may be relevant to the proceedings.

#### **84A—Proceedings to be generally in public**

- (1) Subject to subsection (2), an inquiry under this Part must be held in public.
- (2) The Tribunal may order that an inquiry or part of an inquiry be conducted in private if satisfied that it is necessary to do so in the interests of justice or in order to protect the privacy of clients of the legal practitioner or former legal practitioner whose conduct is the subject of the inquiry.
- (3) If proceedings of the inquiry are held in private, the Tribunal must prepare a summary of the proceedings containing such information as may be disclosed consistently with the interests of justice and the need to protect the privacy of clients.
- (4) A copy of any such summary must be made available on request at the Tribunal's public office for inspection by any interested member of the public.

## **84B—Tribunal's proceedings to be privileged**

Anything said or done in the course of the Tribunal's proceedings is protected by absolute privilege.

## **84C—Stay of proceedings**

- (1) The Tribunal may, if it thinks fit, stay any proceedings before the Tribunal until further order on such terms as it considers proper.
- (2) If proceedings are stayed, the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) is suspended until the proceedings are completed unless the Tribunal considers that there is good reason for not suspending the certificate and orders accordingly.
- (3) If a legal practitioner's practising certificate is suspended under subsection (2), the Supreme Court may, on application by the practitioner, terminate the suspension.

## **85—Costs**

- (1) The Tribunal may make such orders as to costs against any person on whose application an inquiry has been held, or against any legal practitioner or former legal practitioner whose conduct has been subject to inquiry, as the Tribunal considers just and reasonable.
  - (1a) If—
    - (a) the Commissioner has laid a charge under section 82 alleging unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner or former legal practitioner who has refused to consent to the exercise of a power by the Commissioner under section 77J in relation to the alleged unsatisfactory professional conduct or professional misconduct; and
    - (b) the Tribunal finds the legal practitioner or former legal practitioner guilty of unsatisfactory professional conduct or professional misconduct; and
    - (c) the Tribunal considers that the refusal of the legal practitioner or former legal practitioner to consent to the exercise of the power by the Commissioner was unreasonable,

the Tribunal may order the legal practitioner or former legal practitioner to reimburse the Commissioner for costs incurred by the Commissioner in the conduct of the proceedings except to the extent that the legal practitioner or former legal practitioner shows them to have been unreasonably incurred.

- (2) Costs of proceedings before the Tribunal may be adjudicated in the Supreme Court.
- (3) Where the Tribunal has ordered payment of a fine or costs, a certificate of the fine or costs must be filed in the Supreme Court.
- (4) Where a certificate has been filed under subsection (3), proceedings may be taken for the recovery of the fine or costs as if the certificate were a judgment of the Supreme Court.

## **86—Appeal**

- (1) Subject to subsection (2), a right of appeal to the Supreme Court lies against a decision of the Tribunal made in the exercise or purported exercise of powers or functions under this Act.

- (2) An appeal must be instituted within one month of the date on which the appellant is notified of the decision unless the Supreme Court is satisfied that there is good reason to dispense with the requirement that the appeal should be so instituted.
- (3) The Supreme Court may, on the hearing of an appeal exercise any one or more of the following powers, as the case requires:
  - (a) affirm, vary, quash or reverse the decision subject to the appeal and administer any reprimand, or make any order, that should have been administered or made in the first instance;
  - (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for rehearing;
  - (c) make any further or other order as to costs or any other matter that the case requires.

### **87—Operation of order may be suspended**

- (1) Where an order has been made by the Tribunal, and the Tribunal or the Supreme Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order, until the determination of the appeal.
- (2) Where the Tribunal has suspended the operation of an order under subsection (1), the Tribunal may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

### **88—Rules of the Tribunal**

Any three or more Judges of the Supreme Court may make rules for any of the following purposes:

- (a) regulating the practice and procedure of the Tribunal;
- (b) conferring on the Tribunal any additional powers necessary or expedient for carrying out its functions;
- (c) making any other provision that is necessary or expedient for carrying into effect the provisions of this Part relating to the Tribunal.

## **Division 5—Disciplinary proceedings before the Supreme Court**

### **88A—Supreme Court's inherent jurisdiction**

- (1) This Part does not derogate from the inherent jurisdiction of the Supreme Court to control and discipline legal practitioners.
- (2) Without limiting the operation of subsection (1), the Court may act under its inherent jurisdiction to control and discipline legal practitioners on the application of the Attorney-General, the Commissioner or the Society.

### **89—Proceedings before Supreme Court**

- (1) Where the Tribunal after conducting an inquiry into the conduct of a legal practitioner recommends that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court, the Commissioner, the Attorney-General or the Society may institute disciplinary proceedings in the Supreme Court against the legal practitioner.

- (1a) If the Commissioner is of the opinion that the name of a legal practitioner should be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act because the practitioner has been found guilty of a serious offence, or for any other reason, the Commissioner may, without laying a charge before the Tribunal, institute disciplinary proceedings in the Supreme Court against the practitioner.

- (1b) If—

(a) —

- (i) a recommendation is made by the Tribunal that disciplinary proceedings be commenced against a legal practitioner in the Supreme Court; or
  - (ii) the Commissioner has advised a legal practitioner in writing of his or her intention to institute disciplinary proceedings against the legal practitioner in the Supreme Court; and
- (b) the legal practitioner informs the Court in writing that he or she would consent to an order that his or her name be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act,

the Court may, despite the fact that disciplinary proceedings have not been instituted, order that the name of the legal practitioner be struck off the roll maintained under this Act or kept in the other State (as appropriate).

- (2) In any disciplinary proceedings against a legal practitioner (whether instituted under this section or not) the Supreme Court may exercise any one or more of the following powers:

- (a) it may reprimand the legal practitioner;
- (b) it may make an order imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—
  - (i) relating to the practitioner's legal practice; or
  - (ii) requiring that the legal practitioner, within a specified time, complete further education or training, or receive counselling, of a specified type;
- (c) it may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order or until further order;
- (d) it may order that the name of the legal practitioner be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act;
- (e) it may make any other order (including an order as to the costs of proceedings before the Court and the Tribunal) that it considers just.

- (4) In any disciplinary proceedings the Supreme Court may refer any matter to a Judge or Master, or to the Tribunal, for investigation and report.

- (5) In any disciplinary proceedings—
- (a) the Supreme Court may, without further inquiry, accept and act on any findings of the Tribunal or of a Judge or Master to whom a matter has been referred for investigation and report under subsection (4); and
  - (b) the Supreme Court may—
    - (i) receive in evidence a transcript of evidence taken in any proceedings before a court of any State and draw any conclusions of fact from the evidence that it considers proper;
    - (ii) adopt, as in its discretion it considers proper, any findings, decision, judgment or reasons for judgment of any such court that may be relevant to the proceedings.
- (6) Where the Supreme Court is satisfied, on the application of the Commissioner, the Attorney-General or the Society, that a legal practitioner is disqualified or suspended from practice under the law of any other State (whether or not that State is a participating State), it may, without further inquiry, impose a corresponding disqualification or suspension under the provisions of this section.

### **89A—Court may order interim suspension of legal practitioner or impose interim conditions**

If—

- (a) disciplinary proceedings have been instituted against a legal practitioner before the Tribunal or the Supreme Court or a legal practitioner has been charged with or convicted of a criminal offence; and
- (b) the Supreme Court is satisfied that the circumstances are such as to justify invoking the provisions of this section,

the Supreme Court may, on its own initiative or on the application of the Commissioner, the Attorney-General or the Society, make an interim order—

- (c) imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) relating to the practitioner's legal practice; or
- (d) suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate),

until disciplinary proceedings against the practitioner have been finalised or until further order.

## **Division 6—Publicising disciplinary action**

### **89B—Definitions**

In this Division—

*disciplinary action* means—

- (a) the making of an order by a court or tribunal for or following a finding of unsatisfactory professional conduct or professional misconduct by a legal practitioner or former legal practitioner under this Act or under a corresponding law; or

- (ab) the making of an order by the Supreme Court suspending a legal practitioner's practising certificate; or
- (b) the exercise by the Commissioner or a corresponding authority of a power under section 77J or a corresponding law where the Commissioner or corresponding authority is satisfied that there is evidence of unsatisfactory professional conduct or professional misconduct by a legal practitioner; or
- (c) any of the following actions taken under this Act or under a corresponding law, following a finding by a court or tribunal of unsatisfactory professional conduct or professional misconduct by a legal practitioner:
  - (i) removal of the name of the practitioner from a roll of legal practitioners maintained under this Act or a corresponding law;
  - (ii) the suspension or cancellation of the practising certificate of the practitioner;
  - (iii) the refusal to issue or renew a practising certificate to the practitioner;
  - (iv) the appointment of—
    - (A) a supervisor of trust money of the practitioner's practice; or
    - (B) a receiver for the practitioner's practice; or
    - (C) a manager for the practitioner's practice;
- (d) removal of the name of a practitioner from the roll of legal practitioners maintained under this Act pursuant to section 89(1b);

**Register** means the Register of Disciplinary Action referred to in section 89C.

### **89C—Register of Disciplinary Action**

- (1) The Commissioner is to maintain a register (the ***Register of Disciplinary Action***) of—
  - (a) disciplinary action taken in relation to professional misconduct under this Act against legal practitioners and former legal practitioners; and
  - (b) disciplinary action taken in relation to professional misconduct under a corresponding law against legal practitioners and former legal practitioners who are or were enrolled or practising the law in this State when the conduct that is the subject of the disciplinary action occurred.
- (2) The Commissioner may also include in the Register—
  - (a) disciplinary action taken in relation to unsatisfactory professional conduct under this Act against legal practitioners and former legal practitioners; and
  - (b) disciplinary action taken in relation to unsatisfactory professional conduct under a corresponding law against legal practitioners and former legal practitioners who are or were enrolled or practising the law in this State when the conduct that is the subject of the disciplinary action occurred; and
  - (c) disciplinary action consisting of the removal of the name of a legal practitioner from the roll of legal practitioners maintained under this Act pursuant to section 89(1b).

- (3) The following particulars are to be included when information about disciplinary action is entered into the Register:
  - (a) the full name of the person against whom the disciplinary action was taken;
  - (b) the person's business address or former business address;
  - (c) the person's home jurisdiction or most recent home jurisdiction;
  - (d) particulars of the disciplinary action taken;
  - (e) other particulars prescribed by the regulations or determined by the Commissioner.
- (4) The Register may be kept in a form determined or identified by the Commissioner and may form part of other registers.
- (5) The Register is to be made available for public inspection on—
  - (a) the Internet site of the Commissioner; or
  - (b) an Internet site identified on the Internet site of the Commissioner.
- (6) Information recorded in the Register may be provided to members of the public in any other manner approved by the Commissioner.
- (7) The Commissioner may cause any error in or omission from the Register to be corrected.
- (7a) The Commissioner may cause information about disciplinary action to be removed from the Register in the circumstances prescribed by regulation (if any).
- (8) 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.

#### **89D—Other means of publicising disciplinary action**

- (1) The Commissioner may publicise disciplinary action taken against a legal practitioner or former legal practitioner in any manner the Commissioner thinks fit.
- (2) Nothing in this section affects the provisions of this Division relating to the Register.

#### **89E—Quashing of disciplinary action**

- (1) If disciplinary action is quashed on appeal or review, any reference to that disciplinary action must be removed from the Register.
- (2) If disciplinary action is quashed on appeal or review after the action was publicised by the Commissioner under section 89D, the result of the appeal or review must be publicised with equal prominence by the Commissioner.

#### **89F—Liability for publicising disciplinary action**

- (1) No liability is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of—
  - (a) publicising disciplinary action taken against a legal practitioner or former legal practitioner; or
  - (b) exercising the powers or functions of the Commissioner under this Division; or

- (c) keeping, publishing or enabling access to the Register.
- (2) Without limiting subsection (1), no liability (including liability in defamation) is incurred by a person publishing in good faith—
  - (a) information about disciplinary action—
    - (i) recorded in the Register; or
    - (ii) otherwise publicised by the Commissioner under this Division, or matter purporting to contain information of that kind where the matter is incorrect in any respect; or
  - (b) a fair report or summary of information referred to in paragraph (a).
- (3) In this section—

***protected person*** means—

- (a) the Crown; or
- (b) the Society; or
- (c) the Council; or
- (d) an officer, employee or agent of the Society; or
- (e) the Commissioner; or
- (f) an employee or agent of the Commissioner; or
- (g) a person responsible for keeping the whole or any part of the Register; or
- (h) an Internet service provider or Internet content host; or
- (i) a person acting at the direction of the State or of any person or body referred to in this definition.

## **90—General**

- (1) The provisions of this Division are subject to any order made by—
  - (a) the Supreme Court or 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 correspond to this Part; or
  - (c) a court or tribunal of this or another jurisdiction,so far as the order prohibits or restricts the disclosure of information.
- (2) Despite subsection (1), the name and other identifying particulars of the person against whom the disciplinary action was taken, and the kind of disciplinary action taken, must be recorded in the Register in accordance with the requirements of this Division and may be otherwise publicised under this Division.

## **Division 6A—Provisions relating to interstate legal practice**

### **90AA—Conduct of local legal practitioners outside State**

The provisions of this Part extend in their operation to conduct by a local legal practitioner in a participating State or elsewhere outside this State.



### **90AB—Conduct not to be the subject of separate proceedings**

If conduct by a legal practitioner has been the subject of disciplinary proceedings in a participating State that have been finally determined, no proceedings are to be commenced or continued under this Part in relation to that conduct (other than proceedings authorised under section 89(6)).

### **90AC—Referral or request for investigation of matter to regulatory authority in participating State**

- (1) If it considers it appropriate to do so, a regulatory authority in this State may refer a complaint made to it in relation to a local legal practitioner or an interstate legal practitioner to a regulatory authority in a participating State, to be dealt with according to the law of that State.
- (2) If it considers it appropriate to do so, a regulatory authority in this State may request a regulatory authority in a participating State to investigate the conduct of a local legal practitioner or an interstate legal practitioner (whether or not the subject of a complaint), in accordance with the law of that State.
- (3) After a referral under subsection (1) has been made, no further action (other than action required to comply with section 90AE) may be taken by any regulatory authority in this State in relation to the subject-matter of the referral.

### **90AD—Dealing with matter following referral or request by regulatory authority in participating State**

If a regulatory authority in a participating State—

- (a) refers a complaint against a local legal practitioner or an interstate legal practitioner to a regulatory authority in this State; or
- (b) requests a regulatory authority in this State to investigate the conduct of a local legal practitioner or an interstate legal practitioner,

the conduct of the practitioner may be investigated by the regulatory authority in this State and, following such investigation, a charge may be laid and disciplinary proceedings may be brought against the practitioner, whether or not the conduct investigated allegedly occurred in or outside this State.

### **90AE—Furnishing information**

- (1) A regulatory authority in this State must furnish without delay any information about a local legal practitioner or interstate legal practitioner reasonably required by a regulatory authority in a participating State in connection with actual or possible disciplinary action against the practitioner.
- (2) A regulatory authority may provide the information despite any law relating to secrecy or confidentiality.
- (3) Nothing in this section affects any obligation or power to provide information apart from this section.

### **90AF—Local legal practitioners are subject to interstate regulatory authorities**

- (1) A local legal practitioner practising in this State must comply with any condition in respect of his or her legal practice imposed by a regulatory authority in a participating State as a result of disciplinary action against the practitioner.

- (2) A contravention of or non-compliance with this section is professional misconduct.
- (3) A regulatory authority in a participating State that has the appropriate jurisdiction under the corresponding law of that State may suspend, cancel, vary the conditions of, or impose conditions or further conditions on, a local legal practitioner's practising certificate as a result of disciplinary action against the practitioner in that State, or may make an order for such suspension, cancellation, variation or imposition.
- (4) A regulatory authority in this State must comply with an order of a regulatory authority in a participating State under subsection (3).
- (5) A regulatory authority in a participating State that has jurisdiction to order the removal of the name of a person from the roll kept in that State that corresponds to the roll of practitioners in the Supreme Court in this State may order that the name of the local legal practitioner be removed from the roll in this State.
- (6) If an order is made in relation to a local legal practitioner under subsection (5), the Supreme Court will remove the local legal practitioner's name from the roll in this State.

## **Division 7—Annual reports**

### **90A—Annual reports**

- (1) The Commissioner and the Tribunal must each, on or before 31 October in each year, prepare and present to the Attorney-General and the Chief Justice a report on their proceedings for the last financial year.
- (2) A report must contain—
  - (a) a statement of the nature of the matters subject to investigation or inquiry; and
  - (b) information as to case management, and the number of uncompleted matters outstanding at the end of the financial year; and
  - (c) such other information as the Attorney-General may require.
- (3) The Attorney-General must, within 12 sitting days after receiving a report from the Commissioner or the Tribunal under this section, cause copies of the report to be laid before both Houses of Parliament.

## **Division 8—Professional mentoring agreements**

### **90B—Professional mentoring agreements**

- (1) The Society or the Commissioner may enter into an agreement with a legal practitioner (a *professional mentoring agreement*) for the appointment of a professional mentor for the practitioner.
- (2) A person is not eligible for appointment as a professional mentor for a legal practitioner unless he or she is a legal practitioner of at least 5 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State).

- (3) A professional mentor appointed for a legal practitioner—
  - (a) is to provide guidance to the practitioner in relation to the conduct of the practitioner's practice and the meeting of his or her professional obligations; and
  - (b) has, in relation to the practitioner and the practitioner's practice, for the period of the appointment, the duties, obligations and powers prescribed in the regulations; and
  - (c) must report on the practitioner and the practitioner's practice as required by the regulations to the Society and, if the professional mentor was appointed under an agreement entered into with the Commissioner, the Commissioner.
- (4) A professional mentoring agreement—
  - (a) must be in writing; and
  - (b) must state the term for which the professional mentor has been appointed; and
  - (c) must comply with any requirements prescribed by the regulations.
- (5) The initial term of appointment of a professional mentor for a legal practitioner may not exceed 6 months but the professional mentor may, at the end of the initial term of appointment, be appointed for a further term not exceeding 6 months.
- (6) A professional mentor for a legal practitioner is to be remunerated by the legal practitioner or the relevant law practice in accordance with the method prescribed by the regulations.
- (7) Any charge for which a legal practitioner or law practice is liable in accordance with the regulations is recoverable from the practitioner or law practice as a debt due to the professional mentor.
- (8) The regulations may make further provision for the recovery of charges owing to professional mentors.
- (9) If the Commissioner enters into a professional mentoring agreement with a legal practitioner, the Commissioner must provide the Society with a copy of the agreement.
- (10) A legal practitioner who has entered into a professional mentoring agreement may, for any proper purpose, disclose a matter to the professional mentor and such disclosure will be taken not to affect the operation of client legal privilege (or other legal professional privilege).



## **Part 7—Appointment of Senior Counsel, Queen's Counsel etc**

### **91—Appointment of Senior Counsel**

- (1) The Chief Justice may, on behalf of the Supreme Court and in accordance with the Rules of the Court, appoint any legal practitioner as a Senior Counsel.
- (2) The Chief Justice must ensure that notice of the appointment of a legal practitioner as a Senior Counsel is published in the Gazette as soon as practicable.

### **92—Appointment of Queen's Counsel etc**

- (1) The Attorney-General must, at the request of a legal practitioner who is a Senior Counsel, recommend to the Governor that the legal practitioner be appointed as a Queen's Counsel or King's Counsel (as the case may require) (and the Attorney-General may only make such a recommendation to the Governor on receipt of a request from a Senior Counsel in accordance with this subsection).
- (2) The Governor may, on the recommendation of the Attorney-General, by notice in the Gazette, appoint a legal practitioner as a Queen's Counsel or King's Counsel (as the case may require).
- (3) If a legal practitioner is appointed as a Queen's Counsel or King's Counsel, the legal practitioner—
  - (a) ceases to be a Senior Counsel; and
  - (b) will take precedence, as a Queen's Counsel or King's Counsel, in accordance with their former precedence as a Senior Counsel.

### **93—Revocation and resignation of appointments**

- (1) The Chief Justice may, on behalf of the Supreme Court and in accordance with the Rules of the Court, revoke the appointment of any legal practitioner as a Senior Counsel or as a Queen's Counsel or King's Counsel.
- (2) A legal practitioner who has been appointed as a Senior Counsel, or as a Queen's Counsel or King's Counsel, may, by written notice to the Chief Justice, resign from that appointment.
- (3) The Chief Justice must ensure that notice of a revocation of, or resignation from, an appointment as a Senior Counsel, or as a Queen's Counsel or King's Counsel, is published in the Gazette as soon as practicable.



## Part 8—Miscellaneous

### 95—Application of certain revenues

- (1) Subject to subsection (1aa), the Treasurer must in each year pay to the Society, from the money paid by way of practising certificate fees, fees paid by corporations under Schedule 1 clauses 4(1) and 5(2) and the fees paid by interstate practitioners on giving notice of the establishment of an office in this State—
  - (a) an amount approved by the Attorney-General towards the Society's costs in exercising any powers or functions delegated to the Society under this Act; and
  - (b) after deduction of the amount described in paragraph (a)—
    - (i) a prescribed proportion of the balance for the purpose of maintaining and improving the library of the Society;
    - (ii) a prescribed proportion of the balance to be credited by the Society to the Fidelity Fund.
- (1aa) If the Society collects practising certificate fees pursuant to an assignment of functions by the Supreme Court, the Society may retain a proportion of those fees approved by the Attorney-General for the purposes specified in subsection (1).
- (1a) The revenue raised from practising certificate levies will be applied for the purpose of maintaining and improving the Supreme Court library.
- (2) The Treasurer may, on the recommendation of the Attorney-General, make payments towards—
  - (a) meeting any expenses incurred by LPEAC in exercising its functions and powers under this Act; and
  - (b) defraying the costs of administering Part 6.
- (3) This section is, without further appropriation, sufficient authority for the payment of the money to which it relates from the Consolidated Account.

### 95AA—Agreements and arrangements with other regulatory authorities

A regulatory authority of this State may, with the approval of the Attorney-General, make agreements or arrangements with a regulatory authority of a participating State for or with respect to matters arising under this Act, including—

- (a) the investigation of complaints;
- (b) professional indemnity insurance;
- (c) contributions to and claims against the Fidelity Fund or a similar fund maintained in the participating State;
- (d) trust account inspections;
- (e) the appointment of managers and receivers;
- (f) the exchange of information.

### **95A—Inspection of documents**

A power to inspect or require production of a document includes, in relation to a record of information that is accessible only through the use of a computer or other device, power to produce or require production of the information in an understandable form through the use of that computer or other device.

### **95B—False or misleading information**

A person must not knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or a record kept, under this Act.

Maximum penalty: \$10 000.

### **95BA—Mortgage financing**

- (1) On and from the commencement of this section, mortgage financing is not to be regarded as part of the practice of the profession of the law.
- (2) A legal practitioner who engages in mortgage financing must inform each prospective lender and borrower, orally and in writing, that any loss suffered as a result of mortgage financing will not be compensated by the Fidelity Fund or covered by professional indemnity insurance required under this Act.

Maximum penalty: \$10 000.

- (3) It is not the intention of the Parliament that any implication be drawn from this Act (or the Act that inserted this section) that mortgage financing when engaged in by a legal practitioner before the commencement of this section was part of the practice of the profession of the law.

### **95C—Self-incrimination and legal professional privilege**

- (1) It is not an excuse for a person to refuse or fail to answer a question or to produce a document as required under this Act on the ground that to do so might tend to incriminate the person, or make the person liable to a penalty, or on the ground of legal professional privilege.
- (2) If a person objects to answering a question or to producing a document on the ground that the answer or document might tend to incriminate the person or make the person liable to a penalty, then—
  - (a) in the case of a person who is required to produce a document—the fact of production of the document (as distinct from the contents of the document); or
  - (b) in any other case—the information furnished in compliance with the requirement,

is not admissible in evidence against the person in proceedings (other than proceedings in respect of the making of a false or misleading statement or perjury) in which the person might be found guilty of an offence or liable to a penalty.

- (3) If a person objects to answering a question or to producing a document on the ground of legal professional privilege, the answer or document will not be admissible in civil or criminal proceedings against the person who would, but for this section, have the benefit of the legal professional privilege.



## 95D—Service of notices and documents

- (1) A notice or document required or authorised by this Act to be served on or given to a person may be served on or given to the person—
  - (a) by delivering it personally to the person or to an agent of the person; or
  - (b) by sending it by post to the person or agent at—
    - (i) the usual or last known business or residential address of the person or agent; or
    - (ii) an address nominated for the purpose by the person or agent; or
  - (c) by leaving it for the person or agent at—
    - (i) the usual or last known business or residential address of the person or agent; or
    - (ii) an address nominated for the purpose by the person or agent, with a person on the premises who is apparently at least 16 years old and apparently employed or residing there; or
  - (d) by transmitting it by fax or email to a fax number or email address provided by the person or agent; or
  - (e) by sending or delivering it to the person or agent in a manner prescribed by regulation.
- (2) A reference in subsection (1) to any method of giving a notice or document to a person includes a reference to arranging for the notice or document to be given to that person by that method (for example, by delivery by courier).
- (3) In this section—

**agent** of a person means an agent, law practice or legal practitioner who has authority to accept service of legal process on behalf of the person.

## 95E—Wills register

If a register of wills made in this State is maintained by the Society, a legal practitioner does not breach a duty of confidentiality owed by the practitioner to a client for whom the practitioner has prepared a will merely by publishing on the register, without the client's consent, the name and date of birth of the client or the date of the will, provided that—

- (a) the will was made before the commencement of this section; and
- (b) the practitioner has been unable to contact the client despite having taken reasonable steps to do so for the purpose of obtaining the client's consent to publication of the information.

## 96—Summary offences

- (2) Proceedings for an offence against this Act must not be brought unless the Attorney-General has, by instrument in writing, authorised the institution of the proceedings.

- (3) An apparently genuine document purporting to be an authorisation under this section will, in the absence of proof to the contrary, be accepted as such in any legal proceedings.

## **97—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of the foregoing, those regulations may—
  - (a) prescribe, and provide for the recovery of, any fee or levy for the purposes of this Act; and
  - (b) prescribe any form for the purposes of this Act; and
  - (d) prescribe fines not exceeding a fine of \$10 000 for contravention of any regulation.
- (3) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the amendment of this Act by another Act.
- (3aa) A provision of a regulation made under subsection (3) may, if the regulation so provides, take effect from the commencement of the amendment or from a later day.
- (3aab) To the extent to which a provision takes effect under subsection (3aa) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (3a) Regulations under this Act—
  - (a) may be of general application or limited application; and
  - (b) may make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Attorney-General, the Supreme Court or the Society.
- (4) This section is in addition to, and does not derogate from, any other provision of this Act providing for the making of regulations.

## **98—Review of operation of Act in relation to barristers**

- (1) The Minister must, within 6 months after the commencement of this section, cause a review to be undertaken into—
  - (a) the operation of this Act insofar as it affects legal practitioners who practise the profession of the law solely as barristers; and
  - (b) the operation of section 6, with particular reference to the role of a separate bar.
- (2) A report on the review must be submitted to the Minister within 3 months after the commencement of the review.

- (3) The Minister must, within 12 sitting days after receiving the report under this section, cause copies of the report to be laid before both Houses of Parliament.



## **Schedule 1—Incorporated legal practices**

### **A1—Interpretation**

In this Schedule—

*approved form* means a form approved by the Supreme Court.

### **1—Nature of incorporated legal practice**

- (1) An incorporated legal practice is a corporation that engages in legal practice in this jurisdiction.
- (2) However, a corporation is not an incorporated legal practice if—
  - (a) the corporation does not receive any form of, or have any expectation of, a fee, gain or reward for the legal services it provides; or
  - (b) the only legal services that the corporation provides are any or all of the following services:
    - (i) in-house legal services, namely, legal services provided to the corporation concerning a proceeding or transaction to which the corporation (or a related body corporate) is a party;
    - (ii) services that are not legally required to be provided by a legal practitioner and that are provided by an officer or employee who is not a legal practitioner; or
  - (c) this Schedule 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 subclause (2).
- (4) Nothing in this Schedule affects or applies to the provision by an incorporated legal practice of legal services in 1 or more other jurisdictions.

### **2—Prohibition of non-legal services and businesses**

An incorporated legal practice may not provide any service, or conduct any business, that does not involve engaging in legal practice.

**Note—**

Contravention of this clause is a ground for banning an incorporated legal practice—see clause 21.

### **3—Corporations eligible to be incorporated legal practice**

- (1) Any corporation is, subject to this Schedule, eligible to be an incorporated legal practice.
- (2) This clause 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 a practising certificate.

### **3A—Incorporated legal practices may practise in partnership**

Subject to this Act, an incorporated legal practice may practise in partnership with another incorporated legal practice or a legal practitioner (or both).

### **4—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 Supreme Court written notice, in the approved form and accompanied by the prescribed fee, 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 clause.  
Maximum penalty: \$50 000.
- (3) A corporation that starts to engage in legal practice in this jurisdiction without giving a notice under subclause (1) is in default of this clause until it gives the Supreme Court written notice, in the approved form, of the failure to comply with that subclause and the fact that it has started to engage in legal practice.
- (4) The giving of a notice under subclause (3) does not affect a corporation's liability under subclause (1) or (2).
- (5) A corporation is not entitled to recover any amount for anything the corporation did in contravention of subclause (2).
- (6) A person may recover from a corporation, as a debt due to the person, any amount the person paid to or at the direction of the corporation for anything the corporation did in contravention of subclause (2).
- (7) This clause does not apply to—
  - (a) a corporation referred to in clause 1(2)(a) or (b); or
  - (b) a corporation that was a legal practitioner within the meaning of this Act immediately before the commencement of this clause.

### **4A—Notice to be given by incorporated legal practice of intention to practise in partnership**

- (1) Before an incorporated legal practice starts to engage in legal practice in this jurisdiction in partnership with another incorporated legal practice or a legal practitioner (or both), the practice must give the Supreme Court written notice, in the approved form, and accompanied by the prescribed fee, of its intention to do so.
- (2) An incorporated legal practice must not engage in legal practice in this jurisdiction in partnership with an incorporated legal practice or a legal practitioner (or both) if it is in default of this clause.  
Maximum penalty: \$50 000.
- (3) An incorporated legal practice that starts to engage in legal practice in this jurisdiction in partnership with an incorporated legal practice or a legal practitioner (or both) without giving a notice under subclause (1) is in default of this clause until it gives the Supreme Court written notice, in the approved form, of the failure to comply with that subclause and the fact that it has started to engage in legal practice in partnership with an incorporated legal practice or a legal practitioner.

- (4) The giving of a notice under subclause (3) does not affect an incorporated legal practice's liability under subclause (1) or (2).
- (5) A firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, is not entitled to recover any amount for anything the firm did while a member of the firm was in contravention of subclause (2).
- (6) A person may recover from a firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, as a debt due to the person, any amount the person paid to or at the direction of the firm for anything the firm did while a partner of the firm was in contravention of subclause (2).
- (7) This clause does not apply in relation to—
  - (a) a firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, if the firm—
    - (i) was established before the commencement of this clause; and
    - (ii) engaged in legal practice in this jurisdiction immediately before the commencement of this clause; or
  - (b) an incorporated legal practice that was a member of a firm referred to in paragraph (a) immediately before the commencement of this clause insofar as the practice engages in legal practice as a member of the firm.

#### **5—Notice to be given by companies that were formerly legal practitioners**

- (1) This clause applies to a corporation that was a legal practitioner within the meaning of this Act immediately before the commencement of clause 4.
- (2) A corporation to which this clause applies must, if it intends to continue to engage in legal practice in this jurisdiction, within 28 days following the commencement of clause 4, give the Supreme Court written notice, in the approved form and accompanied by the prescribed fee, of that intention.
- (3) A corporation to which this clause applies that engages in legal practice in this jurisdiction after the end of the 28 day period referred to in subclause (2) without giving a notice under that subclause is in default of this clause until it gives the Supreme Court written notice, in the approved form, of the failure to comply with that subclause and the fact that it has continued to engage in legal practice.
- (4) A corporation is not entitled to recover any amount for anything the corporation did while in default of this clause.
- (5) A person may recover from a corporation, as a debt due to the person, any amount the person paid to or at the direction of the corporation for anything the corporation did while in default of this clause.

#### **5A—Notice to be given by incorporated legal practice providing legal services in partnership**

- (1) This clause applies to—
  - (a) an incorporated legal practice that—
    - (i) immediately before the relevant day—

- (A) was a legal practitioner within the meaning of this Act (as in force immediately before the relevant day); and
  - (B) was practising in partnership with another legal practitioner; and
  - (ii) immediately before the commencement of this clause, continued to practise in the partnership; and
- (b) an incorporated legal practice that, after the relevant day but before the commencement of this clause—
  - (i) commenced practising in partnership with another incorporated legal practice or a legal practitioner (or both); and
  - (ii) immediately before the commencement of this clause, continued to practise in the partnership.
- (2) An incorporated legal practice to which this clause applies must, if it intends to continue to engage in legal practice in this jurisdiction in partnership with another incorporated legal practice or a legal practitioner (or both), within 28 days following the commencement of this clause, give the Supreme Court written notice, in the approved form and accompanied by the prescribed fee, of that intention.
- (3) An incorporated legal practice to which this clause applies must not engage in legal practice in this jurisdiction in partnership with an incorporated legal practice or a legal practitioner (or both) if it is in default of this clause.  
Maximum penalty: \$50 000.
- (4) An incorporated legal practice to which this clause applies that engages in legal practice in this jurisdiction in partnership with another incorporated legal practice or a legal practitioner (or both) after the end of the 28 day period referred to in subclause (2) without giving a notice under that subclause is in default of this clause until it gives the Supreme Court written notice, in the approved form, of the failure to comply with that subclause and the fact that it has continued to engage in legal practice in partnership with another incorporated legal practice or a legal practitioner (or both).
- (5) The giving of a notice under subclause (4) does not affect an incorporated legal practice's liability under subclause (2) or (3).
- (6) A firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, is not entitled to recover any amount for anything the firm did while a member of the firm was in contravention of this clause.
- (7) A person may recover from a firm of incorporated legal practices, or of incorporated legal practices and legal practitioners, as a debt due to the person, any amount the person paid to or at the direction of the firm for anything the firm did while a member of the firm was in contravention of this clause.
- (8) In this clause—  
***relevant day*** means the day on which this Schedule came into operation.



## **6—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 clause 4.  
Maximum penalty: \$50 000.
- (2) A director, officer, employee or agent of a corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under clause 4.  
Maximum penalty: \$50 000.
- (3) A reference in this clause 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.

## **7—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 Supreme Court a written notice, in the approved form, of that fact.  
Maximum penalty: \$50 000.
- (2) The regulations may make provision for or with respect to determining whether and when a corporation ceases to engage in legal practice in this jurisdiction.

## **8—Incorporated legal practice must have legal practitioner director**

- (1) An incorporated legal practice is required to have at least 1 legal practitioner director.
- (2) Each legal practitioner director of an incorporated legal practice is, for the purposes of this Act 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 legal practitioners and other obligations imposed by or under this Act, the regulations or legal profession rules; and
  - (b) so that those obligations of 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 legal practitioners or other obligations imposed by or under this Act, the director must take all reasonable action available to the director to ensure that—
  - (a) the breaches do not occur; and
  - (b) appropriate remedial action is taken in respect of breaches that do occur.
- (5) Nothing in this Schedule derogates from the obligations or liabilities of a director of an incorporated legal practice under any other law.
- (6) The reference in subclause (1) to a legal practitioner director does not include a reference to a person who is not validly appointed as a director (but this subclause does not affect the meaning of the expression "legal practitioner director" in other provisions of this Act).

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

## **10—Incorporated legal practice without legal practitioner director**

- (1) An incorporated legal practice contravenes this clause if it does not have any legal practitioner directors for a period exceeding 7 days.  
Maximum penalty: \$50 000.
- (2) If an incorporated legal practice ceases to have any legal practitioner directors, the incorporated legal practice must notify the Supreme Court as soon as possible.  
Maximum penalty: \$50 000.
- (3) An incorporated legal practice must not provide legal services in this jurisdiction during any period it is in default of director requirements under this clause.  
Maximum penalty: \$50 000.
- (4) An incorporated legal practice that contravenes subclause (1) is taken to be in default of director requirements under this clause for the period from the end of the period of 7 days until—
  - (a) it has at least 1 legal practitioner director; or
  - (b) a person is appointed under this clause or a corresponding law in relation to the practice.
- (5) The Supreme Court may, if it thinks it appropriate, appoint a legal practitioner who is an employee of the incorporated legal practice or another person nominated by the Court, in the absence of a legal practitioner director, to exercise or perform the functions or duties conferred or imposed on a legal practitioner director under this Schedule.
- (6) A legal practitioner is not eligible to be appointed under this clause unless the practitioner holds an unrestricted practising certificate.
- (7) The appointment under this clause of a person to exercise or perform functions or duties of a legal practitioner director does not, for any other purpose, confer or impose on the person any of the other functions or duties of a director of the incorporated legal practice.
- (8) An incorporated legal practice does not contravene subclause (1) during any period during which a person holds an appointment under this clause in relation to the practice.
- (9) A reference in this clause to a legal practitioner director does not include a reference to a person who is not validly appointed as a director (but this subclause does not affect the meaning of the expression "legal practitioner director" in other provisions of this Act).

## **11—Obligations and privileges of practitioners who are officers or employees**

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

- (2) For the purposes only of subclause (1), the professional obligations and professional privileges of a 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 1 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 a 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 a legal practitioner employed by the practice.

## **12—Professional indemnity insurance**

- (1) If a scheme under section 52 is in force requiring incorporated legal practices, or specified classes of incorporated legal practices, to be insured against liabilities that may arise in the course of, or in relation to, legal practice, an incorporated legal practice, or the specified classes of incorporated legal practices, must have the insurance required by the scheme.

**Note—**

See also section 52AA.

- (2) If the obligation referred in subclause (1) is not complied with, the practising certificate held by each legal practitioner director of the incorporated legal practice will be taken to be suspended until the legal practice obtains such insurance.
- (3) Subclause (1) does not affect an obligation of a legal practitioner, who is an officer or employee of an incorporated legal practice, to comply with the provisions of this Act relating to insurance.

## **13—Conflicts of interest**

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 a 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 clause).

## **14—Application of legal profession rules**

- (1) The legal profession rules, so far as they apply to legal practitioners, also apply to legal practitioners who are officers or employees of an incorporated legal practice, unless the rules otherwise provide.

- (2) Nothing in this clause prevents legal profession rules prescribing additional duties and obligations in connection with the conduct of an incorporated legal practice.

### **15—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 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 subclause (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 clause is, for the purposes of disciplinary proceedings taken against a legal practitioner, taken to have been authorised by each legal practitioner director of the incorporated legal practice.
- (4) This clause does not apply if the provision by which the restriction is imposed expressly excludes its application to incorporated legal practices.

### **16—Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices**

- (1) This clause 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 a 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 clause) 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.

### **17—Sharing of receipts, revenue or other income**

- (1) Nothing in this Act, the regulations or the legal profession rules prevents a legal practitioner from sharing with an incorporated legal practice receipts, revenue or other income arising from the provision of legal services by the practitioner.
- (2) This clause does not extend to the sharing of receipts, revenue or other income in contravention of clause 18.

## **18—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 engaging in legal practice in partnership with the incorporated legal practice; 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.

Maximum penalty: \$50 000.

- (2) The failure of a legal practitioner director of an incorporated legal practice to ensure that the practice complies with subclause (1) is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (3) On application, the Tribunal may authorise an incorporated legal practice to be a party to an agreement or arrangement of a kind referred to in subclause (1), subject to conditions (if any) specified by the Tribunal.
- (4) An application for such an authorisation may be made to the Tribunal by an incorporated legal practice.
- (5) The Tribunal may grant such an authorisation in its discretion but only if satisfied—
- (a) that the disqualified person will not practise the profession of the law; and
  - (b) that granting the authorisation on the specified conditions (if any) is not likely to create a risk to the public.
- (6) For the purposes of a hearing of an application under this clause, the Tribunal is constituted of a panel of 3 of its members chosen by the presiding member (1 of whom may be the presiding member).
- (7) The Tribunal must give to the Commissioner, and to the incorporated legal practice on whose application a hearing is to be held, not less than 7 days written notice of the time and place at which it intends to conduct the hearing, and must afford the Commissioner, and any such person, a reasonable opportunity to call and give evidence, to examine witnesses, and to make submissions to the Tribunal.
- (8) Subject to this clause, sections 80, 84, 84B, 85, 86 and 88 apply to a hearing of an application under this clause in the same way as to proceedings before the Tribunal under Part 6.
- (9) If an application is granted by the Tribunal, and the Tribunal or the Supreme Court is satisfied that an appeal against the authorisation has been instituted, or is intended, it may suspend the operation of the authorisation until the determination of the appeal.
- (10) If the Tribunal has suspended the operation of an authorisation under subclause (9), the Tribunal may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

- (11) An incorporated legal practice must comply with any conditions imposed on an authorisation by the Tribunal or the Supreme Court.

Maximum penalty: \$50 000.

- (12) An incorporated legal practice is not guilty of an offence against this clause in relation to an agreement or arrangement to which the legal practice is a party at the commencement of this clause if—

- (a) the agreement or arrangement is authorised under this clause on an application made within 12 months after that commencement; and
- (b) the incorporated legal practice complies with any conditions imposed on the authorisation.

- (13) In this clause—

***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 request) been removed from the roll of legal practitioners maintained under this Act, or the roll kept in a participating State that corresponds to the roll maintained under this Act, and who has not subsequently been admitted or re-admitted to the legal profession under this Act or a corresponding law;
- (b) a person whose practising certificate has been cancelled or suspended under this Act or a corresponding law and who, because of the cancellation, is not a legal practitioner or in relation to whom that suspension has not finished;
- (c) a person who has been refused a renewal of a practising certificate under this Act or a corresponding law, and to whom a practising certificate has not been granted at a later time;
- (d) a person who is the subject of an order under this Act or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice;
- (e) a person who is the subject of an order under this Act or a corresponding law prohibiting a legal practitioner from being a partner of the person in a business that includes the practitioner's practice;
- (f) a person who is the subject of an order under this Act or the provisions of a corresponding law disqualifying the person from being involved in the management of an incorporated legal practice or a firm that provides legal services (however described).

## **19—Audit of incorporated legal practice**

- (1) The Society may conduct an audit of—

- (a) the compliance of an incorporated legal practice (and of its officers and employees) with the requirements of this Act, 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—**

Clause 8 requires legal practitioner directors to ensure that appropriate management systems are implemented and maintained.

- (2) The Society may, in writing, appoint a suitably qualified person to conduct an audit under this clause.
- (3) The appointment may be made generally, or in relation to a particular incorporated legal practice, or in relation to a particular audit.
- (4) An audit may be conducted whether or not a complaint has been made against a legal practitioner with respect to the provision of legal services by the incorporated legal practice.
- (5) A report of an audit—
  - (a) is to be provided to the incorporated legal practice concerned; and
  - (b) may be provided by the Society to the Regulator or a corresponding authority; and
  - (c) may be provided by the Regulator to a corresponding authority; and
  - (d) may be taken into account in connection with any disciplinary proceedings taken against legal practitioner directors or other persons or in connection with the grant, amendment, suspension or cancellation of practising certificates.

## **20—Application of Schedule 4 (Investigatory powers)**

The investigatory powers set out in Schedule 4 apply to an audit under this Schedule.

## **21—Banning of incorporated legal practices**

- (1) The Supreme Court may, on the application of the Regulator, the Attorney-General or the Society, 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 clause has been established; and
  - (b) the disqualification is justified.
- (2) An order under this clause 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 a legal practitioner who is an officer or employee of the corporation is found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction;



- (b) that the Society 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 clause 2;
  - (d) that the incorporated legal practice has contravened clause 18;
  - (e) that a person who is an officer of the incorporated legal practice, and who is acting in the management of the incorporated legal practice, is the subject of an order under this Act or the provisions of a corresponding law disqualifying the person from being involved in the management of an incorporated legal practice or a firm that provides legal services (however described).
- (4) If a corporation is disqualified under this clause, the applicant for the order must, as soon as practicable, notify the Regulator of every other jurisdiction.
- (5) If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the Regulator 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 subclause prevents the Regulator, the Attorney-General or the Society from instead applying for an order under this clause.
- (6) A corporation that provides legal services in contravention of a disqualification under this clause is guilty of an offence.  
Maximum penalty: \$50 000.
- (7) A corporation that is disqualified under this clause ceases to be an incorporated legal practice.
- (8) Conduct of a 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 where the practitioner ought reasonably to have known that the corporation is disqualified under this clause.
- (9) The regulations may make provision for or with respect to the publication and notification of orders made under this clause, including notification of appropriate authorities of other jurisdictions.

## **22—Disqualification from managing incorporated legal practice**

- (1) The Supreme Court may, on the application of the Regulator, the Attorney-General or the Society, 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 2001* of the Commonwealth 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 clause, revoke the order.

- (3) A disqualification order made under this clause has effect for the purposes only of this Act and does not affect the application or operation of the *Corporations Act 2001* of the Commonwealth.
- (4) The regulations may make provision for or with respect to the publication and notification of orders made under this clause.
- (5) A person who is disqualified from managing a corporation under provisions of a corresponding law that correspond to this clause is taken to be disqualified from managing a corporation under this clause.

### **23—Disclosure of information to Australian Securities and Investments Commission**

- (1) This clause applies if the Regulator, the Attorney-General or the Society, in connection with exercising powers or performing functions under this Act, acquired information concerning a corporation that is or was an incorporated legal practice.
- (2) The Regulator, the Attorney-General or the Society 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 subclause (2) despite any law relating to secrecy or confidentiality, including any provisions of this Act.

### **24—External administration proceedings under *Corporations Act 2001***

- (1) This clause applies to proceedings in any court under Chapter 5 (External administration) of the *Corporations Act 2001* of the Commonwealth—
  - (a) relating to a corporation that is an externally-administered body corporate under that Act; or
  - (b) relating to a corporation becoming an externally-administered body corporate under that Act,being a corporation that is or was an incorporated legal practice.
- (2) The Regulator, the Attorney-General and the Society are 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) Subclause (3) does not authorise the court to make any decision that is contrary to a specific provision of the *Corporations Act 2001* of the Commonwealth.
- (5) The provisions of subclauses (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.

**Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth 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.

## **25—External administration proceedings under other legislation**

- (1) This clause applies to proceedings for the external administration (however expressed) of an incorporated legal practice, but does not apply to proceedings to which clause 24 applies.
- (2) The Regulator, the Attorney-General and the Society are 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) Subclause (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.

## **26—Cooperation between courts**

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

## **27—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.

## **28—Relationship of Act to legislation establishing incorporated legal practice**

- (1) This clause 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 2001* of the Commonwealth.
- (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.

## **29—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 2001* of the Commonwealth.
- (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 2001* of the Commonwealth 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 otherwise than to a specified extent.

- (3) In this clause—

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

### **30—Undue influence**

A person (whether or not an officer or an 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 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 a legal practitioner.

Maximum penalty: \$250 000 or imprisonment for 2 years.

### **31—Obligations of individual practitioners not affected**

Except as provided by this Schedule, nothing in this Schedule affects any obligation imposed on a legal practitioner director or a legal practitioner who is an employee of an incorporated legal practice under this or any other Act, the regulations or the legal profession rules in his or her capacity as a legal practitioner.

### **32—Regulations**

- (1) The regulations may (without limitation)—
  - (a) make provision for or with respect to the legal services provided by incorporated legal practices or a specified class of incorporated legal practices;
  - (b) prescribe requirements to be observed by incorporated legal practices, or a specified class of incorporated legal practices, in this jurisdiction.
- (2) A regulation prevails over any inconsistent provision of the legal profession rules.
- (3) A regulation may provide that a breach of the regulations is capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director, or by a legal practitioner responsible for the breach, or both.

## Schedule 1A—Foreign lawyers

### Part 1—Preliminary

#### 1—Definitions

- (1) In this Schedule—

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

*Australia* includes the external territories;

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

*Australian legal practitioner* means a legal practitioner who holds a current practising certificate or a current interstate practising certificate;

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

*foreign 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;

*information notice*—see subclause (2);

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

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

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

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

- (2) For the purposes of this Schedule, an *information notice* is a written notice to a person about a decision stating—

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

## **2—This Schedule does not apply to Australian legal practitioners**

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

## **3—Professional conduct rules**

The Society's professional conduct rules may include rules about practising the profession of the law in this jurisdiction as an Australian-registered foreign lawyer.

## **Part 2—Practice of foreign law**

### **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.Maximum penalty: \$50 000.
- (2) However, a person does not contravene subclause (1) if the person is an overseas-registered foreign lawyer—
  - (a) who—
    - (i) practises foreign law in this jurisdiction for 1 or more periods that do not 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.

### **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.

### **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 by 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 by 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 subclause (2), an Australian-registered foreign lawyer may advise on the effect of an Australian law if—
  - (a) the giving of advice on Australian law is necessarily incidental to the practice of foreign law; and
  - (b) the advice is expressly based on advice given on the Australian law by an Australian legal practitioner who is not an employee of the foreign lawyer.

## **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 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both, in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under a law of this jurisdiction; or
  - (c) as a director or employee of an incorporated legal practice; or
  - (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 subclause (1)(b) to (e) does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

## **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) Part 6 of this Act applies to a person who—
  - (a) is an Australian-registered foreign lawyer; or

- (b) was an Australian-registered foreign lawyer when the relevant conduct allegedly occurred, but is no longer an Australian-registered foreign lawyer (in which case Part 6 of this Act applies as if the person were an Australian-registered foreign lawyer),
- and so applies as if a reference in Part 6 to a legal practitioner were a reference to a person of that kind.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of Part 6 of this Act for the purposes of this clause.
- (4) Without limiting the matters that may be taken into account in determining whether a person should be disciplined for a contravention of subclause (1), the following matters may be taken into account:
  - (a) whether the conduct of the person was consistent with the standard of professional conduct of the legal profession in any foreign country where the person is registered;
  - (b) whether the person contravened the subclause wilfully or without reasonable excuse.
- (5) Without limiting any other provision of this clause or the orders that may be made under Part 6 of this Act as applied by this clause, the following orders may be made by the Supreme Court under section 89 as applied by this clause:
  - (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.

## **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 clause, the name of a foreign law practice with which the lawyer is affiliated or associated (whether as a partner, director, employee or otherwise);
  - (d) if the lawyer is a principal of any law practice in Australia whose principals include both 1 or more Australian-registered foreign lawyers and 1 or more Australian legal practitioners—a description of the practice that includes reference to both Australian legal practitioners and Australian-registered foreign lawyers (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 Society with acceptable evidence that the lawyer is a principal of the foreign law practice.
- (3) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the name of the practice as referred to in this clause whether or not other principals of the practice are Australian-registered foreign lawyers.
- (4) This clause 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.

## 10—Letterhead and other identifying documents

- (1) An Australian-registered foreign lawyer must indicate, on the lawyer's website (if any) and in each public document distributed by the lawyer in connection with the lawyer's practice of foreign law, the fact that the lawyer is an Australian-registered foreign lawyer and is restricted to the practice of foreign law.
- (2) Subclause (1) is satisfied if the lawyer includes on the website or 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 the lawyer's website (if any) and 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 themselves, and any law practice with which the lawyer is affiliated or associated, in any of the ways designated in clause 9.
- (4) In this clause—

**public document** includes any business letter, statement of account, invoice, business card, and promotional and advertising material.

## 11—Advertising

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

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

## **12—Foreign lawyer employing Australian legal practitioner**

- (1) An Australian-registered foreign lawyer may employ 1 or more Australian legal practitioners.
- (2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign lawyer to practise Australian law in this jurisdiction.
- (3) An Australian legal practitioner employed by an Australian-registered foreign lawyer may practise foreign law.
- (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) Subclause (4) does not apply to an Australian legal practitioner employed by a law firm a partner of which is an Australian-registered foreign lawyer, if at least 1 other partner is an Australian legal practitioner.
- (6) Any period of employment of an Australian legal practitioner by an Australian-registered foreign lawyer cannot be used to satisfy a requirement imposed by a condition on a local practising certificate to complete a period of supervised legal practice.

## **13—Trust money and trust accounts**

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

## **14—Professional indemnity insurance**

- (1) An Australian-registered foreign lawyer must, at all times while practising foreign law in this jurisdiction, comply with 1 of the following:
  - (a) the foreign lawyer must have professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian legal practitioners in any jurisdiction;

- (b) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a)—the foreign lawyer—
  - (i) must have professional indemnity insurance that covers the practise of foreign law in this jurisdiction and that complies with the relevant requirements of a foreign law or foreign registration authority; and
  - (ii) if the insurance is for less than \$1.5 million per claim (inclusive of defence costs)—must provide a disclosure statement to each client disclosing the level of cover;
- (c) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) or (b)—the foreign lawyer must provide a disclosure statement to each client stating that the lawyer does not have complying professional indemnity insurance.

Maximum penalty: \$10 000.

- (2) A disclosure statement must be made in writing before, or as soon as practicable after, the foreign lawyer is retained in the matter.
- (3) A disclosure statement provided to a person before the foreign lawyer is retained in a matter is taken to be provided to the person as a client for the purposes of this clause.
- (4) A disclosure statement is not valid unless it is given in accordance with, and otherwise complies with, any applicable requirements of the regulations.

## **15—Fidelity Fund**

The regulations may provide that Part 4 Division 3 and Part 5 of this Act, or specified provisions of Part 4 Division 3 and Part 5 of this Act, apply to Australian-registered foreign lawyers, or to prescribed classes of Australian-registered foreign lawyers, and so apply with any modifications specified in the regulations.

## **Part 3—Local registration of foreign lawyers generally**

### **16—Local registration of foreign lawyers**

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

### **17—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 Society renews or refuses to renew the registration or the holder withdraws the application for renewal, unless the registration is sooner suspended or cancelled; and
  - (b) if renewed, is taken to have been renewed on and from that 1 July.

## **18—Locally registered foreign lawyer is not officer of Supreme Court**

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

## **Part 4—Applications for grant or renewal of local registration**

### **19—Application for grant or renewal of registration**

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

### **20—Manner of application**

- (1) An application for the grant or renewal of registration as a foreign lawyer must be—
  - (a) made in the approved form; and
  - (b) accompanied by the prescribed fees.
- (2) The fees are not to be greater than the maximum fees for a practising certificate.
- (3) The Society may also require the applicant to pay any reasonable costs and expenses incurred by the Society 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.
- (4) The fees and costs must not include any component for compulsory membership of any professional association.
- (5) The approved form may require the applicant to disclose—
  - (a) matters that may affect the Society's consideration of the application for the grant or renewal of registration; and
  - (b) particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this clause.
- (6) The approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.
- (7) 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.
- (8) The prescribed proportion of fees paid to the Society under this clause must be credited by the Society to the Fidelity Fund.
- (9) The balance of those fees must be applied by the Society towards the Society's costs in exercising powers and functions under this Schedule and any powers or functions delegated to the Society under this Act.

### **21—Requirements regarding applications for grant or renewal of registration**

- (1) An application for grant of registration must state the applicant's educational and professional qualifications.
- (2) An application for grant or renewal of registration must—
  - (a) state that the applicant is registered to engage in legal practice by 1 or more specified foreign registration authorities in 1 or more foreign countries; and

- (b) state that the applicant is not an Australian legal practitioner; and
  - (c) state that the applicant is not the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in the applicant's capacity as—
    - (i) an overseas-registered foreign lawyer; or
    - (ii) an Australian-registered foreign lawyer; or
    - (iii) an Australian legal practitioner; and
  - (d) state whether the applicant has been convicted of an offence in Australia or a foreign country, and if so—
    - (i) the nature of the offence; and
    - (ii) how long ago the offence was committed; and
    - (iii) the applicant's age when the offence was committed; and
  - (e) state that the applicant's registration is not cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country; and
  - (f) state—
    - (i) that the applicant is not otherwise personally prohibited from engaging in legal practice in any place or bound by any undertaking not to carry out the practice of law in any place; and
    - (ii) whether or not the applicant is subject to any special conditions in engaging in legal practice in any place,as a result of criminal, civil or disciplinary proceedings in Australia or a foreign country; and
  - (g) specify any special conditions imposed in Australia or a foreign country as a restriction on 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 Society considers appropriate regarding the applicant's activities in engaging in legal practice in the places concerned or otherwise regarding matters relevant to the application; and
  - (i) specify which of the paragraphs of clause 14(1) the applicant proposes to rely on and be accompanied by supporting proof of the relevant matters; and
  - (j) provide the information or be accompanied by the other information or documents (or both) that is specified in the application form or in material accompanying the application form as provided by the Society.
- (3) The application must (if the Society so requires) be accompanied by an original instrument, or a copy of an original instrument, from each foreign registration authority specified in the application that—
- (a) verifies the applicant's educational and professional qualifications; and

- (b) verifies the applicant's registration by the authority to engage in legal practice in the foreign country concerned, and the date of registration; and
  - (c) describes anything done by the applicant in engaging in legal practice in that foreign country of which the authority is aware and that, in the opinion of the authority, has had or is likely to have had an adverse effect on the applicant's professional standing within the legal profession of that place.
- (4) The applicant must (if the Society so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.
- (5) The Society may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the Society.
- (6) If the accompanying instrument is not in English, it must be accompanied by a translation in English that is authenticated or certified to the satisfaction of the Society.

## **Part 5—Grant or renewal of registration**

### **22—Grant or renewal of registration**

- (1) The Society must consider an application that has been made for the grant or renewal of registration as a foreign lawyer and may—
  - (a) grant or refuse to grant the registration; or
  - (b) renew or refuse to renew the registration.
- (2) The Society may, when granting or renewing registration, impose conditions as referred to in clause 42.
- (3) If the Society grants or renews registration, the Society must, as soon as practicable, give the applicant a registration certificate or a notice of renewal.
- (4) If the Society—
  - (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 Society must, as soon as practicable, give the applicant an information notice.
- (5) A notice of renewal may be in the form of a new registration certificate or any other form the Society considers appropriate.

### **23—Requirement to grant or renew registration if criteria satisfied**

- (1) The Society must grant an application for registration as a foreign lawyer if the Society—
  - (a) is satisfied the applicant is registered to engage in legal practice in 1 or more foreign countries and is not an Australian legal practitioner; and
  - (b) considers an effective system exists for regulating engaging in legal practice in 1 or more of the foreign countries; and
  - (c) considers the applicant is not, as a result of criminal, civil or disciplinary proceedings in any of the foreign countries, subject to—

- (i) any special conditions in engaging in legal practice in any of the foreign countries; or
  - (ii) any undertakings concerning engaging in legal practice in any of the foreign countries,
- that would make it inappropriate to register the person; and
- (d) is satisfied the applicant demonstrates an intention to commence practising foreign law in this jurisdiction within a reasonable period if registration were to be granted,

unless the Society refuses the application under this Schedule.

- (2) The Society must grant an application for renewal of a person's registration unless the Society refuses renewal under this Schedule.
- (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.

## **24—Refusal to grant or renew registration**

- (1) The Society may refuse to consider an application if it is not made in accordance with this Act or the regulations.
- (2) The Society may refuse to grant or renew registration if—
  - (a) the application is not accompanied by, or does not contain, the information required by this Schedule 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).
- (3) The Society 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 Society may refuse to grant registration if the Society is satisfied that the applicant is not a fit and proper person to be registered after considering—
  - (a) the nature of any offence for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this clause; and
  - (b) how long ago the offence was committed; and
  - (c) the person's age when the offence was committed.
- (5) The Society may refuse to renew registration if the Society 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 for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this clause, other than an offence disclosed in a previous application to the Society; and
  - (b) how long ago the offence was committed; and
  - (c) the person's age when the offence was committed.
- (6) The Society may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.
- (7) If the Society refuses to grant or renew registration, the Society must, as soon as practicable, give the applicant an information notice.
- (8) Nothing in this clause affects the operation of Part 7 of this Schedule.

## **Part 6—Amendment, suspension or cancellation of local registration**

### **25—Application of Part**

This Part does not apply in relation to matters referred to in Part 7 of this Schedule.

### **26—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 Schedule;
  - (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 the person's capacity as—
    - (i) an overseas-registered foreign lawyer; or
    - (ii) an Australian-registered foreign lawyer; or
    - (iii) an Australian legal practitioner;
  - (e) the person has been convicted of an offence in Australia or a foreign country;



- (f) the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action taken in Australia or a foreign country;
  - (g) the person does not meet the requirements of clause 14;
  - (h) another ground the Society considers sufficient.
- (2) Subclause (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under clause 42.

## **27—Amending, suspending or cancelling registration**

- (1) If the Society considers reasonable grounds exist to amend, suspend or cancel a person's registration as a foreign lawyer (the *action*), the Society must give the person a notice that—
- (a) states the action proposed and—
    - (i) if the proposed action is to amend the registration in any way—states the proposed amendment; and
    - (ii) if the proposed action is to suspend the registration—states the proposed suspension period; and
  - (b) states the grounds for proposing to take the action; and
  - (c) outlines the facts and circumstances that form the basis for the Society's belief; and
  - (d) invites the person to make written representations to the Society, within a specified time not less than 7 days and not more than 28 days, as to why the action proposed should not be taken.
- (2) If, after considering all written representations made within the specified time, the Society still believes grounds exist to take the action, the Society may—
- (a) if the notice stated the action proposed was to amend the registration—amend the registration in the way specified or in another way the Society considers appropriate in the light of the representations; or
  - (b) if the notice stated the action proposed was to suspend the registration for a specified period—suspend the registration for a period no longer than the specified period; or
  - (c) if the notice stated the action proposed was to cancel the registration—
    - (i) cancel the registration; or
    - (ii) suspend the registration for a period; or
    - (iii) amend the registration in a less onerous way the Society considers appropriate because of the representations.
- (3) The Society may, at its discretion, consider representations made after the specified time.
- (4) The Society must give the person notice of the Society's decision.
- (5) If the Society amends, suspends or cancels the registration, the Society must give the person an information notice.

- (6) In this clause—

*amend* registration means amend the registration under clause 42 during its currency, otherwise than at the request of the foreign lawyer concerned.

## **28—Operation of amendment, suspension or cancellation of registration**

- (1) This clause applies if a decision is made to amend, suspend or cancel a person's registration under clause 27.
- (2) Subject to subclauses (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 specified in the notice.
- (3) If the registration is amended, suspended or cancelled because the person has been convicted of an offence—
  - (a) the Society 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 conviction; and
    - (ii) if an appeal is made against the conviction—the appeal is finally decided, lapses or otherwise ends; and
  - (b) the amendment, suspension or cancellation does not have effect during any period in respect of which the stay is in force.
- (4) If the registration is amended, suspended or cancelled because the person has been convicted of an offence and the conviction is quashed—
  - (a) the amendment or suspension ceases to have effect when the conviction is quashed; or
  - (b) the cancellation ceases to have effect when the conviction is quashed and the registration is restored as if it had merely been suspended.

## **29—Other ways of amending or cancelling registration**

- (1) This clause applies if—
  - (a) a locally registered foreign lawyer requests the Society to amend or cancel the registration and the Society proposes to give effect to the request; or
  - (b) the Society 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 Society may amend or cancel the registration as referred to in subclause (1) by written notice given to the lawyer, and clause 27 does not apply in that case.

## **30—Relationship of this Part with Part 6 of Act**

Nothing in this Part prevents a complaint from being made under Part 6 of this Act about a matter to which this Part relates.

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

### **31—Applicant for local registration—show cause event**

- (1) This clause 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 clause, after the person first became an overseas-registered foreign lawyer.
- (2) As part of the application, the person must provide to the Society a written statement, in accordance with the regulations—
  - (a) about the show cause event; and
  - (b) explaining why, despite the show cause event, the applicant considers themselves to be a fit and proper person to be a locally registered foreign lawyer.
- (3) However, the person need not provide a statement under subclause (2) if the person has previously provided to the Society a statement under this clause, or a notice and statement under clause 32, explaining why, despite the show cause event, the person considers themselves to be a fit and proper person to be a locally registered foreign lawyer.

### **32—Locally registered foreign lawyer—show cause event**

- (1) This clause 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 Society both of the following:
  - (a) within 7 days after the happening of the event—notice, in the approved form, that the event happened;
  - (b) within 28 days after the happening of the event—a written statement explaining why, despite the show cause event, the person considers themselves to be a fit and proper person to be a locally registered foreign lawyer.
- (3) If a written statement is provided after the 28 days mentioned in subclause (2)(b), the Society may accept the statement and take it into consideration.

### **33—Refusal, amendment, suspension or cancellation of local registration—failure to show cause**

- (1) The Society may refuse to grant or renew, or may amend, suspend or cancel, local registration if the applicant for registration or the locally registered foreign lawyer—
  - (a) is required by clause 31 or 32 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 clause 31 or 32 but the Society does not consider that the applicant or foreign lawyer has shown in the statement that, despite the show cause event concerned, they are a fit and proper person to be a locally registered foreign lawyer.
- (2) For the purposes of this clause only, a written statement accepted by the Society under clause 32(3) is taken to have been provided in accordance with clause 32.
- (3) If the Society makes a determination under this clause, the Society must, as soon as practicable, give the applicant or lawyer an information notice.

### **34—Restriction on making further applications**

- (1) If the Society determines under this Part to cancel a person's registration, the Society may also determine that the person is not entitled to apply for registration under this Schedule for a specified period (being a period not exceeding 5 years).
- (2) A person in respect of whom a determination has been made under this clause, or under a provision of a corresponding law that corresponds to this clause, is not entitled to apply for registration under this Schedule during the period specified in the determination.

### **35—Relationship of this Part with Part 6 and Schedule 4**

- (1) The Commissioner has and may exercise powers under Part 6 of this Act, and Schedule 4, in relation to a matter under this Part, as if the matter were the subject of a complaint under Part 6 of this Act.
- (2) Accordingly, the provisions of Part 6 Division 2 of this Act, and Schedule 4, apply in relation to a matter under this Part, and so apply with any necessary modifications.
- (3) Nothing in this Part prevents a complaint from being made under Part 6 Division 2 of this Act, or an investigation from being initiated under Schedule 4, about a matter to which this Part relates.

## **Part 8—Further provisions relating to local registration**

### **36—Immediate suspension of registration**

- (1) This clause applies, despite clauses 27 and 28, if the Society considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer.
- (2) The Society may, by written notice given to the person, immediately suspend the registration until the earlier of the following:
  - (a) the time at which the Society informs the person of the Society's decision by notice under clause 27;
  - (b) the end of the period of 56 days after the notice is given to the person under this clause.
- (3) The notice under this clause must state—
  - (a) the reasons for the suspension; and
  - (b) that the person may make written representations to the Society about the suspension.
- (4) The person may make written representations to the Society about the suspension and the Society must consider the representations.

- (5) The Society may revoke the suspension at any time, whether or not in response to any written representations made to it by the person.

### **37—Surrender of local registration certificate and cancellation of registration**

- (1) A person registered as a foreign lawyer under this Schedule may surrender the local registration certificate to the Society.
- (2) The Society may cancel the registration.

### **38—Automatic cancellation of registration on grant of practising certificate**

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

### **39—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 Schedule does not affect any disciplinary processes in respect of matters arising before the suspension or cancellation.

### **40—Return of local registration certificate on amendment, suspension or cancellation of registration**

- (1) This clause applies if a person's registration under this Schedule as a foreign lawyer is amended, suspended or cancelled.
- (2) The Society may give the person a notice requiring the person to return the local registration certificate to the Society in the way specified in the notice within a specified period of not less than 14 days.
- (3) The person must comply with the notice, unless the person has a reasonable excuse. Maximum penalty: \$50 000.
- (4) If the certificate is amended, the Society must return the certificate to the person as soon as practicable after amending it.

## **Part 9—Conditions on registration**

### **41—Conditions generally**

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

- (a) any conditions imposed by the Society; 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 Part 6 Division 2 of this Act or under provisions of a corresponding law that correspond to Part 6 Division 2.

### **42—Conditions imposed by Society**

- (1) The Society 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 clause 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.
- (3) The Society must not impose a condition under subclause (2)(a) that is more onerous than a condition that would be imposed on a local practising certificate of a local legal practitioner in the same or similar circumstances.
- (4) The Society may vary or revoke conditions imposed by it under this clause.

#### **43—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 Society that the lawyer has been—
    - (i) convicted of an offence that would have to be disclosed in relation to an application for registration as a foreign lawyer under this Act; or
    - (ii) charged with a serious offence; and
  - (b) must do so within 7 days of the event and by a written notice.
- (2) The legal profession rules may specify the form of the notice to be used and the person to whom or the address to which it is to be sent or delivered.
- (3) This clause does not apply to an offence to which Part 7 of this Schedule applies.

#### **44—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.

#### **45—Compliance with conditions**

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

Maximum penalty: \$50 000.

### **Part 10—Interstate-registered foreign lawyers**

#### **46—Extent of entitlement of interstate-registered foreign lawyers to practise in this jurisdiction**

- (1) This Schedule 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 Society under clause 47; and

- (ii) any conditions imposed by or under the legal profession rules as referred to in that clause; 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 subclause (2)(a) and conditions mentioned in subclause (2)(b), the conditions that are, in the opinion of the Society, more onerous prevail to the extent of the inconsistency.
- (4) An interstate-registered foreign lawyer must not practise foreign law in this jurisdiction in a manner not authorised by this Act or in contravention of any condition referred to in this clause.

#### **47—Additional conditions on practice of interstate-registered foreign lawyers**

- (1) The Society 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 clause must not be more onerous than conditions applying to locally registered foreign lawyers in the same or similar circumstances.

### **Part 11—Miscellaneous**

#### **48—Consideration and investigation of applicants and locally registered foreign lawyers**

- (1) To help it consider whether or not to grant, renew, suspend or cancel registration under this Part, or impose conditions on a person's registration under this Part, the Society 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 cooperate with any inquiries that it considers appropriate.
- (2) A failure to comply with a notice under subclause (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 Society.

#### **49—Register of locally registered foreign lawyers**

- (1) The Society must keep a register of the names of locally registered foreign lawyers.
- (2) The register must—
  - (a) state the conditions (if any) imposed on a foreign lawyer's registration; and

- (b) include other particulars prescribed by the regulations.
- (3) The register may be kept in the way the Society decides.
- (4) The register must be available for inspection, without charge, at a place determined by the Society during normal business hours or at an Internet site maintained by the Society.

## **50—Publication of information about locally registered foreign lawyers**

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

## **51—Exemption by Society**

- (1) The Society 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 Society may revoke or vary any conditions imposed under this clause or impose new conditions.

## **52—Membership of professional association**

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



## Schedule 2—Trust money and trust accounts

### Part 1—Preliminary

#### 1—Definitions

(1) In this Schedule—

**approved ADI** means an ADI approved under clause 41 by the Society;

**barrister** means a legal practitioner who practises the profession of the law solely as a barrister;

**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 clause 15(6), which prevents pooling of controlled money.

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

**deposit record** includes a deposit slip or duplicate deposit slip;

**external examination** means an external examination under Part 3 Division 2 of a law practice's trust records;

**external examiner** means a person holding an appointment as an external examiner under Part 3 Division 2;

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

**investigation** means an investigation under Part 3 Division 1 of the affairs of a law practice;

**investigator** means a person holding an appointment as an investigator under Part 3 Division 1;

**law practice** includes—

- (a) an Australian-registered foreign lawyer who practises foreign law on the foreign lawyer's own account; and
- (b) a partnership consisting of 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both;

**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 with an approved ADI to hold trust money;

**trust money** means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice to which the practice is not wholly entitled, and includes—

- (a) money received by the practice on account of legal costs in advance of providing the services (other than money paid to the practice as a retainer); 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,

but does not include money received by a practitioner in the course of mortgage financing;

**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;
  - (p) supporting information required to be kept under the regulations in relation to powers to deal with trust money.
- (2) A reference in this Schedule 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 Schedule 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) 1 or more associates of the practice;
  - (ii) the person, or 1 or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

## **2—Money granted or provided under contract to community legal centre**

Money granted, or provided under contract, to a community legal centre to enable the centre to deliver legal services to the community or a section of the community is not trust money or controlled money for the purposes of this Act.

## **3—Determinations about status of money**

- (1) This clause applies to money received by a law practice if the Society considers that there is doubt or a dispute as to whether the money is trust money.
- (2) The Society may determine that the money is or is not trust money.
- (3) The Society may revoke or modify a determination under this clause.
- (4) While a determination under this clause 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 clause 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 clause has effect subject to a decision of a court made in relation to the money concerned.

## **4—Application of Schedule to law practices and trust money**

- (1) This Schedule applies to the following law practices in respect of trust money received by them in this jurisdiction:
  - (a) a law practice that has an office in this jurisdiction, whether or not the practice has an office in another jurisdiction;
  - (b) a law practice that does not have an office in any jurisdiction at all.

### **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 Schedule 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 1 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 Schedule does not apply to—
- (a) prescribed law practices or classes of law practices; or
  - (b) prescribed law practices, or classes of law practices, in prescribed circumstances; or
  - (c) prescribed kinds of trust money; or
  - (d) prescribed kinds of trust money in prescribed circumstances.
- (4) A reference in this clause 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—**

The requirements of this Schedule will not apply in relation to a law practice that is a legal practitioner practising solely in the manner of a barrister because a legal practitioner may not, in the course of practising as a barrister, receive trust money—see clause 10.

## **5—Protocols for determining where trust money is received**

- (1) The Society may enter into arrangements (referred to in this Schedule 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 Society may enter into arrangements that amend, revoke or replace a protocol.

## **6—When money is received**

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

## **7—Discharge by legal practitioner associate of obligations of law practice**

- (1) The following actions, if taken by a legal practitioner associate of a law practice on behalf of the practice in relation to trust money received by the practice, discharge the corresponding obligations of the practice in relation to the money:
- (a) the establishment of a trust account;

- (b) the maintenance of a trust account;
  - (c) the payment of trust money into and out of a trust account and other dealings with trust money;
  - (d) the maintenance of trust records;
  - (e) engaging an external examiner to examine trust records;
  - (f) the payment of an amount into an ADI account as referred to in section 53;
  - (g) the obtaining of a Supreme Court approval in relation to trust money or a trust account;
  - (h) 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 Schedule and the regulations made for the purposes of this Schedule apply to the associate in the same way as they apply to a law practice.
- (3) Subclause (1) does not apply to the extent that the associate is prevented by the regulations from taking any action referred to in that subclause.

## **8—Liability of principals of law practice**

- (1) A provision of this Schedule or the regulations made for the purposes of this Schedule 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 Schedule and the regulations made for the purposes of this Schedule to a law practice include references to the principals of the law practice.

## **9—Former practices, principals and associates**

- (1) This Schedule applies in relation to former law practices and former principals and associates of law practices in relation to conduct occurring while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary modifications.
- (2) For the purposes of this Schedule, a law practice that is a sole practitioner does not cease to be a law practice solely because of the cancellation or suspension of the practitioner's practising certificate.

## **10—Barristers not to receive trust money**

A barrister is not, in the course of practising as a barrister, to receive trust money.

# **Part 2—Trust accounts and trust money**

## **11—Maintenance of general trust account**

- (1) A law practice that receives trust money to which this Schedule applies must maintain a general trust account in this jurisdiction.
- Maximum penalty: \$50 000.

- (2) A law practice that is required to maintain a general trust account in this jurisdiction must establish and maintain the account in accordance with the regulations.  
Maximum penalty: \$50 000.
- (3) Subclause (1) does not apply to a law practice in respect of any period during which the practice receives or holds only either or both of the following:
  - (a) controlled money;
  - (b) transit money received in a form other than cash.
- (4) Subject to any requirements of the regulations, a requirement of this clause for a law practice to maintain, or establish and maintain, a general trust account in this jurisdiction does not prevent the practice from maintaining, or establishing and maintaining, more than 1 general trust account in this jurisdiction, whether during the same period or during different periods.
- (5) Without limiting the other provisions of this clause, the regulations may provide that a law practice must not close a general trust account except as permitted by the regulations, either generally or in any prescribed circumstances.

## **12—Certain trust money to be deposited in general trust account**

- (1) Subject to clause 19, as soon as practicable after receiving trust money, a law practice must deposit the money in a general trust account of the practice unless—
  - (a) the practice has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or
  - (b) the money is controlled money; or
  - (c) the money is transit money; or
  - (d) the money is the subject of a power given to the practice or an associate of the practice to deal with the money for or on behalf of another person.

Maximum penalty: \$50 000.

- (2) Subject to clause 19, a law practice that has received money that is the subject of a written direction mentioned in subclause (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.

Maximum penalty: \$50 000.

- (3) The law practice must keep a written direction mentioned in subclause (1)(a) for the period prescribed by the regulations.

Maximum penalty: \$50 000.

- (4) A person is an **appropriate person** for the purposes of this clause if the person is legally entitled to give the law practice directions in respect of dealings with the trust money.

### **13—Holding, disbursing and accounting for trust money**

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

Maximum penalty: \$50 000.

- (2) Subclause (1) applies subject to an order of a court of competent jurisdiction or as authorised by law.
- (3) The law practice must account for the trust money as required by the regulations.  
Maximum penalty: \$50 000.

### **14—Manner of withdrawal of trust money from general trust account**

- (1) A law practice must not withdraw trust money from a general trust account otherwise than by cheque or electronic funds transfer.  
Maximum penalty: \$50 000.
- (2) Without limiting subclause (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 clause has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the trust money.

### **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.  
Maximum penalty: \$50 000.
- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subclause (1) exclusively for the person on whose behalf it was received.  
Maximum penalty: \$50 000.
- (3) The law practice that holds controlled money deposited in a controlled money account in accordance with subclause (1) must not disburse the money except in accordance with—
  - (a) the written direction mentioned in that subclause; or

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

Maximum penalty: \$50 000.

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

Maximum penalty: \$50 000.

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

Maximum penalty: \$50 000.

- (6) The law practice must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the person referred to in subclause (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.

Maximum penalty: \$50 000.

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

## **16—Manner of withdrawal of controlled money from controlled money account**

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

Maximum penalty: \$50 000.

- (2) Without limiting subclause (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 clause has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the controlled money.

## **17—Transit money**

- (1) Subject to clause 19, 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.

Maximum penalty: \$50 000.

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

Maximum penalty: \$50 000.



## **18—Trust money subject to specific powers**

- (1) Subject to clause 19, 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.  
Maximum penalty: \$50 000.
- (2) The law practice must account for the money in the way prescribed by the regulations.  
Maximum penalty: \$2 500.

## **19—Trust money received in form of cash**

### **(1) General trust money**

A law practice must deposit general trust money received in the form of cash in a general trust account of the practice.

Maximum penalty: \$50 000.

- (2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice—
  - (a) the money must nevertheless be deposited in the general trust account of the practice in accordance with subclause (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**

Controlled money received in the form of cash must be deposited in a controlled money account in accordance with clause 15.

### **(4) Transit money**

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.

Maximum penalty: \$50 000.

### **(5) Trust money subject of a power**

A law practice must deposit trust money that is received in the form of cash and is the subject of a power in a general trust account (or a controlled money account in the case of controlled money) of the practice before the money is otherwise dealt with in accordance with the power.

Maximum penalty: \$50 000.

### **(6) Paramount operation of this clause**

This clause has effect despite anything to the contrary in any relevant direction, instruction or power.

(7) **Definitions**

In this clause—

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

**20—Protection of trust money**

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

**21—Intermixing money**

- (1) A law practice must not, otherwise than as permitted by subclause (2), mix trust money with other money.  
Maximum penalty: \$50 000.
- (2) A law practice is permitted to mix trust money with other money to the extent only that is authorised by the Society and in accordance with any conditions imposed by the Society in relation to the authorisation.

**22—Dealing with trust money—legal costs and unclaimed money**

- (1) A law practice may do any of the following in relation to trust money held in a general trust account or controlled money account of the practice for a person:
  - (a) exercise a lien, including a general retaining lien, for the amount of legal costs reasonably due and owing by the person to the practice;
  - (b) withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements prescribed by this Act and the regulations are complied with;
  - (c) after deducting any legal costs properly owing to the practice, deal with the balance as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (2) Subclause (1) applies despite any other provision of this Schedule but has effect subject to Schedule 3.

**23—Deficiency in trust account**

- (1) A legal practitioner 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.

Maximum penalty: \$50 000.

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

- (3) In this clause—

*cause* includes be responsible for;

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

## **24—Reporting certain irregularities and suspected irregularities**

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

- (a) the Society; and

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

Maximum penalty: \$50 000.

- (2) If a 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 Society; and

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

Maximum penalty: \$50 000.

- (3) The validity of a requirement imposed on a legal practitioner under subclause (1) or (2) is not affected, and the practitioner is not excused from complying with subclause (1) or (2), on the ground that giving the notice may tend to incriminate the practitioner.

- (4) A legal practitioner is not liable for any loss or damage suffered by another person as a result of the practitioner's compliance with subclause (1) or (2).

## **25—Keeping trust records**

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

Maximum penalty: \$50 000.

- (2) The law practice must keep the trust records—

- (a) in accordance with the regulations; and

- (b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and

- (c) in a way that enables the trust records to be conveniently and properly investigated or externally examined; and
- (d) for a period determined in accordance with the regulations.

Maximum penalty: \$50 000.

## **26—False names**

- (1) A law practice must not knowingly receive money or record receipt of money in the practice's trust records under a false name.
- (2) If a person on whose behalf trust money is received by a law practice is commonly known by more than 1 name, the practice must ensure that the practice's trust records record all names by which the person is known.

Maximum penalty: \$50 000.

## **27—Interest payable if law practice fails to deposit trust money**

- (1) A law practice that fails to deposit trust money in a trust account as required by this Part is liable to pay the Society interest on the amount of the trust money at the prescribed rate for the period of the default.
- (2) The Society may, for proper reasons, remit interest payable under subclause (1) wholly or in part.
- (3) Any interest received or recovered by the Society under subclause (1) must be paid into the statutory interest account.

# **Part 3—Investigations and external examinations**

## **Division 1—Investigations**

### **28—Appointment of investigators**

- (1) The Society may, in writing, appoint a suitably qualified person to investigate the affairs or specified affairs of a law practice.
- (2) The appointment may be made generally or for the law practice specified in the instrument of appointment.

### **29—Investigations**

- (1) The instrument of appointment may authorise the investigator to conduct either or both of the following:
  - (a) routine investigations on a regular or other basis;
  - (b) investigations in relation to particular allegations or suspicions regarding trust money, trust accounts or any other aspect of the affairs of the law practice.
- (2) The principal purposes of an investigation are to ascertain whether the law practice has complied with or is complying with the requirements of this Schedule and to detect and prevent fraud or defalcation, but this subclause does not limit the scope of the investigation or the powers of the investigator.

### 30—Application of Schedule 4

Schedule 4 applies to an investigation under this Division.

### 31—Investigator's report

- (1) As soon as practicable after completing the investigation, the investigator must give a written report of the investigation to the Society.
- (2) The investigator must not disclose information in the report or acquired in carrying out the investigation except—
  - (a) to the practice that or person who is a subject of the investigation or report; or
  - (b) as is necessary for properly conducting the investigation and making the report of the investigation; or
  - (c) as provided in Schedule 4 Part 5 clause 19.

Maximum penalty: \$50 000.

### 32—When costs of investigation are debt

- (1) If—
  - (a) an investigator states in his or her report of an investigation that there is evidence that a breach of this Act or the regulations has been committed or evidence that a fiduciary or professional default has occurred in relation to the law practice whose affairs are under investigation; and
  - (b) the Society is satisfied that the breach or default is wilful or of a substantial nature,the Society may decide that the whole or part of the costs of carrying out the investigation is payable to the Society and may specify the amount payable.
- (2) The amount specified by the Society is a debt payable to the Society by the law practice whose affairs are under investigation.
- (3) The Society must, before seeking to recover the amount payable, give the law practice written notice of the Society's decision, the reasons for the decision and the amount specified as being payable.

## Division 2—External examinations

### 33—Designation of external examiners

- (1) The Society may, in writing, designate persons (referred to in this Division as *designated persons*) as being eligible to be appointed as external examiners.
- (2) Only designated persons may be appointed as external examiners.
- (3) An employee or agent of the Society may be a designated person.
- (4) The Society may revoke a person's designation under this clause.

### **34—Trust records to be externally examined**

- (1) A law practice must, as soon as practicable after the end of each financial year, have its trust records for that year externally examined by an external examiner appointed in accordance with the regulations.  
Maximum penalty: \$50 000.
- (2) The Society may appoint an external examiner to examine a law practice's trust records if the Society is not satisfied—
  - (a) that the practice has had its trust records externally examined as required by this clause; or
  - (b) that an external examination of the practice's trust records has been carried out in accordance with the regulations.
- (3) Without affecting the generality of clause 49, this clause has effect subject to any exemptions provided by or given under the regulations from the requirement to have trust records examined as otherwise required by this clause.

### **35—Examination of affairs in connection with examination of trust records**

- (1) An external examiner appointed to examine a law practice's trust records may examine the affairs of the practice for the purposes of and in connection with an examination of the trust records.
- (2) A reference in this Division and Schedule 4 to *trust records* includes a reference to the affairs of a law practice that may be examined under this clause for the purposes of and in connection with an examination of the practice's trust records.

### **36—Designation and appointment of associates as external examiners**

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

### **37—Final examination of trust records**

- (1) This clause applies if a law practice—
  - (a) ceases to be authorised to receive trust money; or
  - (b) ceases to engage in legal practice in this jurisdiction.
- (2) The law practice must appoint an external examiner to examine the practice's trust records—
  - (a) in respect of the period since an external examination was last conducted; and
  - (b) in respect of each period thereafter, comprising a completed period of 12 months or any remaining partly completed period, during which the practice continued to hold trust money.  
Maximum penalty: \$50 000.
- (3) The law practice must lodge with the Society—
  - (a) a report of each examination under subclause (2) within 60 days after the end of the period to which the examination relates; and

- (b) a statutory declaration in a form approved by the Attorney-General or the Society within 60 days of ceasing to hold trust money.

Maximum penalty: \$50 000.

- (4) If a legal practitioner who is a principal or an associate of a law practice dies, the practitioner's legal personal representative must assist the law practice to comply with this clause as if the representative were the practitioner.
- (5) Nothing in this clause affects any other requirements under this Schedule.

### **38—Carrying out examination**

- (1) Schedule 4 applies to an external examination under this Division.
- (2) Subject to Schedule 4, an external examination of trust records is to be carried out in accordance with the regulations.
- (3) Without limiting subclause (2), the regulations may provide for the following:
  - (a) the standards to be adopted and the procedures to be followed by external examiners;
  - (b) the form and content of an external examiner's report on an examination.

### **39—External examiner's report**

- (1) Subject to subclause (2), as soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the Society.
- (2) A written report of an external examination completed pursuant to clause 34(1) must, if reasonably practicable, be given by the external examiner to the Society on or before 31 October following the financial year to which the report relates.
- (3) The examiner must not disclose information in the report or acquired in carrying out the examination, unless permitted to do so under subclause (4) or under Schedule 4 Part 5 clause 19.

Maximum penalty: \$50 000.

- (4) The examiner may disclose information in the report or acquired in carrying out the examination—
  - (a) as is necessary for properly conducting the examination and making the report of the examination; or
  - (b) to an investigator or a supervisor, manager or receiver appointed in relation to the law practice; or
  - (c) to the law practice concerned or an associate of the law practice.

### **40—Law practice liable for costs of examination**

- (1) A law practice whose trust accounts have been externally examined must pay the costs of the examination.
- (2) If the Society appointed the external examiner to carry out the examination, the Society may specify the amount payable as the costs of the examination, and the specified amount is a debt payable to it by the law practice.

- (3) The Society must, before seeking to recover the amount payable, give the law practice written notice of the Society's decision, the reasons for the decision and the amount specified as being payable.

## **Part 4—Provisions relating to ADIs**

### **41—Approval of ADIs**

- (1) Subject to subclause (2), the Society may approve ADIs at which trust accounts to hold trust money may be maintained.
- (2) The Society may not approve an ADI unless the ADI is prepared to pay interest on trust accounts at a rate equal to or above the rate determined by the Society.
- (3) The Society may impose conditions, of the kinds prescribed by the regulations, on and under this clause, when the approval is given or during the currency of the approval, and may amend or revoke any conditions imposed.
- (4) The Society may revoke an approval given under this clause.

### **42—ADI not subject to certain obligations and liabilities**

- (1) An ADI at which a trust account is maintained by a law practice—
  - (a) is not under any obligation to control or supervise transactions in relation to the account or to see to the application of money disbursed from the account; and
  - (b) does not have, in relation to any liability of the law practice to the ADI, any recourse or right (whether by way of set-off counterclaim, charge or otherwise) against money in the account.
- (2) Subclause (1) does not relieve an ADI from any liability to which it is subject apart from this Act.

### **43—Reports, records and information**

- (1) An ADI at which a trust account is maintained must report any deficiency in the account to the Society as soon as practicable after becoming aware of the deficiency.  
Maximum penalty: \$50 000.
- (2) An ADI at which a trust account is maintained must report a suspected offence in relation to the trust account to the Society as soon as practicable after forming the suspicion.  
Maximum penalty: \$50 000.
- (3) An ADI must furnish to the Society reports about trust accounts in accordance with the regulations.  
Maximum penalty: \$50 000.
- (4) An ADI at which a trust account is maintained must without charge—
  - (a) produce for inspection or copying by an investigator or external examiner any records relating to the trust account or trust money deposited in the trust account; and
  - (b) provide the investigator or external examiner with full details of any transactions relating to the trust account or trust money,



on demand by the investigator or the external examiner and on production to the ADI of evidence of the appointment of the investigator or the external examiner in relation to the law practice concerned.

Maximum penalty: \$50 000.

- (5) Subclauses (1) to (4) apply despite any rule of legislation or duty of confidence to the contrary.
- (6) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of—
  - (a) reporting a deficiency in accordance with subclause (1); or
  - (b) making or furnishing a report in accordance with subclause (2) or (3); or
  - (c) producing records or providing details in accordance with subclause (4).

## Part 5—Miscellaneous

### 44—Restrictions on receipt of trust money

- (1) A law practice (other than an incorporated legal practice or a community legal centre) must not receive trust money unless each principal holds a practising certificate that does not prohibit the receipt of trust money.

Maximum penalty: \$50 000.

- (2) An incorporated legal practice must not receive trust money unless—
  - (a) at least 1 legal practitioner director of the practice holds a practising certificate that does not prohibit the receipt of trust money; or
  - (b) a person is holding an appointment under Schedule 1 clause 10 in relation to the practice and the person holds a practising certificate that does not prohibit 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 Schedule 1 clause 10,so long as there was, immediately before the start of that period, at least 1 legal practitioner director of the practice who held a practising certificate that did not prohibit the receipt of trust money.

Maximum penalty: \$50 000.

### 45—Protection from liability

- (1) A matter or thing done or omitted to be done by a protected person does not, if the matter or thing was done or omitted to be done in good faith for the purpose of the administration of this Schedule, subject the person to any action, liability, claim or demand.
- (2) In this clause—

***protected person*** means—

- (a) the Society; or
- (b) the Council; or

- (c) an officer, employee or agent of the Society; or
- (d) an investigator; or
- (e) an external examiner.

#### **46—Application of Schedule to incorporated legal practices**

The regulations may provide that specified provisions of this Schedule, and any other provisions of this Act, the regulations or the legal profession rules relating to trust money and trust accounts, do not apply to incorporated legal practices, or to specified classes of incorporated legal practices, or apply to them with specified modifications.

#### **47—Disclosure to clients—money not received as trust money**

- (1) In this clause—

**non-trust money** means money that is not trust money for the purposes of this Act because of a determination under clause 3.

- (2) When money entrusted to a law practice is or becomes non-trust money, the practice must, in accordance with this clause and the regulations, notify the person who entrusted the money to the practice that—
- (a) the money is not treated as trust money for the purposes of this Act and is not subject to any supervision, investigation or external examination requirements of this Act; and
  - (b) a claim against the Fidelity Fund under this Act cannot be made in respect of the money.

Maximum penalty: \$50 000.

- (3) The notification must be given, in writing, to the person at the time—
- (a) the money is entrusted to the law practice, if the money is non-trust money when it is entrusted to the practice; or
  - (b) the money becomes non-trust money, if the money was trust money when it was entrusted to the practice.
- (4) The regulations may make provision for or with respect to the form and manner in which notification required by this clause is to be given and the contents of the notification.

#### **48—Disclosure of accounts used to hold money entrusted to law practice or legal practitioner associate**

- (1) A law practice must in accordance with the regulations notify the Society of the details required by the regulations of each account maintained at an ADI in which the law practice or any legal practitioner associate of the law practice holds money entrusted to the practice or legal practitioner associate.

Maximum penalty: \$50 000.

- (2) Subclause (1) applies whether or not the money is trust money and whether or not clause 3 applies to the money.

## 49—Regulations

The regulations may make provision for or with respect to any matter to which this Schedule relates, including for or with respect to—

- (a) the establishment, maintenance and closure of general trust accounts and controlled money accounts; and
- (b) the manner of receiving, depositing, withdrawing, making records about and otherwise dealing with and accounting for trust money; and
- (c) without limiting paragraph (a) or (b)—
  - (i) the keeping and reconciliation of trust records; and
  - (ii) the establishment and keeping of trust ledger accounts; and
  - (iii) the establishment and keeping of records about controlled money and transit money; and
  - (iv) the establishment and keeping of registers of powers and estates where trust money is involved; and
  - (v) the recording of information about the investment of trust money; and
  - (vi) the furnishing of statements regarding trust money; and
- (d) the notification to the Society of information relating directly or indirectly to matters to which this Schedule relates, including information about—
  - (i) trust accounts, trust money and trust records; and
  - (ii) the proposed or actual termination of a law practice that holds trust money; and
  - (iii) the proposed or actual termination of engaging in legal practice in this jurisdiction by a law practice that holds trust money; and
  - (iv) the proposed or actual restructuring of the business of a law practice so that it no longer holds or no longer will hold trust money; and
- (e) the creation and exercise of liens over trust money; and
- (f) providing exemptions, or providing for the giving of exemptions, from all or any specified requirements of this Schedule.



## Schedule 3—Costs disclosure and adjudication

### Part 1—Preliminary

#### 1—Interpretation

In this Schedule—

**adjudication** means an adjudication of legal costs under Part 7;

**barrister** means a legal practitioner who practises the profession of the law solely as a barrister;

**business day** means a day other than a Saturday, a Sunday or a public holiday;

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

**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 clause 25, but does not include a costs agreement to the extent to which clause 27(1) applies;

**costs agreement** means an agreement about the payment of legal costs;

**itemised bill** means a bill that specifies in detail how the legal costs are made up;

**law practice** includes—

- (a) an Australian-registered foreign lawyer who practises foreign law on the foreign lawyer's own account; and
- (b) a partnership consisting of 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both;

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

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

**litigious matter** means a matter that involves, or is likely to involve, the issue or defence 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 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;

**public authority** means an authority or body (whether a body corporate or not) established or incorporated for a public purpose by a law of a jurisdiction or of the Commonwealth, and includes a body corporate incorporated under a law of a jurisdiction or of the Commonwealth in which a jurisdiction or the Commonwealth has a controlling interest;

**scale of costs** means a scale of costs of a court or tribunal of this State;

**sophisticated client** means a client to whom, because of clause 13(1)(c) or (d), disclosure under clause 10 or 11(1) is or was not required;

**third party payer**—see clause 2;

**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.

## 2—Terms relating to third party payers

- (1) For the purposes of this Schedule—
  - (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 subclause (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.

## Part 2—Application of Schedule

### 3—Application of Schedule—first instructions rule

This Schedule applies to a matter if the client first instructs the law practice in relation to the matter in this State.

### 4—Schedule also applies by agreement or at client's election

- (1) This Schedule applies to a matter if—
    - (a) either—
      - (i) this Schedule does not currently apply to the matter; or
      - (ii) it is not possible to determine the jurisdiction in which the client first instructs the law practice in relation to the matter; and
    - (b) either—
      - (i) the legal services are or will be provided wholly or primarily in this State; or
      - (ii) the matter has a substantial connection with this State,
- or both; and

- (c) either—
  - (i) the client accepts, in writing or by other conduct, a written offer to enter into an agreement under subclause (2)(a) in respect of the matter; or
  - (ii) the client gives a notification under subclause (2)(b) in respect of the matter.
- (2) For the purposes of subclause (1)(c), the client may—
  - (a) accept, in writing or by other conduct, a written offer that complies with subclause (3) to enter into an agreement with the law practice that this Schedule is to apply to the matter; or
  - (b) notify the law practice in writing that the client requires this Schedule to apply to the matter.
- (3) An offer referred to in subclause (2)(a) must clearly state—
  - (a) that it is an offer to enter into an agreement that this Schedule is to apply to the matter; and
  - (b) that the client may accept it in writing or by other conduct; and
  - (c) the type of conduct that will constitute acceptance.
- (4) A notification has no effect for the purposes of subclause (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 subclause prevents an agreement referred to in subclause (2)(a) from coming into effect at any time.

## **5—Displacement of Schedule**

- (1) This clause applies if this Schedule applies to a matter by the operation of clause 3 or 4.
- (2) This Schedule ceases to apply to the matter if—
  - (a) either—
    - (i) the legal services are or will be provided wholly or primarily in another jurisdiction; or
    - (ii) the matter has a substantial connection with another jurisdiction,or both; and
  - (b) either—
    - (i) the client enters, under the corresponding law of the other jurisdiction, into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
    - (ii) the client notifies, under the corresponding law of the other jurisdiction (and within the time allowed by the corresponding law), the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

- (3) Nothing in this clause prevents the application of this Schedule to the matter by means of a later agreement or notification under clause 4.

## **6—First instructions to law practice**

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the law practice first receives instructions from or on behalf of the client in relation to the matter in that jurisdiction, whether in person or by post, telephone, fax, email or other form of communication.

## **7—Substantial connection of matter with State**

The regulations may prescribe the circumstances in which, or the rules to be used to determine whether, a matter has or does not have a substantial connection with this State for the purposes of this Schedule.

## **8—Application of different laws**

- (1) This clause applies if this Schedule applies to a matter for a period and a corresponding law applies for another period.
- (2) If this Schedule applied to a matter for a period and a corresponding law applies to the matter afterwards, this Schedule continues to apply in respect of legal costs (if any) incurred while this Schedule applied to the matter.
- (3) If a corresponding law applied to a matter for a period and this Schedule applies to the matter afterwards, this Schedule 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 adjudication of costs provisions of this Schedule are to apply in respect of all legal costs incurred in relation to the matter, and Part 7 accordingly applies in respect of those legal costs; or
  - (b) if the client enters into a written agreement with the law practice that the adjudication of costs provisions of a corresponding law are to apply in respect of all legal costs incurred in relation to the matter, Part 7 accordingly does not apply in respect of those legal costs.
- (5) A written agreement referred to in subclause (4) need not be signed by the client but, in that case, the client's acceptance must be communicated to the law practice by fax, email or some other written form.
- (6) If a corresponding law applied to a matter for a period and this Schedule applies to the matter afterwards, this Schedule does not require disclosure of any matters to the extent that they have already been disclosed under a corresponding law.
- (7) This clause has effect despite any other provisions of this Schedule.

## **Part 3—Costs disclosure**

### **9—Disclosure not required by barrister**

Disclosure to a client under this Part is not required to be made by a barrister engaged for the purposes of the client's matter.



## 10—Disclosure of costs to clients

- (1) A law practice must disclose to a client in accordance with this Part—
- (a) the basis on which legal costs will be calculated, including whether a scale of costs, or a recommendation as to the calculation of barristers' costs, applies to any of the legal costs; and
  - (b) if the law practice will not be calculating legal costs in accordance with an applicable scale of costs—that another law practice may calculate legal costs in accordance with the scale; and
  - (c) the client's right to—
    - (i) negotiate a costs agreement with the law practice; and
    - (ii) receive a bill from the law practice; and
    - (iii) request an itemised bill after receipt of a lump sum bill; and
    - (iv) be notified under clause 17 of any substantial change to the matters disclosed under this clause; and
  - (d) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs; and
  - (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 subclause (2)); 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 clause 19; 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) raising the matter with the practice;
    - (ii) adjudication of costs under Part 7;
    - (iii) the setting aside of a costs agreement under clause 30;
    - (iv) if the client believes there has been overcharging—making a complaint to the Commissioner; 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 State 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.
- (2) For the purposes of subclause (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.
- (3) The regulations may make provision for or with respect to the use of benchmark rates of interest, and in particular for or with respect to permitting, regulating or preventing the use of particular benchmark rates or particular kinds of benchmark rates.
- (4) For the purposes of subclause (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
  - (b) if applicable, a statement that disbursements may be payable by the client even if the client enters a conditional costs agreement.
- (5) A law practice is taken to have complied with the requirement to disclose the details referred to in subclause (1)(c)(i) to (iii), (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 subclause at the same time as the other details are disclosed as required by this clause.
- (6) A form prescribed for the purposes of subclause (5) may, instead of itself containing details of the kind referred to in that subclause, refer to publicly accessible sources of information (such as an Internet website) from which those details can be obtained.
- (7) The regulations may—
  - (a) require the Society to develop a statement of the relevant details and to revise it as necessary to keep it up to date; and
  - (b) require the Society to make the statement publicly available in the prescribed manner.

## **11—Disclosure if another law practice is to be retained**

- (1) If a law practice intends to retain another law practice on behalf of the client, the first law practice must disclose to the client the details specified in clause 10(1)(a), (d) and (e) in relation to the other law practice, in addition to any information required to be disclosed to the client under clause 10.
- (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 clause 10, but must disclose to the other law practice the information necessary for the other law practice to comply with subclause (1).

- (3) This clause does not apply if the first law practice ceases to act for the client in the matter when the other law practice is retained.

## **12—Timing of disclosure to client**

- (1) Disclosure under clause 10 must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.
- (2) Disclosure under clause 11(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 clauses 10 and 11.

## **13—Exceptions to requirement for disclosure**

- (1) Disclosure under clause 10 or 11(1) is not required to be made in any of the following circumstances:
  - (a) if the total legal costs in the matter, excluding disbursements, are not likely to exceed \$1 500 (exclusive of GST) or the prescribed amount (whichever is higher);
  - (b) if—
    - (i) the client has received 1 or more disclosures under clause 10 or 11(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 a 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 2001* of the Commonwealth); 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
- (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 subclause (1)(a), if a law practice becomes aware that the total legal costs are likely to exceed \$1 500 (exclusive of GST) or the prescribed amount (whichever is higher), the law practice must disclose the matters in clause 10 or 11 (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 subclause (1)(b) is made and kept with the files relating to the matter concerned.
- (4) The reaching of a decision referred to in subclause (3) otherwise than on reasonable grounds is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of the principal.
- (5) Nothing in this clause affects or takes away from any client's right—
  - (a) to progress reports in accordance with clause 19; or
  - (b) to obtain reasonable information from the law practice in relation to any of the matters specified in clause 10; or
  - (c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

#### **14—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 agreed—
  - (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 subclause (1), if the other law practice makes the disclosure to the client before the settlement is executed.

### **15—Additional disclosure—uplift fees**

- (1) A law practice must, before entering into a costs agreement that involves an uplift fee—
  - (a) provide the client with—
    - (i) an estimate of the total legal costs the client would be likely to incur if the agreement did not involve an uplift fee; or
    - (ii) if it is not reasonably practicable to provide an estimate of the total legal costs—a range of estimates of the total legal costs the client would be likely to incur if the agreement did not involve an uplift fee and an explanation of the major variables that would affect the calculation of those costs; and
  - (b) disclose to the client in writing—
    - (i) the uplift fee (or the basis of the calculation of the uplift fee); and
    - (ii) the reasons why the uplift fee is warranted.
- (2) A law practice is not required to make a disclosure under subclause (1) to a sophisticated client.

### **16—Form of disclosure**

- (1) Written disclosures under this Part—
  - (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 Part to be conveyed orally to the client in addition to providing the written disclosure.

### **17—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 Part as soon as is reasonably practicable after the law practice becomes aware of that change.

### **18—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 Part to be disclosed, the client or associated third party payer need not pay the legal costs unless they have been adjudicated under Part 7.
- (2) A law practice that does not disclose to a client or an associated third party payer anything required by this Part 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 adjudicated under Part 7.

- (3) If a law practice does not disclose to a client or an associated third party payer anything required by this Part to be disclosed and the client or associated third party payer has entered a costs agreement with the law practice, the client or associated third party payer may also apply under clause 30 for the costs agreement to be set aside.
- (4) If a law practice does not disclose to a client or an associated third party payer anything required by this Part to be disclosed, then, on an adjudication of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the Supreme Court to be proportionate to the seriousness of the failure to disclose.
- (5) If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to the client solely because the retained law practice failed to disclose relevant information to the first law practice as required by clause 11(2), then subclauses (1) to (4)—
  - (a) do not apply to the legal costs owing to the first law practice on account of legal services provided by it, to the extent that the non-disclosure by the first law practice was caused by the failure of the retained law practice to disclose the relevant information; and
  - (b) do apply to the legal costs owing to the retained law practice.
- (6) In a matter involving both a client and an associated third party payer where disclosure has been made to 1 of them but not the other—
  - (a) subclause (1) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and
  - (b) subclause (2) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.
- (7) Failure by a law practice to comply with this Part is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any legal practitioner or Australian-registered foreign lawyer involved in the failure.

## **19—Progress reports**

- (1) A law practice must give a client, on reasonable request—
  - (a) a written report of the progress of the matter in which the law practice is retained; and
  - (b) a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.
- (2) A law practice may charge a client a reasonable amount for a report under subclause (1)(a) but must not charge a client for a report under subclause (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 subclause (1), but must disclose to the other law practice any information necessary for the other law practice to comply with that subclause.
- (4) Subclause (3) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

## **20—Disclosures to associated third party payers**

- (1) If a law practice is required to make a disclosure to a client of the law practice under this Part, the law practice must, in accordance with subclauses (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 subclause (1) must be made in writing—
  - (a) at the time the disclosure to the client is required under this Part; or
  - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client—as soon as practicable after the law practice became aware of the obligation.
- (3) Clause 16 applies to a disclosure to an associated third party payer under subclause (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 clause 19(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 clause accordingly.

## **Part 4—Legal costs generally**

### **21—Recovery of legal costs**

Legal costs are recoverable—

- (a) under a costs agreement made in accordance with Part 5 or the corresponding provisions of a corresponding law; or
- (b) if paragraph (a) does not apply, in accordance with an applicable scale of costs or any applicable recommendations as to the calculation of barristers' costs; or
- (c) if neither paragraph (a) nor (b) applies, according to the fair and reasonable value of the legal services provided.

### **22—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.

### **23—Interest on unpaid legal costs**

- (1) A law practice may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the practice has given a bill for the costs in accordance with this Schedule.
- (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 subclause (1) or (2) on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.
- (4) A law practice may not charge interest under this clause or under a costs agreement at a rate that exceeds the rate prescribed by the regulations.

## **Part 5—Costs agreements**

### **24—Making costs agreements**

- (1) A costs agreement may be made—
  - (a) between a client and a law practice retained by the client; or
  - (b) between a client and a law practice retained on behalf of the client by another law practice; or
  - (c) between a law practice and another law practice that retained that law practice on behalf of a client; or
  - (d) between a law practice and an associated third party payer.
- (2) A costs agreement must be written or evidenced in writing.
- (3) A costs agreement may consist of a written offer in accordance with subclause (4) that is accepted in writing or by other conduct.

**Note—**

Acceptance by other conduct is not permitted for conditional costs agreements—see clause 25.

- (4) The offer must clearly state—
  - (a) that it is an offer to enter into a costs agreement; and
  - (b) that the offer can be accepted in writing or by other conduct; and
  - (c) the type of conduct that will constitute acceptance.
- (5) Except as provided by clause 51, a costs agreement cannot provide that the legal costs to which it relates are not subject to adjudication of costs under Part 7.

**Note—**

If it attempts to do so, the costs agreement will be void—see clause 29(1).

- (6) A reference in clause 30 and in prescribed provisions of this Schedule 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 subclause (1)(d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

### **25—Conditional costs agreements**

- (1) A costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.
- (2) A conditional costs agreement may relate to any matter, except—
  - (a) a criminal matter; or
  - (b) a matter that relates to or involves child protection, custody or guardianship or adoption; or



- (c) proceedings under any of the following Acts of the Commonwealth:
    - (i) the *Family Law Act 1975*;
    - (iii) the *Child Support (Assessment) Act 1989*; or
  - (d) any other matter of a kind prescribed by regulation.
- (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) Subclause (3)(c)(iii), (d) and (e) do not apply to a conditional costs agreement made under clause 24(1)(c).
- (5) Subclause (3)(c)(iii), (d) and (e) do not apply to a conditional costs agreement made with a sophisticated client.
- (6) If a client terminates an agreement within the period referred to in subclause (3)(e), the law practice—
- (a) may recover only those legal costs in respect of legal services performed for the client before that termination that were performed on the instructions of the client and with the client's knowledge that the legal services would be performed during that period; and
  - (b) without affecting the generality of paragraph (a), may not recover the uplift fee (if any).

## **26—Conditional costs agreements involving uplift fees**

- (1) Subject to subclause (1a), a conditional costs agreement may provide for the payment of an uplift fee.
- (1a) Subclause (1) does not apply to a conditional costs agreement relating to proceedings under the *Migration Act 1958* of the Commonwealth.
- (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 risk of the claim failing, and of the client having to meet his or her own costs, is significant; and
  - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (5) A law practice must not enter into a costs agreement in contravention of this clause.  
Maximum penalty: \$50 000.

## **27—Contingency fees are prohibited**

- (1) A law practice must not enter into a costs agreement under which the amount payable to the law practice, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceedings to which the agreement relates.  
Maximum penalty: \$50 000.
- (2) Subclause (1) does not apply to the extent that the costs agreement adopts an applicable scale of costs.

## **28—Effect of costs agreement**

Subject to this Part and Part 7, a costs agreement may be enforced in the same way as any other contract.

## **29—Certain costs agreements are void**

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Part is void.
- (2) Subject to this clause and Part 7, legal costs under a void costs agreement are recoverable as set out in clause 21(b) or (c).
- (3) However, a law practice is not entitled to recover any amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been void and must repay any excess amount received.
- (4) A law practice that has entered into a costs agreement in contravention of clause 26 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 clause 27 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 subclause (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.

### 30—Setting aside costs agreements

- (1) On application by a client, the Supreme Court may order that a costs agreement be set aside if satisfied that the agreement is not fair and reasonable.
- (2) In determining whether or not a costs agreement is fair and reasonable, and without limiting the matters to which the Supreme Court can have regard, the Court may have regard to any or all of the following matters:
  - (a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the law practice;
  - (b) whether any 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 Part 3;
  - (d) the circumstances and the conduct of the parties before and when the agreement was made;
  - (e) the circumstances and the conduct of the parties in the matters after the agreement was made;
  - (f) whether and how the agreement addresses the effect on costs of matters and changed circumstances that might foreseeably arise and affect the extent and nature of legal services provided under the agreement;
  - (g) whether and how billing under the agreement addresses changed circumstances affecting the extent and nature of legal services provided under the agreement.
- (3) The Supreme Court may adjourn the hearing of an application under this clause pending the completion of any investigation or determination of any charge in relation to the conduct of any legal practitioner or Australian-registered foreign lawyer.
- (4) If the Supreme Court 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 subclause (4)—
  - (a) the Supreme Court must apply the applicable scale of costs (if any) and any applicable recommendations as to the calculation of barristers' costs; or
  - (b) if there is no applicable scale of costs or recommendations—the Court must determine the fair and reasonable legal costs in relation to the work to which the agreement related, taking into account—
    - (i) the seriousness of the conduct of the law practice or any 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 subclause (4), the Supreme Court may not order the payment of an amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been set aside.
- (7) For the purposes of subclause (5), the Supreme Court may have regard to any or all of the following matters:
  - (a) whether the law practice and any legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with any relevant legislation or legal profession rules;
  - (b) any disclosures made by the law practice under Part 3, or the failure to make any disclosures required under that Part;
  - (c) any relevant advertisement as to—
    - (i) the law practice's costs; or
    - (ii) the skills of the law practice or of any legal practitioner or Australian-registered foreign lawyer acting on its behalf;
  - (d) the skill, labour and responsibility displayed on the part of the legal practitioner or Australian-registered foreign lawyer responsible for the matter;
  - (e) the retainer and whether the work done was within the scope of the retainer;
  - (f) the complexity, novelty or difficulty of the matter;
  - (g) the quality of the work done;
  - (h) the place where, and circumstances in which, the work was done;
  - (i) the time within which the work was required to be done;
  - (j) any other relevant matter.
- (8) The Supreme Court may determine whether or not a costs agreement exists.
- (9) The Supreme Court may order the payment of the costs of and incidental to an application under this clause.
- (10) In this clause—

*client* means a person to whom or for whom legal services are or have been provided.

## **Part 6—Billing**

### **31—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 30 days after the law practice has given a bill to the person in accordance with clauses 32 and 33.
- (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 clauses 32 and 33; and
  - (b) the person is about to leave this State.

- (3) A court or tribunal before which any proceedings are brought in contravention of subclause (1) must stay those proceedings on the application of a party, or on its own initiative.
- (4) This clause applies whether or not the legal costs are the subject of a costs agreement.

### **32—Bills**

- (1) A bill may be in the form of a lump sum bill or an itemised bill.
- (2) A bill must be signed on behalf of a law practice by a legal practitioner or an employee of the law practice authorised by a principal of the law practice to sign bills.
- (3) It is sufficient compliance with subclause (2) if a letter signed on behalf of a law practice by a legal practitioner or an employee of the law practice authorised by a principal of the law practice to sign bills is attached to, or enclosed with, the bill.
- (4) If an employee of a law practice who is authorised by a principal of the practice to sign bills on behalf of the practice signs a bill or a letter attached to, or enclosed with, a bill, the bill or letter will be taken to have been signed by the principal.
- (5) A bill is to be given to a person in accordance with section 95D.

### **33—Notification of client's rights**

- (1) A bill must include or be accompanied by a written statement setting out—
  - (a) the following avenues that are open to the client in the event of a dispute in relation to legal costs:
    - (i) raising the matter with the law practice;
    - (ii) adjudication of costs by the Supreme Court under Part 7;
    - (iii) the setting aside of a costs agreement under clause 30;
    - (iv) if the client believes there has been overcharging—making a complaint to the Commissioner; and
  - (b) if the bill is not an itemised bill—the law practice's obligation to provide an itemised bill on request by the client; and
  - (c) any time limits that apply to the taking of any action referred to in paragraph (a).

#### **Note—**

These matters will already have been disclosed under clause 10(1).

- (2) Subclause (1) does not apply in relation to a sophisticated client.
- (3) A law practice is taken to have complied with the requirement to provide the written statement referred to in subclause (1) if it provides a written statement in or to the effect of a form prescribed by the regulations for the purposes of this subclause.
- (4) A form prescribed for the purposes of subclause (3) may, instead of itself containing details of the kind referred to in that subclause, refer to publicly accessible sources of information (such as an Internet website) from which those details can be obtained.
- (5) The regulations may—
  - (a) require the Society to develop a statement of the relevant details and to revise it as necessary to keep it up to date; and

- (b) require the Society to make the statement publicly available in the prescribed manner.

### **34—Request for itemised bill**

- (1) If a bill that is not an itemised bill is given by a law practice, any person who is entitled to apply for an adjudication of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (2) The law practice must comply with the request within 21 days after the date on which the request is made.
- (3) If the person making the request is liable to pay only a part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that the person is liable to pay.
- (4) Subject to subclause (5), a law practice must not commence legal proceedings to recover legal costs from a person who has been given a lump sum bill until at least 30 days after the date on which the person is given the bill.
- (5) If the person makes a request for an itemised bill in accordance with this clause, the law practice must not commence legal proceedings to recover the legal costs from the person until at least 30 days after complying with the request.
- (6) A law practice is not entitled to charge a person for the preparation of an itemised bill requested under this clause.
- (7) Section 95D applies to the giving of an itemised bill under this clause.

### **35—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 adjudicated under Part 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 adjudicated or paid.

## **Part 7—Adjudication of costs**

### **36—Definition**

In this Part—

*client* means a person to whom or for whom legal services are or have been provided.

### **37—Application by clients or third party payers for adjudication of costs**

- (1) The Supreme Court may—
  - (a) on the application of a client for an adjudication of the whole or any part of legal costs; or
  - (b) on the application of a third party payer for an adjudication of the whole or any part of legal costs payable by the third party payer,adjudicate and settle the bill for those costs.
- (2) An application for an adjudication of costs may be made even if the legal costs have been wholly or partly paid.

- (3) If any legal costs have been paid without a bill, the client or third party payer may nevertheless apply for an adjudication.
- (4) An application by a client or third party payer for an adjudication of costs under this clause must be made within 6 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.
- (5) However, an application that is made out of time, otherwise than by—
  - (a) a sophisticated client; or
  - (b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned,may be dealt with by the Supreme Court if the Court, on application by the client or third party payer who made the application for adjudication, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for adjudication to be dealt with after the 6 month period.
- (6) 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 an adjudication of costs under this clause.
- (7) If there is an associated third party payer for a client of a law practice—
  - (a) nothing in this clause prevents—
    - (i) the client from making 1 or more applications for adjudication under this clause in relation to costs for which the client is solely liable; and
    - (ii) the associated third party payer from making 1 or more applications for adjudication under this clause 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 adjudication of costs process where the other of them makes an application for adjudication under this clause in relation to costs for which they are both liable; and
    - (ii) is taken to be a party to the adjudication and is bound by the adjudication; and
  - (c) the law practice is taken to be a party to the adjudication and is bound by the adjudication.
- (8) If there is a non-associated third party payer for a client of a law practice—
  - (a) nothing in this clause prevents—
    - (i) the client from making 1 or more applications for adjudication under this clause in relation to costs for which the client is liable; and

- (ii) the non-associated third party payer from making 1 or more applications for adjudication under this clause 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 adjudication of costs process where the non-associated third party payer makes an application for adjudication under this clause in relation to the legal costs for which the non-associated third party payer is liable; and
    - (ii) is taken to be a party to the adjudication and is bound by the adjudication; and
  - (c) despite any other provision of this Part, the adjudication 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.
- (9) In this clause—
- client* includes the following:
- (a) an executor or administrator of a client;
  - (b) a trustee of the estate of a client;
- third party payer* includes the following:
- (a) an executor or administrator of a third party payer;
  - (b) a trustee of the estate of a third party payer.

### **38—Application for adjudication by law practice retaining another law practice**

- (1) If a law practice retains another law practice to act on behalf of a client, the law practice—
  - (a) may apply to the Supreme Court; and
  - (b) if instructed to do so by the client or third party payer (if any)—must apply to the Supreme Court,for an adjudication of the whole or any part of the legal costs to which a bill given by the other law practice in accordance with Part 6 relates.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for an adjudication.
- (3) An application for an adjudication of costs may be made even if the legal costs have been wholly or partly paid.
- (4) An application under this clause must be made within 60 days after—
  - (a) the bill was given or the request for payment was made; or
  - (b) the costs were paid if neither a bill was given nor a request was made; or



- (c) in the case of an application made on the instructions of a client or third party payer—within 60 days of the day on which the client or third party payer was given notification in writing of the legal costs to which the bill relates.
- (5) An application cannot be made under this clause if—
  - (a) there is a costs agreement between the client and the other law practice; and
  - (b) the bill given by the other law practice is in accordance with the terms of the costs agreement.

### **39—Application for adjudication of costs by law practice giving bill**

- (1) A law practice that has given a bill in accordance with Part 6 may apply to the Supreme Court for an adjudication of the whole or any part of the legal costs to which the bill relates.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for an adjudication.
- (3) An application for an adjudication of costs may be made even if the legal costs have been wholly or partly paid.
- (4) An application may not be made under this clause 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 Part by another person in respect of the legal costs.

### **40—Application may be dismissed**

The Supreme Court may summarily dismiss an application for an adjudication of costs that it considers frivolous or vexatious.

### **41—Power of Supreme Court on application for adjudication**

- (1) The Supreme Court's power to adjudicate and settle a bill (but no other power of the Court under this clause) may, subject to any rule, order or direction of the Court, be exercised by the Registrar of the Court.
- (2) Subject to the rules of the Supreme Court, an appeal lies to a Master against a decision of the Registrar pursuant to subclause (1).
- (3) If an application for adjudication of legal costs has been made in accordance with this Part, the Supreme Court may—
  - (a) restrain a person claiming to be entitled to the costs from commencing an action for recovery of the costs; or
  - (b) stay any proceedings for recovery of the costs.
- (4) The Supreme Court may, on adjudication of a bill under this Part—
  - (a) order the refund of any amount overpaid; or
  - (b) if the proceedings have been instituted by the person seeking recovery of the costs—order payment of legal costs in accordance with the adjudicated bill.

#### **42—Commissioner may institute proceedings**

The Commissioner may institute proceedings for the adjudication of legal costs under clause 37 and must institute such proceedings if ordered to do so by the Tribunal.

#### **43—Court may order plaintiff to apply for adjudication**

Any court in which proceedings for the recovery of legal costs have been instituted may order the plaintiff to apply to have the legal costs adjudicated in accordance with this Part, and may adjourn the proceedings until the adjudication has been completed.

#### **44—Consequences of application**

If an application for an adjudication of costs is made in accordance with this Part—

- (a) a party to the adjudication cannot be required to pay money into court on account of the legal costs the subject of the application; and
- (b) any proceedings to recover the legal costs that may have been commenced by the law practice are stayed until the adjudication has been completed; and
- (c) the law practice must not commence any proceedings to recover the legal costs until the adjudication has been completed.

#### **45—Persons to be notified of application**

- (1) The Supreme Court may cause a copy of an application for adjudication of legal costs to be given to any law practice or client concerned or any other person whom the Court thinks it appropriate to notify.
- (2) A person who is notified by the Supreme Court under subclause (1)—
  - (a) is entitled to participate in the adjudication process; and
  - (b) is taken to be a party to the adjudication; and
  - (c) if the Court so determines, is bound by the adjudication.

#### **46—Criteria for adjudication**

- (1) In conducting an adjudication of legal costs, the Supreme Court must—
  - (a) consider—
    - (i) whether or not it was reasonable to carry out the work to which the legal costs relate; and
    - (ii) whether or not the work was carried out in a reasonable manner; and
    - (iii) the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that clause 47 or 48 applies to any disputed costs; and
  - (b) if the legal costs have been the subject of a complaint to the Commissioner of overcharging—have regard to any recommendation made by the Commissioner that the charges be reduced or an amount refunded to the client.

- (2) In considering what is a fair and reasonable amount of legal costs, the Supreme Court may have regard to any or all of the following matters:
- (a) whether the law practice and any legal practitioner or Australian-registered foreign lawyer acting on its behalf has complied with the law;
  - (b) any disclosures made by the law practice under Part 3;
  - (c) any relevant advertisement as to—
    - (i) the law practice's costs; or
    - (ii) the skills of the law practice or of any legal practitioner or Australian-registered foreign lawyer acting on its behalf;
  - (d) the skill, labour and responsibility displayed on the part of the legal practitioner or Australian-registered foreign lawyer responsible for the matter;
  - (e) the retainer and whether the work done was within the scope of the retainer;
  - (f) the complexity, novelty or difficulty of the matter;
  - (g) the quality of the work done;
  - (h) the place where, and circumstances in which, the legal services were provided;
  - (i) the time within which the work was required to be done;
  - (j) any other relevant matter.
- (3) In conducting an adjudication of legal costs payable by a non-associated third party payer, the Supreme 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.

#### **47—Adjudication of costs by reference to costs agreement**

- (1) The Supreme Court must adjudicate 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 clause 30,
- unless the Court is satisfied—
- (c) that the agreement does not comply in a material respect with any applicable disclosure requirements of Part 3; or
  - (d) that Part 5 precludes the law practice concerned from recovering the amount of the costs; or
  - (e) that the parties otherwise agree.
- (2) The Supreme Court is not required to initiate an examination of the matters referred to in subclause (1)(c) and (d).

#### **48—Adjudication of costs by reference to scale of costs**

The Supreme Court must adjudicate the amount of any disputed costs that are subject to a scale of costs by reference to the scale.

#### **49—Costs of adjudication**

- (1) The Supreme Court must determine the costs of an adjudication of costs.
- (2) Unless the Supreme Court otherwise orders, the law practice to which the legal costs are payable or were paid must pay the costs of the adjudication if—
  - (a) on the adjudication the legal costs are reduced by 15% or more; or
  - (b) the Court is satisfied that the law practice failed to comply with Part 3.
- (3) Unless the Supreme Court otherwise orders, if the law practice is not, under subclause (2), liable to pay the costs of the adjudication, the costs of the adjudication must be paid by the applicant for the adjudication.
- (4) However, if an application for an adjudication of costs is made following the making of a determination by the Commissioner in relation to the costs under section 77N, the applicant is required to pay the costs of the adjudication unless the Supreme Court orders otherwise.
- (5) In determining whether to make an order under subclause (4), the Supreme Court must have regard to the extent (if any) to which the result of the adjudication is more favourable for the applicant than the Commissioner's determination.

#### **50—Referral for disciplinary action**

- (1) If, on an adjudication, the Supreme Court considers that the legal costs charged by a law practice are grossly excessive, the Court must refer the matter to the Commissioner to consider whether disciplinary action should be taken.
- (2) If the Supreme Court considers that an adjudication raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct on the part of a legal practitioner or Australian-registered foreign lawyer, the Court may refer the matter to the Commissioner or a corresponding authority to consider whether disciplinary action should be taken.

#### **51—Contracting out of Part 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 Part (but no such contract affects the Commissioner's power to institute proceedings for the adjudication of legal costs under clause 42).

### **Part 8—Miscellaneous**

#### **52—Application of Schedule to incorporated legal practices**

The regulations may provide that specified provisions of this Schedule do not apply to incorporated legal practices, or to specified classes of incorporated legal practices, or apply to them with specified modifications.

#### **53—Imputed acts, omissions or knowledge**

For the purposes of this Schedule—

- (a) anything done or omitted by, to or in relation to—
  - (i) a legal practitioner; or

- (ii) an Australian-registered foreign lawyer (except for the purposes of clause 26(4) or for the purposes of any provision of this Schedule prescribed by the regulations for the purposes of this clause),  
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) a legal practitioner; or
  - (ii) an Australian-registered foreign lawyer (except for the purposes of clause 26(4) or for the purposes of any provision of this Schedule prescribed by the regulations for the purposes of this clause),  
becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the law practice.



## Schedule 4—Investigatory powers

### Part 1—Preliminary

#### 1—Definitions

- (1) In this Schedule—

**complaint investigation** means an investigation of a complaint under Part 6 and includes an investigation made into the conduct of a legal practitioner or former legal practitioner on the Commissioner's own initiative or at the request of the Attorney-General or the Society;

**ILP compliance audit** means the conduct of an audit under Schedule 1 clause 19 in relation to an incorporated legal practice;

**investigator** means—

- (a) an investigator under Schedule 2; or
- (b) an external examiner under Schedule 2; or
- (c) the Commissioner or a person authorised by the Commissioner to investigate a complaint or the conduct of a legal practitioner or former legal practitioner under Part 6 Division 2; or
- (d) a person appointed by the Society to conduct an ILP compliance audit;

**law practice** includes—

- (a) an Australian-registered foreign lawyer who practises foreign law on the foreign lawyer's own account; and
- (b) a partnership consisting of 1 or more Australian-registered foreign lawyers or 1 or more Australian legal practitioners, or both;

**trust account examination** means an external examination of the trust records of a law practice under Schedule 2;

**trust account investigation** means an investigation of the affairs of a law practice under Schedule 2.

- (2) For the purposes of this Schedule—

- (a) **law practice** includes the Legal Services Commission; and
- (b) an **associate** of the Commission is an employee of the Commission (whether or not a legal practitioner) who is not a principal of the Commission; and
- (c) a **principal** of the Commission is a legal practitioner who is generally responsible for the provision of legal services by the Commission.

- (3) In this Schedule—

- (a) a reference to a legal practitioner is to be taken to include a reference to an Australian-registered foreign lawyer; and
- (b) a reference to a former legal practitioner is to be taken to include a reference to a former Australian-registered foreign lawyer.

## **Part 2—Requirements relating to documents, information and other assistance**

### **2—Application of Part**

This Part applies to—

- (a) trust account investigations; and
- (b) trust account examinations; and
- (c) complaint investigations; and
- (d) ILP compliance audits.

### **3—Requirements that may be imposed for investigations, examinations and audits under Schedule 2**

- (1) For the purpose of carrying out a trust account investigation or trust account examination in relation to a law practice, an investigator may, on production of evidence of his or her appointment, require the practice or an associate or former associate of the practice or any other person (including, for example, an ADI, auditor or liquidator) who has or has had control of documents relating to the affairs of the practice to give the investigator either or both of the following:
  - (a) access to the documents relating to the affairs of the practice the investigator reasonably requires;
  - (b) information relating to the affairs of the practice the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subclause (1) must comply with the requirement.

Maximum penalty: \$50 000 or imprisonment for 1 year.

### **4—Requirements that may be imposed for investigations under Part 6**

- (1) For the purpose of carrying out a complaint investigation in relation to a legal practitioner or former legal practitioner, an investigator may, by notice served on the practitioner or former practitioner, require the practitioner or former practitioner to do any 1 or more of the following:
  - (a) to produce, at or before a specified time and at a specified place, any specified document (or a copy of the document);
  - (b) to provide written information on or before a specified date (verified by statutory declaration if the requirement so states);
  - (c) to otherwise assist in, or cooperate with, the investigation of the complaint in a specified manner.



- (2) For the purpose of carrying out a complaint investigation in relation to a legal practitioner or former legal practitioner, the investigator may, on production of evidence of his or her appointment, require an associate or former associate of a law practice of which the practitioner or former practitioner is or was an associate or any other person (including, for example, an ADI, auditor or liquidator but not including the practitioner) who has or has had control of documents relating to the affairs of the practitioner or former practitioner to give the investigator either or both of the following:
- (a) access to the documents relating to the affairs of the practitioner or former practitioner the investigator reasonably requires;
  - (b) information relating to the affairs of the practitioner or former practitioner the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (3) A person who is subject to a requirement under subclause (1) or (2) must comply with the requirement.
- Maximum penalty: \$50 000 or imprisonment for 1 year.
- (4) A requirement imposed on a person under this clause is to be notified in writing to the person and is to specify a reasonable time for compliance.

## **5—Provisions relating to requirements under this Part**

- (1) This clause applies to a requirement imposed on a person under this Part.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on—
- (a) the ground that the giving of the information or access to information may tend to incriminate the person; or
  - (b) the ground that a law practice or legal practitioner has a lien over a particular document or class of documents.
- (3) If compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—
- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
  - (b) in any other case—the answer given in compliance with the requirement, is not admissible in evidence against the person in proceedings other than disciplinary proceedings under this Act or proceedings—
  - (c) for an offence—
    - (i) against this Act; or
    - (ii) relating to the keeping of trust accounts or the receipt of trust money; or
  - (d) in respect of the making of a false or misleading statement.

- (4) The investigator imposing the requirement may—
  - (a) inspect any document provided pursuant to the requirement; and
  - (b) make copies of the document or any part of the document; and
  - (c) retain the document for a period the investigator thinks necessary for the purposes of the investigation in relation to which it was produced.
- (5) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.
- (6) A failure by a legal practitioner to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (7) The Supreme Court may, on application by the Commissioner or the Society, or on its own initiative, suspend a legal practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

## **Part 3—Entry and search of premises**

### **6—Application of Part**

This Part applies to—

- (a) trust account investigations; and
- (b) complaint investigations,

but does not apply to—

- (c) trust account examinations; or
- (d) ILP compliance audits.

### **7—Investigator's power to enter premises**

- (1) Subject to this clause, for the purpose of carrying out an investigation, an investigator may enter and remain on premises to exercise the powers in clause 9.
- (2) In the case of a trust account investigation—
  - (a) the investigator may enter premises, other than residential premises, without the need for consent or a search warrant; and
  - (b) the investigator may only enter residential premises as follows:
    - (i) the investigator may enter the premises at any time with the consent of the occupier;
    - (ii) the investigator may enter the premises under the authority of a search warrant issued under this Part;
    - (iii) the investigator may enter the premises at any time without the consent of the occupier and without a warrant, but only if the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material.

- (3) In the case of a complaint investigation, the investigator may only enter premises as follows:
    - (a) the investigator may enter the premises at any time with the consent of the occupier;
    - (b) the investigator may enter the premises under the authority of a search warrant issued under this Part.
  - (4) The investigator must not exercise the power in subclause (2)(b)(iii) unless the Society has, when appointing the investigator, authorised the use of that power.
  - (5) An investigator may use reasonable force for the purposes of entering premises under subclause (2)(a) or (2)(b)(iii).
  - (6) The investigator must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce evidence of his or her appointment.
- Maximum penalty: \$2 500.

## **8—Search warrants**

- (1) For the purpose of carrying out an investigation, an investigator may apply to a Magistrate for a search warrant.
  - (2) A Magistrate may, on application made under this clause, issue a search warrant to an investigator if—
    - (a) an investigator satisfies the Magistrate that there are reasonable grounds to suspect that relevant material is located at the premises; and
    - (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
  - (3) A search warrant authorises an investigator to enter the premises specified in the warrant, by the use of reasonable force if necessary, at the time or within the period specified in the warrant.
  - (4) A search warrant may be executed by the investigator to whom it is issued or by any other investigator engaged in the investigation to which the warrant relates.
  - (5) An investigator executing a warrant must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce the warrant.
- Maximum penalty: \$2 500.

## **9—Powers of investigator while on premises**

- (1) An investigator who enters premises under this Part may exercise any or all of the following powers:
  - (a) search the premises and examine anything on the premises;
  - (b) search for any information, document or other material relating to the matter to which the investigation relates;
  - (c) operate equipment or facilities on the premises for a purpose relevant to the investigation;

- (d) take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;
  - (e) make copies of any relevant material or any part of any relevant material;
  - (f) seize and take away any relevant material or any part of any relevant material;
  - (g) use (free of charge) photocopying equipment on the premises for the purpose of copying any relevant material;
  - (h) with respect to any computer or other equipment that the investigator suspects on reasonable grounds may contain any relevant material—
    - (i) inspect and gain access to a computer or equipment;
    - (ii) download or otherwise obtain any documents or information;
    - (iii) make copies of any documents or information held in it;
    - (iv) seize and take away any computer or equipment or any part of it;
  - (i) if any relevant material found on the premises cannot be conveniently removed—secure it against interference;
  - (j) request any person who is on the premises to do any of the following:
    - (i) to state his or her full name, date of birth and address;
    - (ii) to answer (orally or in writing) questions asked by the investigator relevant to the investigation;
    - (iii) to produce relevant material;
    - (iv) to operate equipment or facilities on the premises for a purpose relevant to the investigation;
    - (v) to provide access (free of charge) to photocopying equipment on the premises the investigator reasonably requires to enable the copying of any relevant material;
    - (vi) to give other assistance the investigator reasonably requires to carry out the investigation;
  - (k) do anything else reasonably necessary to obtain information or evidence for the purposes of the investigation.
- (2) Any documents, information or anything else obtained by the investigator may be used for the purposes of the investigation.
- (3) If an investigator takes anything away from the premises, the investigator must issue a receipt and—
- (a) if the occupier or a person apparently responsible to the occupier is present, give it to him or her; or
  - (b) otherwise, leave it on the premises in an envelope addressed to the occupier.
- (4) An investigator may be accompanied by any assistants the investigator requires, including persons with accounting expertise and persons to assist in finding and gaining access to electronically stored information.

## **Part 4—Additional powers in relation to incorporated legal practices**

### **10—Application of Part**

- (1) This Part applies to—
  - (a) trust account investigations; and
  - (b) complaint investigations; and
  - (c) ILP compliance audits,  
conducted in relation to incorporated legal practices (whether engaged in legal practice on their own account or in partnership).
- (2) The provisions of this Part are additional to the other provisions of this Schedule.

### **11—Investigative powers relating to investigations and audits**

An investigator conducting an investigation or audit to which this Part applies may exercise the powers set out in this Part.

### **12—Examination of persons**

- (1) The investigator, by force of this clause, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by Division 2 of Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (2) Division 2 of Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth applies to the exercise of those powers, with the following modifications (and any other necessary modifications):
  - (a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the investigator;
  - (b) a reference to a matter that is being or is to be investigated under Division 1 of Part 3 of that Act is taken to be a reference to a matter that is being or is to be investigated, examined or audited by the investigator;
  - (c) a reference in section 19 of that Act to a person is taken to be a reference to a legal practitioner or an incorporated legal practice;
  - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Society.
- (3) Sections 22(2) and (3), 25(2) and (2A), 26 and 27 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth do not apply in respect of the exercise of the powers conferred by this clause.

### **13—Inspection of books**

- (1) The investigator, by force of this clause, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by sections 30(1), 34 and 37 to 39 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

- (2) Those provisions apply to the exercise of those powers, with the following modifications (and any other necessary modifications):
- (a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the investigator;
  - (b) a reference to a body corporate (including a body corporate that is not an exempt public authority) is taken to be a reference to an incorporated legal practice;
  - (c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice;
  - (d) a reference to a member or staff member is taken to be a reference to the appropriate authority or a person authorised by the appropriate authority who is an officer or employee of the authority;
  - (e) a reference in section 37 of that Act to a proceeding is taken to be a reference to an investigation, examination or audit to which this Part applies.
- (3) In this clause—
- appropriate authority*** means—
- (a) in the case of a complaint investigation—the Commissioner; and
  - (b) in the case of an ILP compliance audit, a trust account investigation or a trust account examination—the Society.

#### **14—Power to hold hearings**

- (1) The investigator may hold hearings for the purposes of an investigation, examination or audit to which this Part applies.
- (2) Sections 52, 56(1), 58, 59(1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth apply to a hearing, with the following modifications (and any other necessary modifications):
- (a) a reference to the Australian Securities and Investments Commission (however expressed) is taken to be a reference to the investigator;
  - (b) a reference to a member or staff member is taken to be a reference to the appropriate authority or a person authorised by the appropriate authority who is an officer or employee of the authority;
  - (c) a reference to a prescribed form is taken to be a reference to a form approved by the Society.
- (3) In this clause—
- appropriate authority*** has the same meaning as in clause 13.

## 15—Failure to comply with investigation

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

- (a) a failure by a legal practitioner to comply with any requirement made by the investigator, or a person authorised by the investigator, in the exercise of powers conferred by this Part;
- (b) a contravention by a legal practitioner of any condition imposed by the investigator in the exercise of powers conferred by this Part;
- (c) a failure by a legal practitioner director of an incorporated legal practice to ensure that the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following:
  - (i) any requirement made by the investigator, or a person authorised by the investigator, in the exercise of powers conferred by this Part;
  - (ii) any condition imposed by the investigator in the exercise of powers conferred by this Part.

## Part 5—Miscellaneous

### 16—Obstruction of investigator

- (1) A person must not, without reasonable excuse, obstruct an investigator exercising a power under this Act.  
Maximum penalty: \$50 000.

- (2) A person requested to do anything under clause 9(1)(j) must not, without reasonable excuse, fail to comply with the request.  
Maximum penalty: \$50 000.

- (3) In this clause—  
*obstruct* includes hinder, delay, resist and attempt to obstruct.

### 17—Obligation of legal practitioners

- (1) The duties imposed on a legal practitioner by this clause are additional to obligations imposed under other provisions of this Schedule, whether or not the legal practitioner is the subject of the investigation, examination or audit concerned.
- (2) A legal practitioner must not mislead an investigator, the Commissioner or the Society in the exercise of—
  - (a) any power or function under this Schedule; or
  - (b) any power or function under a provision of a corresponding law that corresponds to this Schedule.
- (3) A legal practitioner who is subject to—
  - (a) a requirement under clause 4; or
  - (b) a requirement under provisions of a corresponding law that correspond to that clause,must not, without reasonable excuse, fail to comply with the requirement.

## 18—Protection from liability

No liability attaches to an investigator for any act or omission by the investigator done in good faith and in the exercise or purported exercise of the investigator's powers or duties under this Act.

## 19—Permitted disclosure of confidential information

- (1) Subject to this clause, the Society, the Commissioner or an investigator, or a person employed or engaged on work related to the affairs of the Society or the Commissioner, must not divulge information that comes to his or her knowledge by virtue of that office or position except—
- (a) in the course of carrying out the duties of that office or position; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) as may be authorised by or under any law.

Maximum penalty: \$50 000.

- (2) The Commissioner or the Council, or a person employed or engaged on work related to the affairs of the Commissioner, may divulge information referred to in subclause (1) as authorised by an agreement or arrangement that has been approved by the Attorney-General under section 77A.
- (3) A person referred to in subclause (1) may disclose information obtained in the course of a trust account investigation, trust account examination, complaint investigation or ILP compliance audit to any of the following:
- (a) any court, tribunal or other person acting judicially;
  - (b) any body regulating legal practitioners in any jurisdiction;
  - (c) the Attorney-General;
  - (d) a person authorised to appoint an investigator;
  - (e) any officer of or legal practitioner instructed by—
    - (i) the Society or Commissioner or any other body regulating legal practitioners in any jurisdiction; or
    - (ii) the Commonwealth or a State or Territory of the Commonwealth; or
    - (iii) an authority of the Commonwealth or of a State or Territory of the Commonwealth;
  - (f) an investigative or prosecuting authority established by or under legislation (for example, the Australian Securities and Investments Commission);
  - (g) a law enforcement authority;
  - (h) if the subject of the investigation, examination or audit is or was—
    - (i) a law practice—a principal of the law practice; or
    - (ii) an incorporated legal practice—a director or shareholder in the practice; or
    - (iii) a legal practitioner—the practitioner or a principal of the law practice of which the practitioner is or was an associate;



- (i) if the subject of the investigation, examination or audit is or was—
    - (i) a law practice—a client or former client of the practice; or
    - (ii) a legal practitioner—a client or former client of the law practice of which the legal practitioner is or was an associate,but only to the extent that the disclosure does not breach legal professional privilege or a duty of confidentiality;
  - (j) if the subject of the investigation, examination or audit is or was—
    - (i) a law practice—a supervisor, manager or receiver appointed in relation to the law practice; or
    - (ii) a legal practitioner—a supervisor, manager or receiver appointed in relation to the law practice of which the legal practitioner is or was an associate,or a legal practitioner or accountant employed by the supervisor, manager or receiver;
  - (k) an investigator carrying out another investigation, examination or audit in relation to the law practice or legal practitioner who is or was the subject of the investigation, examination or audit.
- (4) Nothing in this clause prevents the disclosure of information relating to a complaint to the complainant or a person acting on behalf of the complainant.
- (5) No liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of disclosing information under this clause.
- (6) In this clause—
- protected person*** means—
- (a) the Commissioner; or
  - (b) an employee or agent of the Commissioner; or
  - (c) the Society; or
  - (d) the Council; or
  - (e) an officer, employee or agent of the Society; or
  - (f) an investigator; or
  - (g) a person acting at the direction of any person or entity referred to in this definition.



## **Schedule 5—Transitional provisions**

### **1—Closure of certain complaints**

- (1) A complaint received by the Commissioner under Part 6 before the commencement of subsection (3b) of section 77B may, if the complaint was made by a person who was, at the time of making the complaint, subject to an order under section 39 of the *Supreme Court Act 1935* prohibiting him or her from instituting proceedings (or proceedings of a particular class), be closed by the Commissioner without an investigation or without completing an investigation.
- (2) If the Commissioner determines to close a complaint under subclause (1)—
  - (a) the Commissioner must notify the complainant in writing of the closure of the complaint; and
  - (b) the determination is not subject to appeal.



## Legislative history

### Notes

- This version is comprised of the following:
 

Part 1	1.7.2020
Part 2	1.12.2019
Part 2A	1.2.2018
Part 3	1.7.2020
Part 4	1.7.2020
Part 5	1.7.2014
Part 6	1.7.2020
Part 7	26.11.2020
Part 8	1.12.2019
Sch 1	1.12.2019
Sch 1A	1.7.2020
Sch 2	1.7.2020
Sch 3	1.7.2020
Sch 4	1.7.2020
Sch 5	13.11.2016
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Legal Practitioners Act 1981* repealed the following:

*Legal Practitioners Act 1936*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1981	59	<i>Legal Practitioners Act 1981</i>	25.6.1981	1.3.1982 ( <i>Gazette</i> 25.2.1982 p508)
1982	8	<i>Legal Practitioners Act Amendment Act 1982</i>	25.2.1982	1.3.1982: s 2
1985	3	<i>Legal Practitioners Act Amendment Act 1985</i>	7.3.1985	6.6.1985 ( <i>Gazette</i> 23.5.1985 p1690)

# Legal Practitioners Act 1981—26.11.2020

## Legislative history

1985	119	<i>Legal Practitioners Act Amendment Act (No. 2) 1985</i>	10.11.1985	10.11.1985
1986	50	<i>Legal Practitioners Act Amendment Act 1986</i>	11.9.1986	1.10.1986 ( <i>Gazette</i> 25.9.1986 p1083)
1987	84	<i>Legal Practitioners Act Amendment Act 1987</i>	27.11.1987	3.12.1987 except s 4—1.2.1988 ( <i>Gazette</i> 3.12.1987 p1733)
1987	90	<i>Legal Practitioners Act Amendment Act (No. 2) 1987</i>	10.12.1987	10.12.1987
1988	13	<i>Strata Titles Act 1988</i>	7.4.1988	1.9.1988 ( <i>Gazette</i> 21.7.1988 p420)
1989	70	<i>Legal Practitioners Act Amendment Act 1989</i>	29.10.1989	9.11.1989 ( <i>Gazette</i> 9.11.1989 p1452)
1990	23	<i>Statute Law Revision Act 1990</i>	26.4.1990	Sch 5—1.8.1990 ( <i>Gazette</i> 12.7.1990 p257)
1990	54	<i>Statute Law Revision Act (No. 2) 1990</i>	22.11.1990	Sch 2—1.8.1990: s 2(2)
1991	25	<i>Legal Practitioners (Miscellaneous) Amendment Act 1991</i>	18.4.1991	6.6.1991 ( <i>Gazette</i> 6.6.1991 p1774)
1991	49	<i>Director of Public Prosecutions Act 1991</i>	21.11.1991	6.7.1992 ( <i>Gazette</i> 25.6.1992 p1869)
1992	27	<i>Legal Practitioners (Litigation Assistance Fund) Amendment Act 1992</i>	14.5.1992	28.5.1992 ( <i>Gazette</i> 28.5.1992 p1510)
1993	22	<i>Legal Practitioners (Reform) Amendment Act 1993</i>	8.4.1993	6.5.1993 except s 10—1.1.1994 ( <i>Gazette</i> 6.5.1993 p1576)
1993	92	<i>Statutes Amendment (Attorney-General's Portfolio No. 2) Act 1993</i>	4.11.1993	Pt 2 (s 3)—4.11.1993
1994	17	<i>State Bank (Corporatisation) Act 1994</i>	12.5.1994	Sch 4—1.7.1994 ( <i>Gazette</i> 23.6.1994 p1784)
1996	10	<i>Legal Practitioners (Miscellaneous) Amendment Act 1996</i>	11.4.1996	9.5.1996 ( <i>Gazette</i> 2.5.1996 p2396) except s 6—13.6.1996 ( <i>Gazette</i> 13.6.1996 p2918)
1996	38	<i>Statutes Amendment (Community Titles) Act 1996</i>	9.5.1996	s 11—4.11.1996 ( <i>Gazette</i> 31.10.1996 p1460)
1996	88	<i>Legal Practitioners (Miscellaneous No. 2) Amendment Act 1996</i>	12.12.1996	1.1.1997 ( <i>Gazette</i> 19.12.1996 p1923)
1997	13	<i>Legal Practitioners (Membership of Board and Tribunal) Amendment Act 1997</i>	27.3.1997	1.3.1982 except s 6—9.5.1996 and except s 4—27.3.1997: s 2
1998	12	<i>Legal Practitioners (Qualifications) Amendment Act 1998</i>	2.4.1998	1.2.1999 ( <i>Gazette</i> 28.1.1999 p587)
1998	50	<i>Legal Practitioners (Miscellaneous) Amendment Act 1998</i>	3.9.1998	1.2.1999 ( <i>Gazette</i> 28.1.1999 p587)
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 33)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)

1999	84	<i>Legal Practitioners (Miscellaneous) Amendment Act 1999</i>	2.12.1999	1.1.2000 ( <i>Gazette</i> 16.12.1999 p3328)
2000	70	<i>Legal Practitioners (Miscellaneous) Amendment Act 2000</i>	7.12.2000	7.12.2000
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 20 (ss 81—83)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13.7.2001 ( <i>Gazette</i> 21.6.2001 p2270)
2003	16	<i>Legal Practitioners (Insurance) Amendment Act 2003</i>	19.6.2003	19.6.2003
2003	55	<i>Legal Practitioners (Miscellaneous) Amendment Act 2003</i>	4.12.2003	11.12.2003 ( <i>Gazette</i> 11.12.2003 p4430)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 45 (ss 155—157)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 51 (ss 145—147)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 81 (s 193)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2010	12	<i>Trustee Companies (Commonwealth Regulation) Amendment Act 2010</i>	5.8.2010	Sch 1 (cl 6)—20.12.2010 ( <i>Gazette</i> 9.12.2010 p5580)
2011	11	<i>Statutes Amendment (Personal Property Securities) Act 2011</i>	14.4.2011	Pt 13 (s 41)—30.1.2012 ( <i>Gazette</i> 15.12.2011 p4988)
2012	52	<i>Independent Commissioner Against Corruption Act 2012</i>	6.12.2012	Sch 3 (cl 21)—1.9.2013 ( <i>Gazette</i> 23.5.2013 p2006)
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 33 (s 63)—17.6.2013 ( <i>Gazette</i> 6.6.2013 p2498)
2013	44	<i>Legal Practitioners (Miscellaneous) Amendment Act 2013</i>	3.10.2013	Pt 1 (ss 1—3) & Sch 2 (cll 5, 13 & 15)—21.4.2014 ( <i>Gazette</i> 17.4.2014 p1526); Pt 2 (ss 4—61), Sch 1 & Sch 2 (cll 6—12, 14 & 16—18)—1.7.2014 ( <i>Gazette</i> 5.6.2014 p2241)
2014	9	<i>Statutes Amendment (Legal Practitioners) Act 2014</i>	25.9.2014	Pt 3 (ss 5—9) & Sch 1—25.9.2014: s 2
2014	25	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2014</i>	11.12.2014	Pt 6 (s 12)—1.4.2015 ( <i>Gazette</i> 19.2.2015 p793)
2016	42	<i>Notaries Public Act 2016</i>	29.9.2016	Sch 1 (cll 2—6)—1.2.2018 ( <i>Gazette</i> 28.11.2017 p4752)
2016	44	<i>Legal Practitioners (Miscellaneous) Amendment Act 2016</i>	29.9.2016	13.11.2016 ( <i>Gazette</i> 10.11.2016 p4392) except ss 15 & 16—30.7.2017 ( <i>Gazette</i> 25.7.2017 p2941)
2017	70	<i>Statutes Amendment (Attorney-General's Portfolio No 3) Act 2017</i>	12.12.2017	Pt 6 (ss 11 & 12)—1.3.2018 ( <i>Gazette</i> 6.2.2018 p610)
2019	27	<i>Legal Practitioners (Miscellaneous) Amendment Act 2019</i>	24.10.2019	1.12.2019 ( <i>Gazette</i> 28.11.2019 p3992) except s 5—uncommenced

2019	49	<i>Legal Practitioners (Foreign Lawyers and Other Matters) Amendment Act 2019</i>	19.12.2019	21.5.2020 except ss 4 to 6, 8 to 14 & 16 to 19—1.7.2020 ( <i>Gazette</i> 21.5.2020 p2451)
2020	32	<b><i>Legal Practitioners (Senior and Queen's Counsel) Amendment Act 2020</i></b>	<b>1.10.2020</b>	<b>26.11.2020 (<i>Gazette</i> 26.11.2020 p5371)</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
Pt 1		
ss 2—4	<i>deleted by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
s 5		
s 5(1)	s 5 redesignated as s 5(1) by 50/1998 s 3(m)	1.2.1999
amend	inserted by 49/2019 s 4(1)	1.7.2020
approved auditor	<i>amended by 10/1996 s 3(a)</i>	<i>9.5.1996</i>
	<i>substituted by 12/1998 s 3(a)</i>	<i>1.2.1999</i>
	<i>deleted by 44/2016 s 4(1)</i>	<i>13.11.2016</i>
associate	inserted by 44/2013 s 4(1)	1.7.2014
Australian Government Solicitor	inserted by 119/1985 s 2	10.11.1985
Australian-registered foreign lawyer	inserted by 49/2019 s 4(2)	1.7.2020
bank	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 17/1994 Sch 4 cl 5</i>	<i>1.7.1994</i>
	<i>inserted by 50/1998 s 3(a)</i>	<i>1.2.1999</i>
	<i>deleted by 33/1999 Sch (item 33(a))</i>	<i>1.7.1999</i>
banking account	<i>deleted by 50/1998 s 3(a)</i>	<i>1.2.1999</i>
Board	<i>inserted in 10/1996 s 3(b)</i>	<i>9.5.1996</i>
	<i>deleted by 44/2013 s 4(2)</i>	<i>1.7.2014</i>
Chief Executive	inserted by 44/2013 s 4(2)	1.7.2014
Chief Justice	inserted by 12/1998 s 3(b)	1.2.1999
the combined trust account	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
Commissioner	inserted by 44/2013 s 4(3)	1.7.2014
the Committee	<i>deleted by 10/1996 s 3(c)</i>	<i>9.5.1996</i>
community legal centre	inserted by 70/1989 s 3	9.11.1989
	substituted by 44/2013 s 4(3)	1.7.2014
company	<i>substituted by 55/2003 s 4</i>	<i>11.12.2003</i>
	<i>deleted by 44/2013 s 4(4)</i>	<i>1.7.2014</i>



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conduct	inserted by 50/1998 s 3(b)	1.2.1999
conviction	inserted by 44/2013 s 4(5)	1.7.2014
corporation	inserted by 44/2013 s 4(5)	1.7.2014
corresponding authority	inserted by 9/2014 s 5	25.9.2014
corresponding disciplinary body	inserted by 44/2013 s 4(5)	1.7.2014
corresponding law	inserted by 50/1998 s 3(b)	1.2.1999
	substituted by 70/2017 s 11	1.3.2018
director	substituted by 44/2013 s 4(6)	1.7.2014
document	inserted by 10/1996 s 3(d)	9.5.1996
domestic partner	inserted by 43/2006 s 145(1)	1.6.2007
<i>the Executive Director</i>	<i>deleted by 44/2013 s 4(7)</i>	<i>1.7.2014</i>
Fidelity Fund	inserted by 44/2013 s 4(7)	1.7.2014
fiduciary or professional default	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 3(c)	1.2.1999
	amended by 44/2013 s 4(8)	1.7.2014
foreign country	inserted by 49/2019 s 4(3)	1.7.2020
foreign law	inserted by 49/2019 s 4(3)	1.7.2020
<i>the guarantee fund</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 44/2013 s 4(9)</i>	<i>1.7.2014</i>
home jurisdiction	inserted by 49/2019 s 4(3)	1.7.2020
incorporated legal practice	inserted by 44/2013 s 4(9)	1.7.2014
interstate legal practitioner	inserted by 50/1998 s 3(d)	1.2.1999
interstate practising certificate	inserted by 50/1998 s 3(d)	1.2.1999
interstate-registered foreign lawyer	inserted by 49/2019 s 4(4)	1.7.2020
jurisdiction	inserted by 44/2013 s 4(10)	1.7.2014
law practice	inserted by 44/2013 s 4(10)	1.7.2014
	amended by 44/2016 s 4(2), (3)	13.11.2016
legal practitioner	amended by 50/1998 s 3(e)	1.2.1999
	(b) deleted by 44/2013 s 4(11)	1.7.2014
legal practitioner director	inserted by 44/2013 s 4(12)	1.7.2014
legal profession rules	inserted by 44/2013 s 4(12)	1.7.2014
legal services	inserted by 44/2013 s 4(12)	1.7.2014
local legal practitioner	inserted by 50/1998 s 3(f)	1.2.1999

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locally registered foreign lawyer	inserted by 49/2019 s 4(5)	1.7.2020
LPEAC	inserted by 12/1998 s 3(c)	1.2.1999
money	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 33/1999 Sch (item 33(b))	1.7.1999
mortgage financing	inserted by 84/1999 s 3(a)	1.1.2000
officer	inserted by 44/2013 s 4(13)	1.7.2014
participating State	inserted by 50/1998 s 3(g)	1.2.1999
partner	inserted by 44/2016 s 4(4)	13.11.2016
practise the profession of the law	inserted by 50/1998 s 3(g)	1.2.1999
	substituted by 44/2013 s 4(14)	1.7.2014
principal	inserted by 44/2013 s 4(15)	1.7.2014
professional mentoring agreement	inserted by 44/2013 s 4(15)	1.7.2014
professional misconduct	inserted by 44/2013 s 4(15)	1.7.2014
professional obligations	inserted by 44/2013 s 4(15)	1.7.2014
Regulator	inserted by 44/2013 s 4(15)	1.7.2014
regulatory authority	inserted by 50/1998 s 3(h)	1.2.1999
	amended by 44/2013 s 4(16)	1.7.2014
	amended by 49/2019 s 4(6)	1.7.2020
related body corporate	inserted by 44/2013 s 4(17)	1.7.2014
<i>the repealed Act</i>	<i>deleted by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>the Secretary</i>	<i>deleted by 10/1996 s 3(e)</i>	<i>9.5.1996</i>
serious offence	inserted by 44/2013 s 4(17)	1.7.2014
show cause event	inserted by 44/2013 s 4(17)	1.7.2014
	amended by 49/2019 s 4(7)	1.7.2020
sole practitioner	inserted by 44/2013 s 4(17)	1.7.2014
spouse	inserted by 43/2006 s 145(2)	1.6.2007
State	inserted by 50/1998 s 3(i)	1.2.1999
the statutory interest account	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
tax offence	inserted by 44/2013 s 4(18)	1.7.2014
trust account	amended by 50/1998 s 3(j)	1.2.1999
	amended by 33/1999 Sch (item 33(c))	1.7.1999
	substituted by 44/2013 s 4(19)	1.7.2014
<i>trustee company</i>	<i>inserted by 12/2010 Sch 1 cl 6</i>	<i>20.12.2010</i>
	<i>deleted by 49/2019 s 4(8)</i>	<i>1.7.2020</i>
trust money	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990

	amended by 84/1999 s 3(b)	1.1.2000
	substituted by 44/2013 s 4(20)	1.7.2014
<i>unprofessional conduct</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 50/1998 s 3(k)</i>	<i>1.2.1999</i>
	<i>deleted by 44/2013 s 4(21)</i>	<i>1.7.2014</i>
unrestricted practising certificate	inserted by 44/2013 s 4(22)	1.7.2014
<i>unsatisfactory conduct</i>	<i>inserted by 50/1998 s 3(1)</i>	<i>1.2.1999</i>
	<i>deleted by 44/2013 s 4(22)</i>	<i>1.7.2014</i>
unsatisfactory professional conduct	inserted by 44/2013 s 4(22)	1.7.2014
s 5(2)	inserted by 50/1998 s 3(m)	1.2.1999
s 5(3)	inserted by 50/1998 s 3(m)	1.2.1999
	amended by 44/2016 s 4(5)	13.11.2016
s 5(4)	inserted by 50/1998 s 3(m)	1.2.1999
	substituted by 44/2013 s 4(23)	1.7.2014
s 5(5)	<i>inserted by 50/1998 s 3(m)</i>	<i>1.2.1999</i>
	<i>amended by 23/2001 s 81</i>	<i>15.7.2001</i>
	<i>amended by 43/2006 s 145(3), (4)</i>	<i>1.6.2007</i>
	<i>deleted by 44/2013 s 4(23)</i>	<i>1.7.2014</i>
s 5(6)	inserted by 50/1998 s 3(m)	1.2.1999
s 5A	inserted by 44/2013 s 5	1.7.2014
s 5A(1)	amended by 44/2016 s 5(1)	13.11.2016
	amended by 49/2019 s 5	1.7.2020
s 5A(3)	amended by 44/2016 s 5(2)—(4)	13.11.2016
s 5B	inserted by 49/2019 s 6	1.7.2020
s 6	substituted by 22/1993 s 3	6.5.1993
s 6(3a)	inserted by 55/2003 s 5	11.12.2003
	amended by 44/2013 s 6	1.7.2014
Pt 2		
Pt 2 Div 1	heading inserted by 27/1992 s 3	28.5.1992
s 7		
s 7(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 7(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 10/1996 s 4	9.5.1996
s 7(2a) and (2b)	inserted by 10/1996 s 4	9.5.1996
s 7(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 8		
s 8(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 4	1.2.1999

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## Legislative history

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s 8(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 s 7(1)	1.7.2014
s 8(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 s 7(2)	1.7.2014
s 9		
s 9(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 9(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 5	1.2.1999
s 11		
s 11(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 11(2)	amended by 88/1996 s 3	1.1.1997
	amended by 23/2001 s 82	15.7.2001
s 12		
s 12(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 12(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 s 8	1.7.2014
s 12(3) and (5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 12(6)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 6	1.2.1999
	amended by 44/2013 s 8	1.7.2014
s 13		
s 13(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 7	1.2.1999
	amended by 44/2013 s 9(1)	1.7.2014
s 13(3)	inserted by 44/2013 s 9(2)	1.7.2014
s 14		
s 14(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 8	1.2.1999
	amended by 33/1999 Sch (item 33(d))	1.7.1999
s 14(2) and (3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
Pt 2 Div 2	inserted by 27/1992 s 4	28.5.1992
s 14A		
s 14A(4)	inserted by 22/1993 s 4	6.5.1993
Pt 2 Div 3	inserted by 50/1998 s 9	1.2.1999
s 14AB		
s 14AB(1)	amended by 44/2013 s 10(1)—(3), Sch 1	1.7.2014
	amended by 27/2019 s 4	1.12.2019
s 14AB(2)	amended by 44/2013 s 10(2)	1.7.2014
Pt 2A	inserted by 12/1998 s 4	1.2.1999
s 14B		
s 14B(5)	amended by 44/2013 s 11	1.7.2014
s 14C		
s 14C(1)	amended by 44/2013 s 12	1.7.2014

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	amended by 42/2016 Sch 1 cl 2	1.2.2018
s 14E		
s 14E(1)	amended by 44/2013 s 13	1.7.2014
Pt 3		
Pt 3 Div 1		
s 15		
s 15(1)	s 15 amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	s 15 amended and redesignated as s 15(1) by 12/1998 s 5(a), (b)	1.2.1999
	(b) deleted by 55/2003 s 6	11.12.2003
	amended by 44/2013 s 14(1)	1.7.2014
s 15(1a)	inserted by 44/2013 s 14(2)	1.7.2014
s 15(2)—(5)	inserted by 12/1998 s 5(b)	1.2.1999
Pt 3 Div 2		
s 16		
s 16(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 10	1.2.1999
s 16(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 5(a)	9.5.1996
	amended by 43/2006 s 146(1), (2)	1.6.2007
	substituted by 44/2013 s 15(1)	1.7.2014
s 16(3) and (4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	deleted by 44/2013 s 15(1)	1.7.2014
s 16(5)	amended by 90/1987 s 2	10.12.1987
s 16(6)	substituted by 23/1990 s 3(1) (Sch 5)	1.8.1990
prescribed relative	amended by 10/1996 s 5(b)	9.5.1996
	amended by 43/2006 s 146(3)	1.6.2007
putative spouse	deleted by 43/2006 s 146(4)	1.6.2007
s 16(6)	substituted by 44/2013 s 15(2)	1.7.2014
s 17		
s 17(1) and (2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 17A	inserted by 22/1993 s 5	6.5.1993
	substituted by 12/1998 s 6	1.2.1999
s 17A(8)	inserted by 42/2016 Sch 1 cl 3	1.2.2018
s 18		
s 18(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 55/2003 s 7(1)	11.12.2003
s 18(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 55/2003 s 7(2)	11.12.2003
s 18(2a)	inserted by 44/2013 s 16	1.7.2014
s 18(3)	inserted by 3/1985 s 3	6.6.1985
	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 55/2003 s 7(3)	11.12.2003

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s 19		
s 19(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 92/1993 s 3	4.11.1993
	substituted by 16/2003 s 3	19.6.2003
s 20		
s 20(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 20AA	inserted by 50/1998 s 11	1.2.1999
s 20A	<i>inserted by 8/1982 s 3</i>	<i>1.3.1982</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 12/1998 s 7</i>	<i>1.2.1999</i>
Pt 3 Div 2A	inserted by 44/2013 s 17	1.7.2014
Pt 3 Div 2B	inserted by 44/2013 s 17	1.7.2014
s 20AI		
s 20AI(1a)	inserted by 49/2019 s 7	21.5.2020
Pt 3 Div 2C	inserted by 44/2013 s 17	1.7.2014
Pt 3 Div 3		
s 21		
s 21(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
	amended by 50/1998 s 12(a)	1.2.1999
	substituted by 44/2013 s 18(1)	1.7.2014
s 21(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 12(b)	1.2.1999
	amended by 44/2013 s 18(2)	1.7.2014
	amended by 49/2019 s 8(1)	1.7.2020
s 21(3)	amended by 119/1985 s 3	10.11.1985
	amended by 13/1988 Sch 1	1.9.1988
	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 49/1991 Sch 2	6.7.1992
	amended by 38/1996 s 11	4.11.1996
	amended by 12/1998 s 14 (Sch)	1.2.1999
	(h) deleted by 12/1998 s 14 (Sch)	1.2.1999
	amended by 70/2000 s 2(a), (b)	7.12.2000
	amended by 55/2003 s 8(1), (2)	11.12.2003
	(t) deleted by 55/2003 s 8(3)	11.12.2003
	amended by 11/2011 s 41	30.1.2012
	amended by 42/2016 Sch 1 cl 4	1.2.2018
	amended by 49/2019 s 8(2), (3)	1.7.2020
s 21(3a)	inserted by 50/1998 s 12(c)	1.2.1999
	substituted by 49/2019 s 8(4)	1.7.2020
s 21(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 22/1993 s 6	6.5.1993
	amended by 50/1998 s 12(d)—(f)	1.2.1999

s 21(4a)	inserted by 44/2013 s 18(3)	1.7.2014
s 21(5)		
approved professional indemnity insurance	inserted by 55/2003 s 8(4)	11.12.2003
business	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 12/1998 s 14 (Sch)	1.2.1999
loan instrument	inserted by 70/2000 s 2(c)	7.12.2000
tribunal	amended by 52/2012 Sch 3 cl 21	1.9.2013
trustee company	inserted by 49/2019 s 8(5)	1.7.2020
s 22	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
	amended by 50/1998 s 13	1.2.1999
s 23		
s 23(1)—(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
s 23AA	inserted by 84/1999 s 4	1.1.2000
s 23AA(7)	amended by 44/2013 s 19	1.7.2014
Pt 3 Div 3A	inserted by 50/1998 s 14	1.2.1999
s 23B		
s 23B(3)	substituted by 55/2003 s 9	11.12.2003
s 23B(4)	amended by 44/2013 s 20	1.7.2014
s 23D		
s 23D(4)	amended by 44/2013 s 21	1.7.2014
Pt 3 Div 3B	inserted by 44/2013 s 22	1.7.2014
<i>Pt 3 Div 4 before substitution by 44/2013</i>		
s 24		
s 24(1)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 32 (Sch 2)</i>	<i>9.5.1996</i>
s 24(2)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
s 25	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 32 (Sch 2)</i>	<i>9.5.1996</i>
s 26	<i>deleted by 50/1986 s 3</i>	<i>1.10.1986</i>
s 27	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 16/2013 s 63</i>	<i>17.6.2013</i>
s 28	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
s 29		
s 29(1)	<i>s 29 redesignated as s 29(1) by 3/1985 s 4</i>	<i>6.6.1985</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
s 29(2)	<i>inserted by 3/1985 s 4</i>	<i>6.6.1985</i>
	<i>deleted by 12/1998 s 8</i>	<i>1.2.1999</i>
s 29(3)	<i>inserted by 3/1985 s 4</i>	<i>6.6.1985</i>

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	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 12/1998 s 8</i>	<i>1.2.1999</i>
<i>s 30</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 12/1998 s 14 (Sch)</i>	<i>1.2.1999</i>
	<i>substituted by 23/2001 s 83</i>	<i>15.7.2001</i>
<i>Pt 3 Div 4</i>	<i>substituted by 44/2013 s 23</i>	<i>1.7.2014</i>
<i>Pt 3 Div 4A</i>	<i>inserted by 49/2019 s 9</i>	<i>1.7.2020</i>
<i>Pt 3 Div 5 before substitution by 44/2013</i>		
<i>s 30A</i>	<i>inserted by 50/1998 s 15</i>	<i>1.2.1999</i>
<i>s 31</i>		
<i>s 31(1) and (2)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 31(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 50/1998 s 16(a)</i>	<i>1.2.1999</i>
<i>s 31(4)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 31(5)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 50/1998 s 16(b)</i>	<i>1.2.1999</i>
<i>s 31(6)</i>	<i>substituted by 3/1985 s 5</i>	<i>6.6.1985</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 33/1999 Sch (item 33(e))</i>	<i>1.7.1999</i>
<i>s 31(6a)</i>	<i>inserted by 3/1985 s 5</i>	<i>6.6.1985</i>
<i>s 31(7)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 31(7a)</i>	<i>inserted by 10/1996 s 6</i>	<i>13.6.1996</i>
<i>s 31(8)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 32 (Sch 2)</i>	<i>9.5.1996</i>
<i>s 31(9)–(11)</i>	<i>inserted by 70/1989 s 4</i>	<i>9.11.1989</i>
<i>s 32</i>		
<i>s 32(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 33/1999 Sch (item 33(f))</i>	<i>1.7.1999</i>
<i>s 32(2)</i>	<i>amended by 33/1999 Sch (item 33(f))</i>	<i>1.7.1999</i>
<i>s 33</i>		
<i>s 33(1)</i>	<i>s 33 redesignated as s 33(1) by 3/1985 s 6</i>	<i>6.6.1985</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 32 (Sch 2)</i>	<i>9.5.1996</i>
	<i>amended by 12/1998 s 9(a)</i>	<i>1.2.1999</i>
<i>s 33(2)</i>	<i>inserted by 3/1985 s 6</i>	<i>6.6.1985</i>
	<i>deleted by 12/1998 s 9(b)</i>	<i>1.2.1999</i>
	<i>inserted by 55/2003 s 10</i>	<i>11.12.2003</i>
<i>s 33(3)</i>	<i>inserted by 3/1985 s 6</i>	<i>6.6.1985</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 12/1998 s 9(b)</i>	<i>1.2.1999</i>
<i>s 33A</i>	<i>inserted by 50/1998 s 17</i>	<i>1.2.1999</i>
<i>s 34</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>



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	<i>amended by 10/1996 s 7</i>	9.5.1996
	<i>substituted by 50/1998 s 18</i>	1.2.1999
<i>s 35</i>	<i>amended by 3/1985 s 7</i>	6.6.1985
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 54/1990 s 3(1) (Sch 2)</i>	1.8.1990
	<i>amended by 22/1993 s 7</i>	6.5.1993
	<i>amended by 10/1996 ss 8, 32 (Sch 2)</i>	9.5.1996
	<i>substituted by 50/1998 s 18</i>	1.2.1999
<i>s 35(1)</i>	<i>amended by 33/1999 Sch (item 33(g))</i>	1.7.1999
<i>s 35(4)</i>		
<i>financial institution</i>	<i>amended by 33/1999 Sch (item 33(h))</i>	1.7.1999
<i>s 36</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 10/1996 s 32 (Sch 2)</i>	9.5.1996
	<i>amended by 33/1999 Sch (item 33(i))</i>	1.7.1999
<i>s 37</i>		
<i>s 37(1)</i>	<i>substituted by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 50/1998 s 19(a)</i>	1.2.1999
<i>s 37(1a)</i>	<i>inserted by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
<i>s 37(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
<i>s 37(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 10/1996 s 32 (Sch 2)</i>	9.5.1996
<i>s 37(4)</i>	<i>inserted by 22/1993 s 8</i>	6.5.1993
	<i>amended by 10/1996 s 9</i>	9.5.1996
	<i>amended by 50/1998 s 19(b), (c)</i>	1.2.1999
	<i>amended by 70/2000 s 3</i>	7.12.2000
<i>s 37(5)</i>	<i>inserted by 22/1993 s 8</i>	6.5.1993
<i>s 38</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 10/1996 s 32 (Sch 2)</i>	9.5.1996
	<i>amended by 12/1998 s 10</i>	1.2.1999
	<i>amended by 50/1998 s 20</i>	1.2.1999
<i>Pt 3 Div 5</i>	<i>substituted by 44/2013 s 24</i>	1.7.2014
<i>Pt 3 Div 6</i>		
<i>s 39</i>		
<i>s 39(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 10/1996 s 10</i>	9.5.1996
	<i>substituted by 44/2013 s 25(1)</i>	1.7.2014
	<i>amended by 49/2019 s 10(1), (2)</i>	1.7.2020
<i>s 39(2)</i>	<i>amended by 10/1996 s 10</i>	9.5.1996
<i>s 39(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 44/2013 s 25(2), (3)</i>	1.7.2014
	<i>amended by 49/2019 s 10(3), (4)</i>	1.7.2020
<i>s 39(4)</i>	<i>inserted by 49/2019 s 10(5)</i>	1.7.2020

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Pt 3 Div 7

s 40

s 40(1)	amended by 49/2019 s 11(1)	1.7.2020
s 40(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 49/2019 s 11(2)—(4)	1.7.2020
s 40(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 49/2019 s 11(5), (6)	1.7.2020

*Pt 3 Div 8 before  
substitution by 44/2013*

s 41

s 41(1) and (2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 41(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
s 41(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990

s 42

s 42(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 42(1a)	inserted by 3/1985 s 8	6.6.1985
s 42(1b)	inserted by 3/1985 s 8	6.6.1985
	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 42(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 42(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 10/1996 s 11	9.5.1996
	amended by 50/1998 s 21	1.2.1999
s 42(6)	substituted by 22/1993 s 9	6.5.1993

s 43

amended by 23/1990 s 3(1) (Sch 5) 1.8.1990

Pt 3 Div 8

substituted by 44/2013 s 26 1.7.2014

Pt 3 Div 9

s 43A

inserted by 50/1998 s 22 1.2.1999

legal practitioner

amended by 44/2013 s 27 1.7.2014  
amended by 49/2019 s 12 1.7.2020

s 44

s 44(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 44(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 50/1998 s 23(a)	1.2.1999
s 44(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 23(b)—(d)	1.2.1999
	amended by 33/1999 Sch (item 33(j))	1.7.1999
s 44(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 33/1999 Sch (item 33(k))	1.7.1999
s 44(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 44(6)	substituted by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
s 44(7)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990

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s 44(9)	<i>deleted by 50/1998 s 23(e)</i>	1.2.1999
s 44(10)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>deleted by 50/1998 s 23(e)</i>	1.2.1999
s 45		
s 45(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 45(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 24(a), (b)	1.2.1999
	amended by 33/1999 Sch (item 33(l))	1.7.1999
s 45(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 24(c)	1.2.1999
s 45(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 12	9.5.1996
s 45(5)	inserted by 50/1998 s 24(d)	1.2.1999
s 46		
s 46(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 47		
s 47(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 47(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
s 48		
s 48(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 48(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
s 48(3)	amended by 44/2013 s 28	1.7.2014
s 48(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
s 48(5a)	inserted by 50/1998 s 25	1.2.1999
s 48(6)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
s 48(7)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
Pt 3 Div 10		
heading	substituted by 44/2013 s 29	1.7.2014
s 49		
s 49(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 10/1996 s 13	9.5.1996
	(a) deleted by 44/2013 s 30(1)	1.7.2014
	amended by 44/2013 s 30(2)	1.7.2014
	substituted by 49/2019 s 13(1)	1.7.2020
s 49(1a)	inserted by 10/1996 s 13	9.5.1996
	amended by 44/2013 s 30(3), (4)	1.7.2014
	amended by 49/2019 s 13(2), (3)	1.7.2020
s 49(1b)	inserted by 44/2013 s 30(5)	1.7.2014
s 49(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990

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s 49(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
	amended by 49/2019 s 13(4)	1.7.2020
Pt 3 Div 11		
s 50		
s 50(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 50(3)	amended by 44/2013 s 31	1.7.2014
s 50(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 50(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
Pt 3 Div 12		
s 51		
s 51(1)	amended by 119/1985 s 4	10.11.1985
	amended by 70/1989 s 5	9.11.1989
	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 25/1991 s 3	6.6.1991
	amended by 49/1991 Sch 2	6.7.1992
	amended by 50/1998 s 26	1.2.1999
	amended by 44/2013 s 32(1), (2)	1.7.2014
s 51(2) and (3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
Pt 3 Div 13		
s 52	amended by 3/1985 s 9	6.6.1985
	substituted by 84/1987 s 3	3.12.1987
s 52(1)	amended by 44/2013 s 33(1)	1.7.2014
s 52(2)	amended by 44/2013 s 33(2)	1.7.2014
s 52(3)	substituted by 22/1993 s 10	1.1.1994
	amended by 44/2013 s 33(3)	1.7.2014
s 52(4)	substituted by 22/1993 s 10	1.1.1994
s 52(5)		
legal practitioner	amended by 44/2013 s 33(4), (5)	1.7.2014
professional indemnity insurance	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 s 33(6)	1.7.2014
s 52AA	inserted by 50/1998 s 27	1.2.1999
	substituted by 44/2013 s 34	1.7.2014
s 52AA(4)	amended by 25/2014 s 12	1.4.2015
s 52AAB	inserted by 50/1998 s 27	1.2.1999
Pt 3 Div 14	inserted by 12/1998 s 11	1.2.1999
Pt 4		
Pt 4 Div 1		
s 52B	inserted by 44/2013 s 35	1.7.2014

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<i>s 53 before substitution by 44/2013</i>		
<i>s 53(1)</i>	<i>amended by 84/1987 s 4(a)</i>	<i>1.2.1988</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 22/1993 s 11(a)</i>	<i>6.5.1993</i>
<i>s 53(1a)</i>	<i>inserted by 22/1993 s 11(a)</i>	<i>6.5.1993</i>
	<i>amended by 33/1999 Sch (item 33(m))</i>	<i>1.7.1999</i>
<i>s 53(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 22/1993 s 11(a)</i>	<i>6.5.1993</i>
	<i>amended by 33/1999 Sch (item 33(n))</i>	<i>1.7.1999</i>
<i>s 53(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 53(4)</i>	<i>substituted by 50/1986 s 4(a)</i>	<i>1.10.1986</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 22/1993 s 11(b)</i>	<i>6.5.1993</i>
<i>s 53(5)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 53(6)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 50/1998 s 28</i>	<i>1.2.1999</i>
<i>s 53(7) and (8)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 22/1993 s 11(c)</i>	<i>6.5.1993</i>
<i>s 53(9)</i>	<i>substituted by 84/1987 s 4(b)</i>	<i>1.2.1988</i>
	<i>substituted by 22/1993 s 11(c)</i>	<i>6.5.1993</i>
<i>s 53(10)</i>	<i>substituted by 22/1993 s 11(c)</i>	<i>6.5.1993</i>
<i>s 53(11) and (12)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 22/1993 s 11(c)</i>	<i>6.5.1993</i>
<i>s 53(13)</i>	<i>inserted by 50/1986 s 4(b)</i>	<i>1.10.1986</i>
	<i>substituted by 22/1993 s 11(c)</i>	<i>6.5.1993</i>
	<i>amended by 33/1999 Sch (item 33(o))</i>	<i>1.7.1999</i>
<i>s 53(14)</i>	<i>inserted by 22/1993 s 11(c)</i>	<i>6.5.1993</i>
	<i>amended by 33/1999 Sch (item 33(p))</i>	<i>1.7.1999</i>
<i>s 53</i>	<i>substituted by 44/2013 s 35</i>	<i>1.7.2014</i>
<i>s 53(6)</i>	<i>amended by 44/2016 s 6</i>	<i>13.11.2016</i>
<i>s 54</i>	<i>amended by 3/1985 s 10</i>	<i>6.6.1985</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 22/1993 s 12</i>	<i>6.5.1993</i>
<i>s 55</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<b>Pt 2 Div 2</b>		
<i>s 56</i>		
<i>s 56(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 56(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 22/1993 s 13</i>	<i>6.5.1993</i>
<i>s 56(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 56(5)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>

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	amended by 44/2013 Sch 1	1.7.2014
s 56(6)	amended by 84/1987 s 5	3.12.1987
	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
Pt 4 Div 3		
heading	substituted by 44/2013 s 36	1.7.2014
s 57		
s 57(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 44/2013 s 37(1)	1.7.2014
s 57(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 s 37(2)	1.7.2014
s 57(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 ss 14, 31 (Sch 1)	9.5.1996
	amended by 50/1998 s 29(a)	1.2.1999
	amended by 44/2013 s 37(2)—(4)	1.7.2014
	amended by 9/2014 s 6(1)	25.9.2014
	(ca) deleted by 9/2014 s 6(1)	25.9.2014
	amended by 49/2019 s 14	1.7.2020
s 57(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 22/1993 s 14	6.5.1993
	amended by 10/1996 s 31 (Sch 1)	9.5.1996
	amended by 88/1996 s 4	1.1.1997
	amended by 12/1998 s 12	1.2.1999
	amended by 50/1998 s 29(b), (c)	1.2.1999
	substituted by 44/2013 s 37(5)	1.7.2014
	amended by 9/2014 s 6(2)	25.9.2014
s 57(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 s 37(2)	1.7.2014
s 57(6)	inserted by 70/1989 s 6	9.11.1989
	amended by 10/1996 s 31 (Sch 1)	9.5.1996
	amended by 44/2013 s 37(2), (6)	1.7.2014
Pt 4 Div 4		
s 57A	inserted by 3/1985 s 11	6.6.1985
s 57A(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 33/1999 Sch (item 33(q))	1.7.1999
s 57A(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
	amended by 27/2019 s 5(1), (2)	uncommenced—not incorporated
s 57A(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 27/2019 s 5(3)	uncommenced—not incorporated
s 57A(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990

s 57A(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 27/2019 s 5(4)	uncommenced—not incorporated
s 57A(6)	<i>deleted by 70/1989 s 7</i>	9.11.1989
s 58		
s 58(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 58(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
s 59	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
Pt 5		
heading	amended by 44/2013 Sch 1	1.7.2014
s 60		
s 60(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 30(a)	1.2.1999
s 60(1a)	inserted by 44/2013 s 38(1)	1.7.2014
s 60(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 15	9.5.1996
s 60(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 60(4)	amended by 3/1985 s 12	6.6.1985
	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 22/1993 s 15	6.5.1993
	amended by 50/1998 s 30(b)	1.2.1999
s 60(5)	inserted by 50/1998 s 30(c)	1.2.1999
	amended by 44/2013 s 38(2)	1.7.2014
s 60A	inserted by 50/1998 s 31	1.2.1999
s 61		
s 61(1)	amended by 44/2013 s 39	1.7.2014
s 61(2) and (3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 62		
s 62(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 32	1.2.1999
s 62(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
s 63		
s 63(1) and (2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 63(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 33	1.2.1999
s 63(5) and (7)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 64		
s 64(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
s 64(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 s 40, Sch 1	1.7.2014

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s 64(3)—(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 64A	inserted by 44/2013 s 41	1.7.2014
s 65	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 66	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 84/1999 s 5	1.1.2000
s 66(1)	substituted by 44/2013 s 42(1)	1.7.2014
s 66(2)	amended by 44/2013 s 42(2), Sch 1	1.7.2014
s 67		
s 67(1)	amended by 44/2013 Sch 1	1.7.2014
s 67(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 Sch 1	1.7.2014
s 67A	inserted by 22/1993 s 16	6.5.1993
s 67A(2)	substituted by 44/2013 s 43	1.7.2014
Pt 6		
<i>Pt 6 Div 1 before substitution by 44/2013</i>	<i>heading amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
s 68		
s 68(1)	<i>substituted by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 10/1996 s 16</i>	<i>9.5.1996</i>
s 68(1a)—(1c)	<i>inserted by 10/1996 s 16</i>	<i>9.5.1996</i>
s 68(2) and (3)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
s 68(4)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 22/1993 s 17</i>	<i>6.5.1993</i>
s 68(5)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
s 68(6)—(8)	<i>inserted by 27/1992 s 5</i>	<i>28.5.1992</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
s 69		
s 69(1)	<i>substituted by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
s 69(2)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
s 69(3)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
	<i>amended by 13/1997 s 3</i>	<i>1.3.1982</i>
s 69(4)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
s 70		
s 70(1)—(5)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
s 70(6)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 25/1991 s 4</i>	<i>6.6.1991</i>



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	<i>amended by 10/1996 s 31 (Sch 1)</i>	9.5.1996
<i>s 71</i>		
<i>s 71(1) and (2)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 10/1996 s 31 (Sch 1)</i>	9.5.1996
<i>s 72</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>substituted by 10/1996 s 17</i>	9.5.1996
<i>s 73</i>		
<i>s 73(1)</i>	<i>s 73 amended and redesignated as s 73(1) by 3/1985 s 13</i>	6.6.1985
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 22/1993 s 8(a), (b)</i>	6.5.1993
	<i>amended by 10/1996 s 31 (Sch 1), s 32 (Sch 2)</i>	9.5.1996
	<i>amended by 50/1998 s 34(a), (b)</i>	1.2.1999
<i>s 73(2)</i>	<i>inserted by 3/1985 s 13(b)</i>	6.6.1985
	<i>amended by 70/1989 s 8</i>	9.11.1989
	<i>amended by 22/1993 s 18(c)</i>	6.5.1993
	<i>amended by 10/1996 s 18</i>	9.5.1996
	<i>amended by 50/1998 s 34(c)—(e)</i>	1.2.1999
<i>s 73(3)</i>	<i>inserted by 50/1998 s 34(f)</i>	1.2.1999
<i>s 73A</i>	<i>inserted by 50/1998 s 35</i>	1.2.1999
<i>Pt 6 Div 1</i>	<i>substituted by 44/2013 s 44</i>	1.7.2014
<i>s 67B</i>	<i>inserted by 44/2016 s 7</i>	13.11.2016
<i>Pt 6 Div 2 before substitution by 44/2013</i>	<i>heading amended by 10/1996 s 31 (Sch 1)</i>	9.5.1996
<i>Pt 6 Div 2 Subdiv 1</i>	<i>heading inserted by 50/1998 s 36</i>	1.2.1999
<i>s 74</i>		
<i>s 74(1)</i>	<i>amended by 22/1993 s 19</i>	6.5.1993
	<i>amended by 10/1996 ss 19(a), 31 (Sch 1)</i>	9.5.1996
	<i>substituted by 50/1998 s 37(a)</i>	1.2.1999
<i>s 74(2)</i>	<i>substituted by 10/1996 s 19(b)</i>	9.5.1996
<i>s 74(3)</i>	<i>inserted by 50/1998 s 37(b)</i>	1.2.1999
<i>s 75</i>		
<i>s 75(1)</i>	<i>amended by 10/1996 s 31 (Sch 1)</i>	9.5.1996
<i>s 75(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>substituted by 50/1998 s 38</i>	1.2.1999
<i>s 75(3)</i>	<i>amended by 10/1996 s 31 (Sch 1)</i>	9.5.1996
<i>heading preceding s 76</i>	<i>inserted by 22/1993 s 20</i>	6.5.1993
	<i>amended by 10/1996 s 20</i>	9.5.1996
	<i>deleted by 50/1998 s 39</i>	1.2.1999
<i>Pt 6 Div 2 Subdiv 2</i>	<i>heading inserted by 50/1998 s 39</i>	1.2.1999
<i>s 76</i>		
<i>s 76(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>substituted by 10/1996 s 21(a)</i>	9.5.1996

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	<i>amended by 50/1998 s 40(a), (b)</i>	<i>1.2.1999</i>
<i>s 76(1a)</i>	<i>inserted by 10/1996 s 21(a)</i>	<i>9.5.1996</i>
	<i>amended by 50/1998 s 40(c)</i>	<i>1.2.1999</i>
<i>s 76(1b)</i>	<i>inserted by 10/1996 s 21(a)</i>	<i>9.5.1996</i>
<i>s 76(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
	<i>amended by 50/1998 s 40(d), (e)</i>	<i>1.2.1999</i>
<i>s 76(3)</i>	<i>amended by 3/1985 s 14(a)</i>	<i>6.6.1985</i>
	<i>substituted by 10/1996 s 21(b)</i>	<i>9.5.1996</i>
<i>s 76(4)</i>	<i>amended by 3/1985 s 14(b)</i>	<i>6.6.1985</i>
	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>substituted by 10/1996 s 21(b)</i>	<i>9.5.1996</i>
<i>s 76(4a)</i>	<i>inserted by 10/1996 s 21(b)</i>	<i>9.5.1996</i>
	<i>amended by 50/1998 s 40(f)</i>	<i>1.2.1999</i>
<i>s 76(4b)</i>	<i>inserted by 10/1996 s 21(b)</i>	<i>9.5.1996</i>
	<i>amended by 50/1998 s 40(g)</i>	<i>1.2.1999</i>
<i>s 76(5)</i>	<i>inserted by 3/1985 s 14(c)</i>	<i>6.6.1985</i>
<i>financial institution</i>	<i>inserted by 22/1993 s 21(a)</i>	<i>6.5.1993</i>
	<i>substituted by 50/1998 s 40(h)</i>	<i>1.2.1999</i>
	<i>amended by 33/1999 Sch (item 33(r))</i>	<i>1.7.1999</i>
<i>prescribed person</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 22/1993 s 21(b)</i>	<i>6.5.1993</i>
	<i>amended by 10/1996 s 21(c)</i>	<i>9.5.1996</i>
	<i>amended by 50/1998 s 40(i)—(k)</i>	<i>1.2.1999</i>
<i>Pt 6 Div 2 Subdiv 3</i>	<i>heading inserted by 50/1998 s 41</i>	<i>1.2.1999</i>
<i>s 77</i>		
<i>s 77(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 ss 22(a), 31 (Sch 1)</i>	<i>9.5.1996</i>
	<i>substituted by 50/1998 s 42(a)</i>	<i>1.2.1999</i>
<i>s 77(2)</i>	<i>amended by 10/1996 s 22(b)</i>	<i>9.5.1996</i>
	<i>deleted by 50/1998 s 42(b)</i>	<i>1.2.1999</i>
<i>s 77(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 10/1996 s 22(c)</i>	<i>9.5.1996</i>
<i>s 77(4)</i>	<i>inserted by 70/1989 s 9</i>	<i>9.11.1989</i>
	<i>amended by 10/1996 ss 22(d), (e), 31 (Sch 1)</i>	<i>9.5.1996</i>
	<i>substituted by 50/1998 s 42(c)</i>	<i>1.2.1999</i>
<i>s 77(5)</i>	<i>inserted by 70/1989 s 9</i>	<i>9.11.1989</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
<i>s 77(6)</i>	<i>inserted by 70/1989 s 9</i>	<i>9.11.1989</i>
<i>s 77AA</i>	<i>inserted by 50/1998 s 43</i>	<i>1.2.1999</i>
<i>s 77AB</i>	<i>inserted by 50/1998 s 43</i>	<i>1.2.1999</i>
<i>s 77AB(1)</i>	<i>amended by 55/2003 s 11(1)—(3)</i>	<i>11.12.2003</i>

<i>heading preceding s 77A</i>	<i>inserted by 22/1993 s 22</i>	6.5.1993
	<i>deleted by 50/1998 s 44</i>	1.2.1999
<i>Pt 6 Div 2 Subdiv 4</i>	<i>heading inserted by 50/1998 s 44</i>	1.2.1999
<i>s 77A</i>	<i>inserted by 22/1993 s 22</i>	6.5.1993
<i>s 77A(1) and (2)</i>	<i>amended by 10/1996 s 31 (Sch 1)</i>	9.5.1996
<i>s 77A(3)</i>	<i>substituted by 10/1996 s 23</i>	9.5.1996
<i>s 77A(4)</i>	<i>amended by 10/1996 s 32 (Sch 2)</i>	9.5.1996
<i>s 77A(5)</i>	<i>amended by 10/1996 s 31 (Sch 1)</i>	9.5.1996
<i>Pt 6 Div 2 Subdiv 5</i>	<i>inserted by 50/1998 s 45</i>	1.2.1999
<i>Pt 6 Div 2</i>	<i>substituted by 44/2013 s 44</i>	1.7.2014
<i>s 72</i>		
<i>s 72(2)</i>	<i>substituted by 27/2019 s 6</i>	1.12.2019
<i>s 77</i>		
<i>s 77(4)</i>	<i>inserted by 44/2016 s 8</i>	13.11.2016
<i>s 77B</i>		
<i>s 77B(2)</i>	<i>amended by 44/2016 s 9(1), (2)</i>	13.11.2016
<i>s 77B(3a)—(3c)</i>	<i>inserted by 44/2016 s 9(3)</i>	13.11.2016
<i>s 77D</i>		
<i>s 77D(1)</i>	<i>amended by 44/2016 s 10</i>	13.11.2016
<i>s 77H</i>		
<i>s 77H(2)</i>	<i>amended by 9/2014 s 7</i>	25.9.2014
	<i>amended by 44/2016 s 11(1)</i>	13.11.2016
<i>s 77H(2a)</i>	<i>inserted by 44/2016 s 11(2)</i>	13.11.2016
<i>s 77K</i>		
<i>s 77K(3a)—(3c)</i>	<i>inserted by 44/2016 s 12</i>	13.11.2016
<i>s 77N</i>		
<i>s 77N(4a)</i>	<i>inserted by 27/2019 s 7(1)</i>	1.12.2019
<i>s 77N(6)</i>	<i>amended by 44/2016 s 13(1)</i>	13.11.2016
<i>s 77N(7)</i>	<i>amended by 44/2016 s 13(2)</i>	13.11.2016
	<i>amended by 27/2019 s 7(2)</i>	1.12.2019
<i>s 77N(8)</i>	<i>amended by 44/2016 s 13(3)</i>	13.11.2016
<i>s 77N(10)</i>	<i>amended by 49/2019 s 15</i>	21.5.2020
<i>Pt 6 Div 3</i>		
<i>s 78</i>		
<i>s 78(1)</i>	<i>substituted by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
<i>s 78(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>amended by 22/1993 s 23(a)</i>	6.5.1993
	<i>amended by 13/1997 s 4(a)</i>	27.3.1997
	<i>amended by 44/2013 s 45(1)</i>	1.7.2014
<i>s 78(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	1.8.1990
	<i>deleted by 22/1993 s 23(b)</i>	6.5.1993
	<i>inserted by 13/1997 s 4(b)</i>	27.3.1997

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	amended by 44/2013 s 45(2)	1.7.2014
s 78(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 44/2013 s 45(3), (4)	1.7.2014
s 78(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 79		
s 79(1)	substituted by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 79(2)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 22/1993 s 24</i>	<i>6.5.1993</i>
s 79(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 79(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 13/1997 s 5	1.3.1982
s 79(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 55/2003 s 12	11.12.2003
s 79(6)	inserted by 10/1996 s 24	9.5.1996
s 80		
s 80(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 46(a)	1.2.1999
	amended by 44/2013 s 46(1)	1.7.2014
s 80(1a)	inserted by 50/1998 s 46(b)	1.2.1999
	substituted by 44/2013 s 46(2)	1.7.2014
s 80(1b)	inserted by 44/2013 s 46(2)	1.7.2014
	amended by 27/2019 s 8(1)	1.12.2019
s 80(1ba)	inserted by 27/2019 s 8(2)	1.12.2019
s 80(1c)	inserted by 44/2013 s 46(2)	1.7.2014
s 80(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 80(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 10/1996 s 25	9.5.1996
	amended by 13/1997 s 6	9.5.1996
s 80(4a)	inserted by 10/1996 s 25	9.5.1996
	amended by 50/1998 s 46(c)	1.2.1999
s 80(4b)	inserted by 10/1996 s 25	9.5.1996
s 80(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 81	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
Pt 6 Div 4		
s 82		
s 82(1)	amended by 50/1998 s 47(a)	1.2.1999
	amended by 44/2013 s 47(1), (2)	1.7.2014
s 82(1a)	inserted by 44/2013 s 47(3)	1.7.2014
s 82(2)	amended by 10/1996 s 31 (Sch 1)	9.5.1996
	amended by 50/1998 s 47(b)	1.2.1999
	amended by 44/2013 s 47(4), (5)	1.7.2014
s 82(2a)	inserted by 50/1998 s 47(c)	1.2.1999
	substituted by 44/2013 s 47(6)	1.7.2014

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	substituted by 27/2019 s 9	1.12.2019
s 82(2b)	<i>inserted by 50/1998 s 47(c)</i>	1.2.1999
	<i>deleted by 44/2013 s 47(6)</i>	1.7.2014
s 82(2c)	inserted by 50/1998 s 47(c)	1.2.1999
s 82(4)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 82(5)	amended by 44/2013 s 47(7)	1.7.2014
s 82(6)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 ss 26(a), (b), 32 (Sch 2)	9.5.1996
	amended by 50/1998 s 47(d), (f), (g)	1.2.1999
	(a)(ia) deleted by 50/1998 s 47(e)	1.2.1999
	amended by 55/2003 s 13	11.12.2003
	amended by 44/2013 s 47(8)—(11)	1.7.2014
s 82(6a)	<i>inserted by 10/1996 s 26(c)</i>	9.5.1996
	<i>substituted by 50/1998 s 47(h)</i>	1.2.1999
	<i>deleted by 44/2013 s 47(12)</i>	1.7.2014
s 82(6b)	inserted by 10/1996 s 26(c)	9.5.1996
	substituted by 50/1998 s 47(h)	1.2.1999
s 82(7)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 31 (Sch 1)	9.5.1996
	amended by 50/1998 s 47(i)	1.2.1999
	amended by 44/2013 s 47(13)	1.7.2014
s 82(8)	inserted by 50/1998 s 47(j)	1.2.1999
	amended by 44/2013 s 47(14), (15)	1.7.2014
s 83	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 84		
s 84(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 27(a)—(c)	9.5.1996
	amended by 44/2013 s 48	1.7.2014
s 84(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 ss 27(d), (e), 32 (Sch 2)	9.5.1996
s 84(5)	amended by 17/2006 s 155(1)	4.9.2006
s 84(6)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	deleted by 10/1996 s 27(f)	9.5.1996
	inserted by 17/2006 s 155(2)	4.9.2006
s 84(7)	amended by 50/1998 s 48	1.2.1999
	amended by 44/2016 s 14(1), (2)	13.11.2016
s 84A	inserted by 22/1993 s 25	6.5.1993
s 84A(2)	substituted by 10/1996 s 28(a)	9.5.1996
s 84A(3)	amended by 10/1996 s 28(b)	9.5.1996
s 84B	inserted by 22/1993 s 25	6.5.1993
s 84C	inserted by 44/2013 s 49	1.7.2014
s 85		
s 85(1)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990

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## Legislative history

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s 85(1a)	inserted by 44/2013 s 50(1)	1.7.2014
s 85(2)	amended by 44/2013 s 50(2)	1.7.2014
s 85(3)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
s 86		
s 86(1) and (2)	substituted by 84/1987 s 6(a)	3.12.1987
s 86(3)	amended by 84/1987 s 6(b)	3.12.1987
Pt 6 Div 5		
s 88A	inserted by 44/2013 s 51	1.7.2014
s 89		
s 89(1)	amended by 50/1998 s 49(a)	1.2.1999
	amended by 44/2013 s 52(1)	1.7.2014
s 89(1a) and (1b)	inserted by 44/2013 s 52(2)	1.7.2014
s 89(2)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 49(b), (c)	1.2.1999
s 89(3)	<i>deleted by 44/2013 s 52(3)</i>	<i>1.7.2014</i>
s 89(5)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 49(d)	1.2.1999
s 89(6)	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 50/1998 s 49(e), (f)	1.2.1999
	amended by 44/2013 s 52(1)	1.7.2014
s 89(7)	<i>deleted by 50/1998 s 49(g)</i>	<i>1.2.1999</i>
s 89A	inserted by 50/1998 s 50	1.2.1999
	amended by 17/2006 s 156	4.9.2006
	amended by 44/2013 s 53	1.7.2014
<i>Pt 6 Div 6 before substitution by 44/2013</i>		
s 90		
s 90(2)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 12/1998 s 14 (Sch)</i>	<i>1.2.1999</i>
	<i>amended by 84/2009 s 193</i>	<i>1.2.2010</i>
s 90(3) and (4)	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 31 (Sch 1)</i>	<i>9.5.1996</i>
Pt 6 Div 6	substituted by 44/2013 s 54	1.7.2014
s 89B		
disciplinary action	amended by 44/2016 s 15	30.7.2017
s 89C		
s 89C(7a)	inserted by 44/2016 s 16	30.7.2017
Pt 6 Div 6A	inserted by 50/1998 s 51	1.2.1999
s 90AF		
s 90AF(2)	amended by 44/2013 s 55	1.7.2014
Pt 6 Div 7	inserted by 22/1993 s 26	6.5.1993
s 90A		
s 90A(1) and (3)	amended by 10/1996 s 31 (Sch 1)	9.5.1996

	amended by 44/2013 s 56	1.7.2014
Pt 6 Div 8	inserted by 44/2013 s 57	1.7.2014
<i>Pt 7 before deletion by 42/2016</i>		
<i>s 91</i>		
<i>s 91(1)–(4)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 92</i>		
<i>s 92(1)–(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 93</i>		
<i>s 93(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 17/2006 s 157</i>	<i>4.9.2006</i>
<i>s 93(2) and (3)</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
<i>s 94</i>	<i>amended by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>amended by 10/1996 s 32 (Sch 2)</i>	<i>9.5.1996</i>
Pt 7	deleted by 42/2016 Sch 1 cl 5	1.2.2018
	<b>inserted by 32/2020 s 4</b>	<b>26.11.2020</b>
Pt 8		
<i>s 95</i>		
<i>s 95(1)</i>	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 10/1996 s 29	9.5.1996
	amended by 12/1998 s 13(a), (b)	1.2.1999
	amended by 50/1998 s 52	1.2.1999
	amended by 44/2013 Sch 1	1.7.2014
	amended by 9/2014 s 8	25.9.2014
<i>s 95(1aa)</i>	inserted by 12/1998 s 13(c)	1.2.1999
<i>s 95(1a)</i>	inserted by 90/1987 s 3	10.12.1987
<i>s 95(2)</i>	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	substituted by 12/1998 s 13(d)	1.2.1999
<i>s 95(3)</i>	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
<i>s 95AA</i>	inserted by 50/1998 s 53	1.2.1999
	amended by 44/2013 Sch 1	1.7.2014
<i>ss 95A and 95B</i>	inserted by 10/1996 s 30	9.5.1996
<i>s 95BA</i>	inserted by 84/1999 s 6	1.1.2000
<i>s 95BA(2)</i>	amended by 44/2013 Sch 1	1.7.2014
<i>s 95C</i>	inserted by 10/1996 s 30	9.5.1996
<i>s 95C(3)</i>	amended by 50/1998 s 54	1.2.1999
<i>s 95D</i>	inserted by 50/1998 s 55	1.2.1999
	substituted by 44/2013 s 58	1.7.2014
<i>s 95E</i>	inserted by 27/2019 s 10	1.12.2019
<i>s 96</i>		
<i>s 96(1)</i>	<i>substituted by 23/1990 s 3(1) (Sch 5)</i>	<i>1.8.1990</i>
	<i>deleted by 12/1998 s 14 (Sch)</i>	<i>1.2.1999</i>
<i>s 96(2) and (3)</i>	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990

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<i>s 96(4)</i>	<i>inserted by 50/1986 s 5</i>	<i>1.10.1986</i>
	<i>deleted by 12/1998 s 14 (Sch)</i>	<i>1.2.1999</i>
<i>s 97</i>		
<i>s 97(2)</i>	amended by 90/1987 s 4	10.12.1987
	amended by 23/1990 s 3(1) (Sch 5)	1.8.1990
	amended by 10/1996 s 32 (Sch 2)	9.5.1996
	(c) deleted by 44/2013 s 59(1)	1.7.2014
<i>s 97(3)</i>	substituted by 44/2013 s 59(2)	1.7.2014
<i>s 97(3aa) and (3aab)</i>	inserted by 44/2013 s 59(2)	1.7.2014
<i>s 97(3a)</i>	inserted by 55/2003 s 14	11.12.2003
<i>s 98</i>	inserted by 44/2013 s 60	1.7.2014
<i>Sch 1</i>	inserted by 44/2013 s 61	1.7.2014
<i>cl A1</i>	inserted by 27/2019 s 11	1.12.2019
<i>cl 3A</i>	inserted by 44/2016 s 17(1)	13.11.2016
<i>cl 4A</i>	inserted by 44/2016 s 17(2)	13.11.2016
<i>cl 5A</i>	inserted by 44/2016 s 17(3)	13.11.2016
<i>cl 18</i>		
<i>cl 18(1)</i>	amended by 44/2016 s 17(4)	13.11.2016
<i>cl 32</i>		
<i>cl 32(1)</i>	amended by 44/2016 s 17(5), (6)	13.11.2016
<i>Sch 1A</i>	inserted by 49/2019 s 16	1.7.2020
<i>Sch 2</i>	inserted by 44/2013 s 61	1.7.2014
<i>cl 1</i>		
<i>cl 1(1)</i>		
<i>law practice</i>	inserted by 49/2019 s 17	1.7.2020
<i>cl 46</i>	amended by 44/2016 s 18	13.11.2016
<i>Sch 3</i>	inserted by 44/2013 s 61	1.7.2014
<i>cl 1</i>		
<i>law practice</i>	inserted by 49/2019 s 18(1)	1.7.2020
<i>cl 18</i>		
<i>cl 18(7)</i>	amended by 49/2019 s 18(2)	1.7.2020
<i>cl 25</i>		
<i>cl 25(2)</i>	(c)(ii) deleted by 70/2017 s 12(1)	1.3.2018
<i>cl 26</i>		
<i>cl 26(1)</i>	amended by 70/2017 s 12(2)	1.3.2018
<i>cl 26(1a)</i>	inserted by 70/2017 s 12(3)	1.3.2018
<i>cl 30</i>		
<i>cl 30(2)</i>	amended by 49/2019 s 18(3)	1.7.2020
<i>cl 30(3)</i>	amended by 49/2019 s 18(4)	1.7.2020
<i>cl 30(5)</i>	amended by 49/2019 s 18(5)	1.7.2020
<i>cl 30(7)</i>	amended by 49/2019 s 18(6)—(8)	1.7.2020
<i>cl 46</i>		



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cl 46(2)	amended by 49/2019 s 18(9)—(11)	1.7.2020
cl 50	amended by 44/2016 s 19	13.11.2016
cl 50(2)	amended by 49/2019 s 18(12)	1.7.2020
cl 53	substituted by 49/2019 s 18(13)	1.7.2020
Sch 4	inserted by 44/2013 s 61	1.7.2014
cl 1		
cl 1(1)		
law practice	inserted by 49/2019 s 19(1)	1.7.2020
cl 1(3)	inserted by 49/2019 s 19(2)	1.7.2020
cl 10		
cl 10(1)	amended by 44/2016 s 20	13.11.2016
cl 19		
cl 19(2)	amended by 9/2014 s 9(1)	25.9.2014
cl 19(3)	amended by 9/2014 s 9(2)	25.9.2014
Sch 5	inserted by 44/2016 s 21	13.11.2016

## Transitional etc provisions associated with Act or amendments

### *Legal Practitioners (Qualifications) Amendment Act 1998*

#### 15—Transitional provision

- (1) If, immediately before the commencement of section 6, a practising certificate is subject to conditions imposed under section 17A of the principal Act, those conditions will, on the commencement of section 6, be taken to be conditions imposed under section 17A of the principal Act as substituted by section 6.
- (2) The Legal Practitioners Education and Admission Council may take action under section 17A of the principal Act as substituted by this Act in relation to non-compliance with any condition imposed under section 17A of the principal Act as in force before the commencement of section 6 as if the condition were a condition imposed under section 17A as so substituted (whether the non-compliance occurred before or after that commencement).

### *Legal Practitioners (Miscellaneous) Amendment Act 1998*

#### 56—Transitional

A condition applying to a legal practitioner immediately before the commencement of this section by virtue of—

- (a) an undertaking entered into by the practitioner and accepted by the Tribunal under section 82 of the principal Act or an order of the Tribunal under that section; or
- (b) an order of the Supreme Court under section 89 of the principal Act,

will, on and after the commencement of this section, be taken to be a condition imposed on the legal practitioner's practising certificate by order of the Tribunal under section 82 of the principal Act as amended by this Act or by order of the Supreme Court under section 89 of the principal Act as amended by this Act, as the case requires (and will be taken to be so imposed for the period specified in the undertaking or order as the period for which the condition was to apply).

### ***Legal Practitioners (Miscellaneous) Amendment Act 1999***

#### **7—Transitional**

The amendments to the principal Act made by this Act do not affect—

- (a) any right to compensation under Part 5 of the principal Act for loss suffered as a result of mortgage financing where the instructions to engage in the mortgage financing were taken before the commencement of this Act; or
- (b) any right to compensation under the principal Act for loss suffered by a legal practitioner in consequence of a fiduciary or professional default by a partner, clerk or employee of the legal practitioner where the fiduciary or professional default was committed before the commencement of this Act.

### ***Statutes Amendment (Domestic Partners) Act 2006***

#### **147—Transitional provision**

From the commencement of this section, a reference to a *prescribed relative, spouse* or *putative spouse* in the memorandum and articles of association or constitution of a company that holds a practising certificate under the *Legal Practitioners Act 1981* will, where the context so admits or requires, be taken to include a reference to a *domestic partner*.

### ***Legal Practitioners (Miscellaneous) Amendment Act 2013, Sch 2***

#### ***Pt 4—Transitional provisions***

#### **5—Interpretation**

- (1) In this Part—

***Board*** means the Legal Practitioners Conduct Board;

***Commissioner*** has the same meaning as in the principal Act;

***principal Act*** means the *Legal Practitioners Act 1981*;

***relevant day*** means the day on which section 44 comes into operation.

- (2) Unless the contrary intention appears, a term used in this Part and also in the principal Act has the same meaning in this Part as it has in that Act.

#### **6—Practising certificates**

Part 3 Divisions 2A to 2C of the principal Act, as inserted by section 17 of this Act, apply in relation to a practising certificate whether issued before, on or after the commencement of that section.

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## 7—Deficiencies in trust accounts

Schedule 2 clauses 23 and 24 of the principal Act (as inserted by this Act) apply to trust money whether the money was received before, on or after the commencement of those clauses.

## 8—Combined trust account

An ADI that was, immediately before the commencement of this clause, an approved ADI within the meaning of section 53 of the principal Act is, on the commencement of this clause, taken to be an approved ADI for the purposes of section 53 as inserted by this Act.

## 9—Costs

- (1) Subject to this clause, Schedule 3 of the principal Act (as inserted by this Act) applies to a matter if the client first instructs the law practice in the matter on or after the commencement of that Schedule and Part 3 Division 8 of the principal Act as in force immediately before the relevant day continues to apply to a matter if the client first instructed the law practice in the matter before the commencement of Schedule 3.
- (2) Schedule 3 of the principal Act (as inserted by 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 of that Schedule in relation to a matter in which the other law practice was retained by the client before that commencement and in that case Part 3 Division 8 of the principal Act as in force immediately before that commencement continues to apply.
- (3) If Part 3 Division 8 of the principal Act as in force immediately before the commencement of Schedule 3 of the principal Act (as inserted by this Act) applies to a matter by virtue of subclause (1) or (2), the Division will cease to apply to the matter on the first anniversary of that commencement and Schedule 3 of the principal Act (as inserted by this Act) will then apply to the matter.

## 10—Fidelity Fund

The legal practitioners' guarantee fund maintained by the Society under Part 4 of the principal Act as in force immediately before the commencement of section 37 continues in existence as the Legal Practitioners Fidelity Fund maintained by the Society under Part 4 of the principal Act as amended by this Act.

## 11—Claims against Fidelity Fund

- (1) Subsection (1a) of section 60 of the principal Act (as inserted by this Act) does not apply in relation to a claim for compensation served on the Society before the commencement of that subsection.
- (2) Section 64 of the principal Act applies to any claim in relation to a fiduciary or professional default, or a series of fiduciary or professional defaults, in respect of which the Society has published a notice under Part 5 of the principal Act before the commencement of section 40 as if—
  - (a) the amendment to section 64(2) made by that section had not been made; and
  - (b) the prescribed percentage for the purposes of section 64(2) were 5%.

## 12—Investigations

An investigation may be undertaken under Schedule 2 Part 3 of the principal Act (as inserted by this Act) in relation to an aspect of the affairs of a law practice whether the investigation relates to matters that occurred before or after the commencement of that Schedule.

## 13—Transfer of functions from Board to Commissioner

- (1) If a complaint received by the Board in relation to the conduct of a legal practitioner or former legal practitioner has not been resolved before the relevant day, the Commissioner will, on and from that day, assume the conduct of the complaint as if it had been received by the Commissioner.
- (2) If a direction by the Attorney-General or the Society to the Board to make an investigation into the conduct of a legal practitioner or former legal practitioner has not been resolved before the relevant day, the Commissioner will, on and from that day, assume the conduct of the investigation as if the direction had been given to the Commissioner.
- (3) An investigation commenced by the Board into—
  - (a) the conduct of a legal practitioner or former legal practitioner; or
  - (b) a complaint of overcharging,is, if the investigation has not been completed before the relevant day, to be continued by the Commissioner as if the investigation had been commenced under section 77B or (in the case of a complaint of overcharging) 77N of the principal Act as inserted by this Act.
- (4) If a charge laid by the Board under section 82 of the principal Act has not been determined before the relevant day, the Commissioner will, on and from that day, assume the conduct of the charge as if it had been laid by the Commissioner.
- (5) If disciplinary proceedings against a legal practitioner commenced by the Board in the Supreme Court have not been determined before the relevant day, the Commissioner will, on and from that day, assume the conduct of the proceedings as if they had been commenced by the Commissioner.
- (6) A notice issued by the Board under repealed section 76(3)(a) of the principal Act and in force immediately before the relevant day continues as if it were a notice issued by an investigator under Schedule 4 clause 4(1)(a) of the principal Act (as inserted by this Act).
- (7) A notice issued by the Board under repealed section 76(4a) of the principal Act and in force immediately before the relevant day continues as if it were a notice issued by the Commissioner under Schedule 4 clause 4(1)(b) of the principal Act (as inserted by this Act).
- (8) A notice issued by the Board under repealed section 77A(3) of the principal Act and in force immediately before the relevant day continues as if it were a notice issued by the Commissioner under section 77N(4) of the principal Act (as inserted by this Act).

## **14—Application of principal Act as amended to complaints, investigations, disciplinary proceedings and conduct**

- (1) Subject to this Schedule, the principal Act as amended by this Act applies in relation to—
  - (a) any complaint received by the Commissioner or for which the Commissioner has assumed the conduct; and
  - (b) any investigation commenced or continued by the Commissioner; and
  - (c) any disciplinary proceedings commenced by the Commissioner, the Society or another person or for which the Commissioner has assumed the conduct,
 whether the conduct to which the complaint, investigation or proceedings relates occurred before or after the relevant day.
- (2) The principal Act as amended by this Act applies in relation to conduct that occurred before the relevant day as if—
  - (a) "unsatisfactory professional conduct" were replaced with "unsatisfactory conduct" wherever occurring; and
  - (b) "professional misconduct" were replaced with "unprofessional conduct" wherever occurring; and
  - (c) "unsatisfactory conduct" and "unprofessional conduct" had the same respective meanings as in the principal Act as in force immediately before the relevant day.

## **15—Transfer of employment**

- (1) A person who, immediately before the relevant day, was a member of the staff of the Board will, on that day, be a member of the staff of the Commissioner.
- (2) The transfer of a person's employment under subclause (1)—
  - (a) will be taken to provide for continuity of employment without termination of the relevant person's service; and
  - (b) will not affect—
    - (i) existing conditions of employment or existing or accrued rights to leave; or
    - (ii) a process commenced for variation of those conditions or rights.
- (3) A person whose employment has been transferred under subclause (1) will be taken to have been appointed by the Commissioner to the Commissioner's staff under section 76 of the principal Act.
- (4) Subclause (1) does not apply in relation to the person occupying the position of Director under section 72 of the principal Act immediately before the relevant day.

## **16—Contracts etc**

- (1) All assets, rights and liabilities of the Board are transferred to the Commissioner.
- (2) A liability of the Board transferred to the Commissioner under subclause (1) may be paid from the Fidelity Fund.

- (3) The transfer of assets, rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law.
- (4) A reference to the Board in an instrument or agreement that gives rise to or evidences an asset, right or liability under subclause (1) will have effect as if it were a reference to the Commissioner.

### **17—Continuing obligation of confidentiality**

- (1) Section 37 of the principal Act as in force immediately before the commencement of section 24 of this Act continues to apply to the Society and to a person employed or appointed before that commencement as an approved auditor or inspector to make an audit or examination of accounts.
- (2) Section 73 of the principal Act as in force immediately before the commencement of section 44 of this Act continues to apply to a person who was, before that commencement, a member of the Board or employed or engaged on work related to the affairs of the Board.

### **18—Tribunal members**

- (1) The office of all members of the Legal Practitioners Disciplinary Tribunal will become vacant on the commencement of section 45 of this Act.
- (2) A person who ceases to hold office as a member of the Tribunal under subclause (1)—
  - (a) may be appointed to the vacant office; or
  - (b) may continue to act as a member of the Tribunal for the purpose of completing the hearing and determination of proceedings part-heard on the commencement of section 45.

### ***Statutes Amendment (Legal Practitioners) Act 2014, Sch 1—Transitional provision***

#### **1—Fidelity Fund**

Money in the Fidelity Fund (within the meaning of the *Legal Practitioners Act 1981*) may be applied for the purpose of reimbursing the expenses incurred by the Crown in funding the establishment and operation of the Office of the Legal Profession Conduct Commissioner, including the costs associated with the salaries and related expenses of the Commissioner and his or her staff, in the period commencing 1 February 2014 (the Commissioner's date of appointment) and ending on the day on which this clause comes into operation.

### ***Notaries Public Act 2016, Sch 1 Pt 3—Transitional provision***

#### **6—Continuation of roll and persons admitted to the roll**

The roll of all public notaries kept by the Registrar of the Supreme Court under Part 7 of the *Legal Practitioners Act 1981* immediately before the commencement of this Act continues after that commencement as the roll of notaries public required to be kept by the Registrar of the Supreme Court under section 7 of this Act and a person listed on that roll is taken to be admitted as enrolled as a notary public under this Act.

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***Legal Practitioners (Miscellaneous) Amendment Act 2019, Sch 1*****1—Transitional provisions**

- (1) Section 77N of the *Legal Practitioners Act 1981* as amended by section 7 of this Act applies in relation to a complaint of overcharging received by the Legal Profession Conduct Commissioner after the commencement of the amendment irrespective of whether the final bill to which the complaint relates was delivered to the client before or after that commencement.
- (2) Section 80 of the *Legal Practitioners Act 1981*, as in force immediately before the commencement of section 8 of this Act, applies in relation to an application for an extension of time heard by the Legal Practitioners Disciplinary Tribunal after the commencement of the amendments made by that section if the charge or charges in relation to which the application is being made arise from a complaint made, or a direction from the Attorney-General or the Society received, or from an investigation by the Commissioner commenced on the Commissioner's own initiative, before that commencement.
- (3) Section 82(2a) of the *Legal Practitioners Act 1981*, as in force immediately before the commencement of section 9 of this Act, applies in relation to the laying of a charge before the Legal Practitioners Disciplinary Tribunal after the commencement of the amendment made by that section if the charge arises from a complaint made, or a direction from the Attorney-General or the Society received, or from an investigation by the Commissioner commenced on the Commissioner's own initiative, before that commencement.

***Legal Practitioners (Foreign Lawyers and Other Matters) Amendment Act 2019, Sch 1*****1—Transitional provision**

Section 77N of the *Legal Practitioners Act 1981* as amended by this Act applies in relation to a complaint of overcharging received by the Legal Profession Conduct Commissioner after the commencement of the amendment irrespective of whether the final bill to which the complaint relates was delivered to the client before or after that commencement.

***Legal Practitioners (Senior and Queen's Counsel) Amendment Act 2020, Sch 1—Transitional provisions*****1—Application of section 92**

Section 92 of the *Legal Practitioners Act 1981* (as enacted by this Act) applies in relation to a legal practitioner who has been appointed as a Senior Counsel by the Chief Justice of the Supreme Court before or after the commencement of that section.

**2—Application of section 93**

Section 93 of the *Legal Practitioners Act 1981* (as enacted by this Act) applies in relation to a legal practitioner who has been appointed as a Senior Counsel by the Chief Justice of the Supreme Court, or as a Queen's Counsel, before or after the commencement of that section.

## **Historical versions**

Reprint—1.8.1990

Reprint No 1—1.10.1991

Reprint No 2—28.5.1992

Reprint No 3—6.7.1992

Reprint No 4—6.5.1993

Reprint No 5—4.11.1993

Reprint No 6—1.1.1994

Reprint No 7—1.7.1994

Reprint No 8—13.6.1996

Reprint No 9—4.11.1996

Reprint No 10—1.1.1997

Reprint No 11—27.3.1997

Reprint No 12—1.2.1999

Reprint No 13—1.7.1999

Reprint No 14—1.1.2000

Reprint No 15—7.12.2000

Reprint No 16—15.7.2001

Reprint No 17—19.6.2003

Reprint No 18—11.12.2003

4.9.2006

1.6.2007

1.2.2010

20.12.2010

30.1.2012

17.6.2013

1.9.2013

1.7.2014

25.9.2014

1.4.2015

13.11.2016

30.7.2017

1.2.2018

1.3.2018

1.12.2019

21.5.2020

1.7.2020