

TASMANIA

LEGAL PROFESSION BILL 2007

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LEGAL PROFESSION BILL 2007

*(Brought in by the Minister for Justice and Workplace
Relations, the Honourable Steven Kons)*

A BILL FOR

**An Act to provide for the regulation of legal practice in
Tasmania and to facilitate the regulation of legal practice
on a national basis, to repeal the *Legal Profession Act 1993*
and for other purposes**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

CHAPTER 1 – INTRODUCTION

PART 1.1 – PRELIMINARY

1. Short title

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

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

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Part 1.1 – Preliminary

3. Purposes

The purposes of this Act are as follows:

- (a) to provide for the regulation of legal practice in this jurisdiction in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;
- (b) to facilitate the regulation of legal practice on a national basis across State and Territory borders.

PART 1.2 – INTERPRETATION

4. Interpretation

(1) In this Act –

“**ADI**” means an authorised deposit-taking institution;

“**admission rules**” means rules relating to the admission of local lawyers and associated matters made under Part 2.2 (Admission of local lawyers);

“**admission to the legal profession**” means admission by a Supreme Court as –

- (a) a lawyer; or
- (b) a legal practitioner; or
- (c) a barrister; or
- (d) a solicitor; or
- (e) a barrister and solicitor; or
- (f) a solicitor and barrister –

under this Act or a corresponding law, but does not include the grant of a practising certificate under this Act or a corresponding law and “**admitted to the legal profession**” has a corresponding meaning;

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“affairs” of a law practice includes the following:

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

“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

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(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;

“approved ADI” means an ADI approved under section 273 (Approval of ADIs) by the prescribed authority;

“approved form” – see section 652 (Approved forms);

“associate” – see section 7 (Terms relating to associates and principals of law practices);

“Australian lawyer” – see section 5 (Terms relating to lawyers);

“Australian legal practitioner” – see section 6 (Terms relating to legal practitioners);

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

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

“Australian roll” means the local roll or an
interstate roll;

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

“barrister” means –

- (a) a local legal practitioner who
holds a current local practising
certificate to practise as or in the
manner of a barrister; or
- (b) an interstate legal practitioner
who holds a current interstate
practising certificate that entitles
the practitioner to engage in legal
practice only as or in the manner
of a barrister;

“Board” means the Legal Profession Board of
Tasmania established by section 589;

“Board of Legal Education” means the
Board of Legal Education continued
under section 604;

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

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“community legal centre” – see the definition of **“complying community legal centre”**;

“complying community legal centre” – see section 218 (Community legal centres);

“conditions” means conditions, limitations or restrictions;

“contravene” includes fail to comply with;

“controlled money” means money received or held by a law practice in respect of which the practice has a written direction to deposit the money in an account (other than a general trust account) over which the practice has or will have exclusive control;

Note. See section 245(6) (Controlled money), 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;

“conviction” – see section 11 (References to convictions for offence);

“corresponding authority” means –

- (a) a person or body having functions or powers under a corresponding law; or

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

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the *Gazette* to be a corresponding authority;

“corresponding disciplinary body” means –

- (a) a body having functions or powers under a corresponding law that correspond to any of the functions or powers of the Board; or
- (b) a court or tribunal having functions or powers under a corresponding law that correspond to any of the functions or powers of the Supreme Court or Tribunal; or
- (c) the Supreme Court of another jurisdiction exercising –
 - (i) its inherent jurisdiction or powers in relation to the control and discipline of any Australian lawyers; or
 - (ii) its jurisdiction or powers to make orders under a corresponding law of the other jurisdiction in relation to any Australian lawyers; or
- (d) a body declared by the Minister by notice published in the *Gazette* to be a corresponding disciplinary body;

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“corresponding foreign law” means the following:

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

“corresponding fund” means a fund in another jurisdiction that corresponds to the Guarantee Fund;

“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

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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;

“costs assessor” has the meaning given in section 283;

“Council” means the Council of the Law Society;

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

- (a) a person whose name has (whether or not at his or her own request) been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession under this Act or a corresponding law;
- (b) a person whose Australian practising certificate has been suspended or cancelled under this

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Act or a corresponding law and who, because of the cancellation, is not an Australian legal practitioner, or in relation to whom that suspension has not finished;

- (c) a person who has been refused a renewal of an Australian practising certificate under this Act or a corresponding law, and to whom an Australian practising certificate has not been granted at a later time;
- (d) a person who is the subject of an order under this Act or a corresponding law prohibiting a law practice from employing or paying the person in connection with the relevant practice;
- (e) a person who is the subject of an order under this Act or a corresponding law prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the practitioner's practice;
- (f) a person who is the subject of an order under section 133 (Disqualification from managing incorporated legal practice) or section 158 (Prohibition on partnerships with certain partners

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who are not Australian legal practitioners) or under provisions of a corresponding law that correspond to section 133 or 158;

“document” means any record of information, and includes –

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph –

and a reference in this Act to a document (as so defined) includes a reference to –

- (e) any part of the document; and
- (f) any copy, reproduction or duplicate of the document or of any part of the document; and
- (g) any part of such a copy, reproduction or duplicate;

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“engage in legal practice” includes practise law;

“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;

“financial year” means a year ending on 30 June;

“foreign country” means –

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

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

“functions” includes duties;

“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;

“grant” of a practising certificate includes the issue of a practising certificate;

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

“Guarantee Fund” means the Solicitors’ Guarantee Fund continued under section 358;

“home jurisdiction” – see section 8 (Home jurisdiction);

“incorporated legal practice” has the same meaning as in Part 2.5 (Incorporated legal practices and multi-disciplinary partnerships);

“information notice” – see section 10 (Information notices);

“insolvent under administration” means –

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

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the deed have not been fully complied with; or

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

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“interstate lawyer” – see section 5 (Terms relating to lawyers);

“interstate legal practitioner” – see section 6 (Terms relating to legal practitioners);

“interstate practising certificate” means a current practising certificate granted under a corresponding law;

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

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

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

“jurisdiction” means a State or Territory of the Commonwealth;

“law firm” means a partnership consisting only of –

- (a) Australian legal practitioners; or
- (b) one or more Australian legal practitioners and one or more Australian-registered foreign lawyers;

“Law Foundation of Tasmania” means the company limited by guarantee

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incorporated under that name on
1 July 1980;

“law practice” means –

- (a) an Australian legal practitioner who is a sole practitioner; or
- (b) a law firm; or
- (c) a multi-disciplinary partnership; or
- (d) an incorporated legal practice; or
- (e) a complying community legal centre;

“Law Society” means the Law Society of Tasmania;

“lay associate” – see section 7 (Terms relating to associates and principals of law practices);

“lay person” means a person who is not an Australian lawyer;

“Legal Aid Commission” means the Legal Aid Commission of Tasmania constituted under the *Legal Aid Commission Act 1990*;

“legal costs” means amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services,

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including disbursements but not including interest;

“legal practitioner associate” – see section 7 (Terms relating to associates and principals of law practices);

“legal practitioner director”, in relation to an incorporated legal practice, has the meaning given in Part 2.5 (Incorporated legal practices and multi-disciplinary partnerships);

“legal practitioner partner” in relation to a multi-disciplinary partnership, has the meaning given in Part 2.5 (Incorporated legal practices and multi-disciplinary partnerships);

“legal profession rules” means rules relating to legal practice made under this Act;

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

“local lawyer” – see section 5 (Terms relating to lawyers);

“local legal practitioner” – see section 6 (Terms relating to legal practitioners);

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

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“local roll” means the roll of lawyers maintained under this Act;

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

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

“managed investment scheme” has the same meaning as in Chapter 5C of the *Corporations Act 2001* of the Commonwealth;

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

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

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

(b) a proposed mortgage;

“mortgage financing” means facilitating a loan secured or intended to be secured by mortgage by –

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

but does not include providing legal advice, legal services or preparing an instrument for the loan;

“mortgage investment scheme” means –

- (a) a scheme in which –
 - (i) more than one person contributes money to the scheme; and
 - (ii) that money is pooled in a fund to make investments in property or other securities; and
 - (iii) the securities arising from the money invested are controlled by a person who has the day-to-day control of the scheme, including the authority to acquire mortgage securities or other securities; or

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- (b) such other scheme as may be prescribed;

“multi-disciplinary partnership” has the meaning given in Part 2.5 (Incorporated legal practices and multi-disciplinary partnerships);

“practical legal training” means –

- (a) legal training by participation in course work; or
- (b) supervised legal training, whether involving articles of clerkship or otherwise –

or a combination of both;

“principal” – see section 7 (Terms relating to associates and principals of law practices);

“professional misconduct” – see section 421 (Professional misconduct);

“Register” means the Register of Disciplinary Action referred to in section 497;

“registered medical practitioner” has the same meaning as in the *Medical Practitioners Registration Act 1996*;

“Registrar” means the Registrar of the Supreme Court;

“regulatory authority” means –

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(a) in relation to this jurisdiction –

- (i) a person or body having functions or powers under this Act; or
- (ii) a person or body prescribed by the regulations as a regulatory authority of this jurisdiction; or

(b) in relation to another jurisdiction –

- (i) if there is only one 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

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determination of one 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;

“rules” includes “admission rules”, “legal profession rules” and Board of Legal Education rules made under section 608;

“serious offence” means an offence whether committed in or outside this jurisdiction that is –

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

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indictable offence against a law of the Commonwealth or this jurisdiction if committed in this jurisdiction (whether or not the offence could be dealt with summarily if committed in this jurisdiction);

“show cause event”, in relation to a person, means –

- (a) his or her becoming bankrupt or being served with notice of a creditor’s petition presented to the Court under section 43 of the *Bankruptcy Act 1966* of the Commonwealth; or
- (b) his or her presentation (as a debtor) of a declaration to the Official Receiver under section 54A of the *Bankruptcy Act 1966* of the Commonwealth of his or her intention to present a debtor’s petition or his or her presentation (as a debtor) of such a petition under section 55 of that Act; or
- (c) his or her applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with his or her creditors or making an assignment of his or her remuneration for their benefit; or

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- (d) his or her conviction for a serious offence or a tax offence, whether or not –
 - (i) the offence was committed in or outside this jurisdiction; or
 - (ii) the offence was committed while the person was engaging in legal practice as an Australian legal practitioner or was practising foreign law as an Australian-registered foreign lawyer, as the case requires; or
 - (iii) other persons are prohibited from disclosing the identity of the offender;

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

“solicitor” means –

- (a) a local legal practitioner who holds a current local practising certificate to practise as a barrister and solicitor; or
- (b) an interstate legal practitioner who holds a current interstate

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practising certificate that does not restrict the practitioner from engaging in legal practice only as or in the manner of a barrister;

“suitability matter” – see section 9 (Suitability matters);

“supervised legal practice” means legal practice by a person who is an Australian legal practitioner –

(a) as an employee of a law practice, where –

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

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

(b) as a partner in a law firm, where –

(i) at least one other partner is an Australian legal practitioner who holds an

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unrestricted practising
certificate; and

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

(c) in a capacity approved under a
legal profession rule;

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

“this jurisdiction” means this State;

“Tribunal” means the Disciplinary Tribunal
established by section 610;

“Trust” means the Solicitors’ Trust continued
under section 633;

“trust account” means an account maintained
by a law practice with an approved ADI
to hold trust money;

“trust money” has the meaning given in
Part 3.2 (Trust money and trust
accounts);

“trust property” means property entrusted to
a law practice in the course of or in
connection with the provision of legal

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services by the practice, but does not include trust money referred to in section 232;

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

“unsatisfactory professional conduct” – see section 420 (Unsatisfactory professional conduct).

- (2) Notes included in this Act do not form part of this Act.

5. Terms relating to lawyers

For the purposes of this Act –

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

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corresponding law, but not under this Act.

6. Terms relating to legal practitioners

For the purposes of this Act –

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

7. Terms relating to associates and principals of law practices

- (1) For the purposes of this Act, an “**associate**” of a law practice is –
 - (a) an Australian legal practitioner who is –
 - (i) a sole practitioner (in the case of a law practice constituted by the practitioner); or
 - (ii) a partner in the law practice (in the case of a law firm); or

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-
- (iii) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
 - (iv) a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership); or
 - (v) an employee of, or consultant to, the law practice; or
 - (b) an agent of the law practice who is not an Australian legal practitioner; or
 - (c) an employee of the law practice who is not an Australian legal practitioner; or
 - (d) an Australian-registered foreign lawyer who is a partner in the law practice; or
 - (e) a person (not being an Australian legal practitioner) who is a partner in a multi-disciplinary partnership; or
 - (f) an Australian-registered foreign lawyer who has a relationship with the law practice, being a relationship that is of a class prescribed by the regulations.
- (2) For the purposes of this Act –
- (a) a “**legal practitioner associate**” of a law practice is an associate of the practice who is an Australian legal practitioner; and

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- (b) a “**lay associate**” of a law practice means an associate of the practice who is not an Australian legal practitioner.
- (3) For the purposes of this Act, a “**principal**” of a law practice is an Australian legal practitioner who is –
 - (a) a sole practitioner (in the case of a law practice constituted by the practitioner); or
 - (b) a partner in the law practice (in the case of a law firm); or
 - (c) a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
 - (d) a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership).

8. Home jurisdiction

- (1) This section has effect for the purposes of this Act.
- (2) The “**home jurisdiction**” for an Australian legal practitioner is the jurisdiction in which the practitioner’s only or most recent current Australian practising certificate was granted.
- (3) The “**home jurisdiction**” for an Australian-registered foreign lawyer is the jurisdiction in

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which the lawyer's only or most recent current registration was granted.

- (4) The “**home jurisdiction**” for an associate of a law practice who is neither an Australian legal practitioner nor an Australian-registered foreign lawyer is –
- (a) where only one jurisdiction is the home jurisdiction for the only associate of the practice who is an Australian legal practitioner or for all the associates of the practice who are Australian legal practitioners, that jurisdiction; or
 - (b) where no one jurisdiction is the home jurisdiction for all the associates of the practice who are Australian legal practitioners –
 - (i) the jurisdiction in which the office is situated at which the associate performs most of his or her duties for the law practice; or
 - (ii) if a jurisdiction cannot be determined under subparagraph (i), the jurisdiction in which the associate is enrolled under a law of the jurisdiction to vote at elections for the jurisdiction; or
 - (iii) if a jurisdiction can be determined under neither subparagraph (i) nor subparagraph (ii), the jurisdiction

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determined in accordance with
criteria specified or referred to in
the regulations.

9. Suitability matters

- (1) Each of the following is a “**suitability matter**” in relation to a natural person:
- (a) whether the person is currently of good fame and character;
 - (b) whether the person is or has been an insolvent under administration;
 - (c) whether the person has been convicted of an offence in Australia or a foreign country, and, if so –
 - (i) the nature of the offence; and
 - (ii) how long ago the offence was committed; and
 - (iii) the person’s age when the offence was committed;

Note. The rules may make provision for the convictions that must be disclosed by an applicant and those that need not be disclosed.

- (d) whether the person engaged in legal practice in Australia –
 - (i) when not admitted to the legal profession, or not holding a

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- practising certificate, as required under this Act or a previous law of this jurisdiction that corresponds to this Act or under a corresponding law; or
- (ii) if admitted to the legal profession, in contravention of a condition on which admission was granted; or
 - (iii) if holding an Australian practising certificate, in contravention of a condition of the certificate or while the certificate was suspended;
- (e) whether the person has practised law in a foreign country –
- (i) when not permitted by or under a law of that country to do so; or
 - (ii) if permitted to do so, in contravention of a condition of the permission;
- (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:
- (i) this Act or a previous law of this jurisdiction that corresponds to this Act;

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- (ii) a corresponding law or corresponding foreign law;
- (g) whether the person –
 - (i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or
 - (ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt;
- (h) whether the person's name has been removed from –
 - (i) a local roll, and has not since been restored to or entered on a local roll; or
 - (ii) an interstate roll, and has not since been restored to or entered on an interstate roll; or
 - (iii) a foreign roll;
- (i) whether the person's right to engage in legal practice has been suspended or cancelled in Australia or a foreign country;

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- (j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts;
 - (k) whether, under this Act, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person;
 - (l) whether the person is or has been subject to an order, under this Act, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice;
 - (m) whether the person is currently unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner.
- (2) A matter is a suitability matter even if it happened before the commencement of this section.

10. Information notices

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

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

11. References to convictions for offences

- (1) A reference in this Act to a conviction includes a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded.
- (2) Without limiting subsection (1), a reference in this Act to the quashing of a conviction for an offence includes a reference to the quashing of –
 - (a) a finding of guilt in relation to the offence; or
 - (b) the acceptance of a guilty plea in relation to the offence.
- (3) However, a reference in this Act to the quashing of a conviction for an offence does not include a reference to the quashing of a conviction where –
 - (a) a finding of guilt in relation to the offence; or
 - (b) the acceptance of a guilty plea in relation to the offence –

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remains unaffected.

CHAPTER 2 – GENERAL REQUIREMENTS FOR ENGAGING IN LEGAL PRACTICE

PART 2.1 – RESERVATION OF LEGAL WORK AND LEGAL TITLES

Division 1 – Preliminary

12. Purposes

The purposes of this Part are as follows:

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

Division 2 – General prohibitions on unqualified practice

13. Prohibition on engaging in legal practice when not entitled

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

Penalty: Fine not exceeding 200 penalty units, or imprisonment for a term not exceeding 2 years, or both.

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- (2) Subsection (1) does not apply to engaging in legal practice of the following kinds:
- (a) legal practice engaged in under the authority of a law of this jurisdiction or of the Commonwealth;
 - (b) legal practice engaged in pursuant to employment under the *State Service Act 2000*;
 - (c) legal practice engaged in pursuant to employment in a council;
 - (d) legal practice engaged in by an incorporated legal practice in accordance with Part 2.5 (Incorporated legal practices and multi-disciplinary partnerships);
 - (e) the practice of foreign law by an Australian-registered foreign lawyer in accordance with Part 2.6 (Legal practice by foreign lawyers);
 - (f) legal practice engaged in by a complying community legal centre;
 - (g) conveyancing work carried out in accordance with a licence in force under the *Conveyancing Act 2004*;
 - (h) preparing or assisting in the preparation of any deed or will or any instrument in writing purporting to create or convey any estate or interest in real or personal property, or otherwise practising the

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business of a conveyancer, provided it is not done for fee or reward;

- (i) publishing or selling information or material describing the procedures relating to the conveyance or transfer of property that does not involve the preparation of an instrument purporting to convey or transfer property;
- (j) work performed by a property agent in respect of instruments he or she is entitled to draw, fill up or prepare, and to charge for, under the *Property Agents and Land Transactions Act 2005*;
- (k) the drawing of instruments by an officer or employee in the service of the State in the course of his or her duties;
- (l) work performed by –
 - (i) The Public Trustee established under the *Public Trustee Act 1930*; or
 - (ii) a trustee company as defined by the *Trustee Companies Act 1953* –

in the course of preparing a will or carrying out any other activities involving the administration of trusts, the estates of living or deceased persons, or the affairs of living persons;
- (m) appearing or defending in person;

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- (n) acting on one's own behalf in any legal proceedings or matters;
 - (o) legal practice engaged in by a complying community legal centre;
 - (p) legal practice of a kind prescribed by the regulations.
- (3) Subsection (1) does not apply to a person or class of persons declared by the regulations to be exempt from the operation of subsection (1).
 - (4) A person is not entitled to recover any amount in respect of anything the person did in contravention of subsection (1).
 - (5) A person may recover from another person, as a debt due to the person, any amount the person paid to the other person in respect of anything the other person did in contravention of subsection (1).
 - (6) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act to persons engaged in legal practice of a kind referred to in subsection (2) (other than subsection (2)(a) and (d)).

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

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

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unless the person is an Australian legal practitioner.

Penalty: Fine not exceeding 100 penalty units.

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

Penalty: Fine not exceeding 100 penalty units.

- (3) Subsections (1) and (2) do not apply to a representation or advertisement about being entitled to engage in legal practice of a kind referred to in section 13(2) (Prohibition on engaging in legal practice when not entitled) by a person so entitled.
- (4) A reference in this section to a person –
- (a) representing or advertising that the person is entitled to engage in legal practice; or
 - (b) representing or advertising that a body corporate is entitled to engage in legal practice –

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

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

- (1) This section applies to the following names, titles and descriptions:
 - (a) legal practitioner;
 - (b) barrister;
 - (c) solicitor;
 - (d) attorney;
 - (e) counsel;
 - (f) Queen’s Counsel;
 - (g) King’s Counsel;
 - (h) Her Majesty’s Counsel;
 - (i) His Majesty’s Counsel;
 - (j) Senior Counsel;
 - (k) any other name, title or description as may be provided.
- (2) The regulations may specify the kind of persons who are entitled, and the circumstances in which they are entitled, to take or use a name, title or description to which this section applies.
- (3) For the purposes of section 14(1) (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled), the taking or using of a name, title or description to which this section applies by a person who is not entitled to

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take or use that name, title or description gives rise to a rebuttable presumption that the person represented that they are entitled to engage in legal practice.

- (4) For the purposes of section 14(2), the taking or using of a name, title or description to which this section applies by a person in relation to a body corporate, of which the person is a director, officer, employee or agent, gives rise to a rebuttable presumption that the person represented that the body corporate is entitled to engage in legal practice.

Division 3 – Prohibitions regarding associates and non-legal partners

16. Definition

For the purposes of this Division –

“lay associate” of a law practice has the same meaning as in section 7 (Terms relating to associates and principals of law practices), and includes a consultant to the law practice (however described) who –

- (a) is not an Australian legal practitioner; and
- (b) provides legal or related services to the law practice, other than services of a kind prescribed by the regulations.

17. Associates who are disqualified or convicted persons

- (1) A law practice must not have a lay associate whom any principal or other legal practitioner associate of the practice knows to be –

- (a) a disqualified person; or
- (b) a person who has been convicted of a serious offence –

unless the lay associate is approved by the Board under subsection (2).

- (2) The Board may, on application, approve a lay associate for the purposes of this section.
- (3) An approval under this section may be subject to specified conditions.
- (4) A disqualified person, or a person convicted of a serious offence, must not seek to become a lay associate of a law practice unless the person first informs the law practice of the disqualification or conviction.

Penalty: Fine not exceeding 50 penalty units.

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

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18. Appeal by law practice or lay associate

- (1) A law practice or the lay associate who is the subject of the application for approval may appeal to the Supreme Court within 30 days –
 - (a) from a refusal of the Board to give an approval; or
 - (b) against any conditions imposed on an approval by the Board.
- (2) If the Board has not given or refused to give an approval within 60 days after an application for approval was made, the Board must be taken to have given the approval.
- (3) After hearing the matter, the Supreme Court –
 - (a) may refuse, grant or confirm an approval; and
 - (b) if it grants an approval, may impose any conditions on the approval it thinks fit; and
 - (c) if it confirms an approval, may confirm or vary any conditions imposed on the approval by the Board and impose any further conditions on the approval it thinks fit.
- (4) A law practice must comply with any conditions imposed on an approval by the Board or the Supreme Court.

Penalty: Fine not exceeding 100 penalty units.

19. Prohibition on employment of certain lay associates

- (1) This section applies to a person who is not an Australian legal practitioner and who is or was a lay associate of a law practice that –
- (a) engages in legal practice principally in this jurisdiction; or
 - (b) employs or employed the person to work principally in this jurisdiction –

and so applies whether or not the law practice subsequently ceased to exist or engage in legal practice principally in this jurisdiction and whether or not any person ceases, by death or otherwise, to be a legal practitioner associate of the law practice.

- (2) On application by the Board, the Supreme Court may make an order prohibiting any law practice from employing or paying in connection with the legal practice engaged in by the law practice a specified person to whom this section applies, if –
- (a) the Supreme Court is satisfied that the person is not a fit and proper person to be employed or paid in connection with that legal practice; or
 - (b) the Supreme Court is satisfied that the person has been guilty of conduct that, if the person were an Australian legal practitioner, would have constituted unsatisfactory professional conduct or professional misconduct.

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- (3) An order made under subsection (2) may be made for a specified period or indefinitely.
- (4) An order under this section may apply to a specified law practice or specified class of law practices or may apply to law practices generally.
- (5) An order under this section may be revoked by the Supreme Court on application by the Board or the person against whom the order was made.

20. Proceedings on prohibition orders

- (1) The parties to an application to the Supreme Court under this Division may be represented by an Australian legal practitioner at the hearing of the application.
- (2) On making an order under this Division, or on determining an appeal under section 18 (Appeal against lay associate approval), the Supreme Court may make orders for costs.
- (3) An order for costs –
 - (a) may be for a specified amount or an unspecified amount; and
 - (b) if for an unspecified amount, may specify the basis on which the amount is to be determined; and
 - (c) may specify the terms on which costs must be paid.

21. Register of approvals and prohibition orders

The Board must –

- (a) maintain in its office a register of approvals under section 17 (Associates who are disqualified or convicted persons); and
- (b) maintain in its office a register of approvals and orders made by the Supreme Court under section 18 (Appeal by law practice or lay associate) and section 158 (Prohibition on partnerships with certain partners who are not Australian legal practitioners) and orders prohibiting the employment of certain lay associates made under section 19 (Prohibition on employment of certain lay associates); and
- (c) permit the register to be inspected by Australian legal practitioners during office hours and without charge, but only if the inspection is made by, or on behalf of, an Australian legal practitioner; and
- (d) permit the register to be inspected by the prescribed authority.

Division 4 – General

22. Professional discipline

- (1) A contravention of this Part by an Australian lawyer who is not an Australian legal

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practitioner is capable of constituting unsatisfactory professional conduct or professional misconduct.

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

PART 2.2 – ADMISSION OF LOCAL LAWYERS

Division 1 – Preliminary

23. Purposes

The purposes of this Part are as follows:

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

24. Definitions

In this Part –

“admission” means admission to the legal profession under this Act;

“admission rules” means the rules made under section 38 (Admission rules);

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“applicant” or **“applicant for admission”**
means an applicant for admission to the
legal profession under this Act;

“Board of Legal Education rules” means
rules made under section 608 (Rules of
Board of Legal Education);

“overseas applicant” means a person who
has obtained academic qualifications,
completed practical legal training or
gained experience in legal practice
wholly or partly overseas;

“professional association” means the Law
Society, the Tasmanian Bar Association,
Tasmanian Independent Bar or other
prescribed body.

Division 2 – Eligibility and suitability for admission

25. Eligibility for admission

- (1) A person is eligible for admission to the legal profession only if the person is a natural person aged 18 years or over and –
- (a) the person has attained –
- (i) approved academic qualifications; or
- (ii) corresponding academic qualifications –

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or is exempted from compliance with this paragraph under subsection (4); and

- (b) the person has satisfactorily completed –
 - (i) approved practical legal training requirements; or
 - (ii) corresponding practical legal training requirements –

or is exempted from compliance with this paragraph under subsection (4).

- (2) In this section –

“approved academic qualifications” means academic qualifications that are approved, under the Board of Legal Education rules, for admission to the legal profession in this jurisdiction;

“approved practical legal training requirements” means legal training requirements that are approved, under the Board of Legal Education rules, for admission to the legal profession in this jurisdiction;

“corresponding academic qualifications” means academic qualifications that would qualify the person for admission to the legal profession in another jurisdiction, if the Board of Legal Education is satisfied that substantially the same minimum criteria apply for the approval of academic qualifications for

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admission in the other jurisdiction as apply in this jurisdiction;

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

- (3) For the purposes of subsection (2), the Board of Legal Education may satisfy itself regarding the minimum criteria for the approval of academic qualifications, or legal training requirements, for admission in another jurisdiction by considering appropriate advice from an authority of the other jurisdiction that those criteria were established consistently with relevant agreed standards, and accordingly the Board of Legal Education need not examine (in detail or at all) the content of courses of legal study or legal training requirements prescribed in the other jurisdiction.
- (4) The Supreme Court, on the recommendation of the Board of Legal Education, may exempt a person from the requirements of subsection (1)(a) or (b), or both, if satisfied that the person has –
 - (a) sufficient academic qualifications; or

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- (b) sufficient relevant experience in legal practice or relevant service with a government department or government agency –

or both, so as to render the person eligible for admission, whether the qualifications or experience were obtained wholly or partly in Australia or overseas.

- (5) An exemption under subsection (4) may be given unconditionally or subject to such conditions relating to the obtaining of further academic qualifications or further legal training as the Supreme Court, on the recommendation of the Board of Legal Education, considers appropriate.
- (6) For the purposes of subsection (3), the regulations may identify or provide a means of identifying the relevant agreed standards.

26. Suitability for admission

- (1) The Supreme Court must, in deciding if a person is a fit and proper person to be admitted to the legal profession under this Act, consider –
 - (a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and
 - (b) any other matter it considers relevant.
- (2) However, the Supreme Court may consider a person to be a fit and proper person to be

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admitted to the legal profession under this Act despite a suitability matter because of the circumstances relating to the matter.

- (3) To enable the Supreme Court to make a decision under subsection (1), the Supreme Court may require an applicant –
 - (a) to obtain from the Commissioner of Police, at the applicant's expense, a report in relation to convictions (if any) of the applicant in this or any other jurisdiction, including the Commonwealth, and to provide that report to the Court; or
 - (b) to be medically examined by a registered medical practitioner nominated by the Court and to furnish a report of that examination to the Court, at the applicant's expense.

27. Early consideration of suitability

- (1) A person may apply to the Supreme Court for a declaration that matters disclosed by the person will not adversely affect an assessment by the Court as to whether the person is a fit and proper person to be admitted.
- (2) The Supreme Court is to consider each application under this section and make an order or declaration as it sees fit.

28. Binding effect of declaration or order

An order or declaration made under section 27 is binding unless the applicant failed on the application to make a full and fair disclosure of all matters relevant to the declaration sought.

29. Entitlement to be represented, heard and make representations

- (1) The Board, a professional association and the applicant concerned are entitled –
 - (a) to make representations in writing to the Supreme Court in relation to any matter under consideration by the Court under this Division; and
 - (b) to be represented and heard at any application or appeal under this Division.
- (2) The Supreme Court is to notify the Board and any relevant professional association in accordance with the admission rules of –
 - (a) any application for a declaration under section 27 (Early consideration of suitability); and
 - (b) any order or declaration made under that section.

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Division 3 – Admission to the legal profession

30. Notice of intention to apply for admission

- (1) A person who intends to apply for admission to the legal profession is to cause a notice of that intention to be published within such period and in such a manner as are prescribed by the admission rules.
- (2) A person who wishes to extend or shorten the period referred to in subsection (1) may apply to the Supreme Court for an order to that effect.
- (3) A person who makes an application under subsection (2) is to forward a copy of that application to the Board, the Law Society and any other relevant professional association.
- (4) The Supreme Court must not hear an application unless –
 - (a) it is satisfied that the provisions of subsection (3) have been complied with; and
 - (b) the Board, the Law Society and any other relevant professional association are given an opportunity to appear before the Court hearing the application.

31. Admission

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

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- (2) The applicant must provide a copy of the application to the Board, the Law Society and any other relevant professional association in accordance with the admission rules.
 - (3) On receipt of an application under subsection (1), the Supreme Court may refer the application to the Board of Legal Education and request the Board of Legal Education to –
 - (a) provide a recommendation on the person's eligibility for admission; or
 - (b) report on any matter relevant to the person's eligibility for admission.
 - (4) The Board of Legal Education is to provide its recommendation to the Supreme Court within 30 days of the receipt of the request under subsection (3) unless the applicant is an overseas applicant.
 - (5) In determining the eligibility of a person for admission, the Supreme Court may rely on the recommendation of the Board of Legal Education.
 - (6) The Supreme Court may admit a person as a lawyer if satisfied that the person –
 - (a) is eligible for admission; and
 - (b) is a fit and proper person to be admitted; and
 - (c) has complied with the provisions of this Part.

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32. Objection to admission

- (1) The Board, the Law Society, any other relevant professional association or any other person who has reasonable grounds to object to an application for admission may apply to the Supreme Court to hear and determine the issues relating to the objection.
- (2) A person who intends to object to an application for admission must lodge with the Registrar two copies of a notice of objection stating the grounds of the objection.
- (3) The Court may accept a notice of objection lodged not less than 7 days before the date on which the application for admission is to be heard or at such time as the Court determines.
- (4) If an objection is made by a person other than the Board or the Law Society, the person making the objection must provide a copy of the notice of objection to the Board and the Law Society.
- (5) On receipt of a notice of objection, the Registrar is to forward a copy of the notice to the applicant.
- (6) A person who lodges a notice of objection is entitled to appear at any hearing held to determine the objection.

33. Terms and conditions of admission

- (1) The Supreme Court may admit a person to the legal profession under section 31 on such terms

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and conditions relating to the right of that person to practise as it thinks fit.

- (2) If the Supreme Court admits a person subject to terms and conditions relating to the right of that person to practise, the Court may, on the application of that person, review, modify or remove all or any of those terms and conditions if –
- (a) the application is made at least 12 months after the date on which the person was so admitted; or
 - (b) in the case of a second or subsequent application, the application is made at least 12 months after the date on which the preceding application was made.

34. Oath on admission

A person who applies to be admitted under this Part must, before that admission, take and subscribe the oath specified in the admission rules.

35. Roll of local lawyers

- (1) The Supreme Court is to maintain a roll of persons admitted to the legal profession under this Act (referred to in this Act as the “**local roll**”).

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- (2) When a person is admitted to the legal profession under this Act, the Supreme Court is to cause the person's name to be entered on the local roll and the admission of a person to the legal profession under this Act is effective from the time the person's name is entered on the local roll.
- (3) A person who is admitted to the legal profession subject to the condition that he or she practise solely as a barrister must sign the roll of barristers, and the person's admission is effective from the time he or she signs the roll of barristers.
- (4) The local roll or a copy of the local roll must be available for inspection, without charge, during normal business hours.
- (5) The Supreme Court may publish the name of persons admitted to the legal profession under this Act and any relevant particulars concerning those persons.
- (6) The Supreme Court must forward to the Board and the prescribed authority the name, address, date of birth and date of admission of each person admitted to the legal profession under this Act as soon as practicable after the person's name has been entered on the local roll or the person has signed the roll of barristers.
- (7) The Supreme Court's functions under this section may be performed by a person or body designated by the Court for the purpose.

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- (8) The regulations may make provision for or with respect to –
- (a) the information that may or must be included in the local roll; and
 - (b) publication of information contained in the local roll.

36. Certificate of admission

The Registrar is to issue a certificate of admission to any person who is admitted to the legal profession under this Part.

37. Local lawyer is officer of Supreme Court

- (1) A person becomes an officer of the Supreme Court on being admitted to the legal profession under this Act.
- (2) A person ceases to be an officer of the Supreme Court under subsection (1) if the person's name is removed from the local roll.

Division 4 – Admission rules

38. Admission rules

- (1) The judges of the Supreme Court, or a majority of them, may make rules for the admission of persons to the legal profession under this Act.

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- (2) Without limiting subsection (1), rules may be made about any of the following:
- (a) the procedure for admission, including –
 - (i) how an application is to be made; and
 - (ii) giving notice of the application to an entity or public notice of the application; and
 - (iii) the affidavits or certificates the applicant must provide with or for the application; and
 - (iv) the keeping and signing of the local roll and the particulars to be recorded on the roll; and
 - (v) the oath or affirmation of office to be taken or made by a local lawyer;
 - (b) the disclosure of matters that may affect consideration of the eligibility of an applicant for admission, or affect consideration of the question whether the applicant is a fit and proper person to be admitted, including convictions that must be disclosed and those that need not be disclosed;
 - (c) applications for admission under the trans-Tasman mutual recognition legislative scheme;

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- (d) the conferral of a right of objection to an applicant's admission on persons of appropriate standing;
 - (e) the procedure to be adopted in the conduct of inquiries under this Part;
 - (f) fees and costs payable under the rules and the refund or remission of fees.
- (3) Without limiting subsection (1), rules may provide for abridging, in specified circumstances, any period of practical legal training required by the rules.

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**PART 2.3 – LEGAL PRACTICE BY AUSTRALIAN
LEGAL PRACTITIONERS**

Division 1 – Preliminary

39. Purposes

The purposes of this Part are as follows:

- (a) to facilitate the national practice of law by ensuring that Australian legal practitioners can engage in legal practice in this jurisdiction and to provide for the certification of Australian lawyers whether or not admitted to the legal profession in this jurisdiction;
- (b) to provide a system for the granting and renewing of local practising certificates.

*Division 2 – Legal practice in this jurisdiction by Australian
legal practitioners*

**40. Entitlement of holder of Australian practising
certificate to practise in this jurisdiction**

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

41. Lawyers entitled to practise without practising certificate

An Australian lawyer or person eligible for admission to the legal profession who is employed or engaged –

- (a) under the *State Service Act 2000*; or
- (b) by a State, Territory or Commonwealth instrumentality; or
- (c) by a local council; or
- (d) in a State, Territory or Commonwealth statutory office –

is taken to hold, for the purposes of this Act and for purposes of that employment or engagement, a practising certificate as a legal practitioner for the period during which the person is so employed or engaged.

Division 3 – Local practising certificates generally

42. Local practising certificates

- (1) Practising certificates may be granted under this Part.
- (2) The prescribed authority may determine categories of local practising certificates.
- (3) It is a statutory condition of a local practising certificate that the holder must not hold another local practising certificate, or an interstate

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practising certificate, that is in force during the currency of the first-mentioned local practising certificate.

43. Suitability to hold local practising certificate

- (1) This section has effect for the purposes of section 53 (Grant or renewal of local practising certificate) or any other provision of this Act where the question of whether or not a person is a fit and proper person to hold a local practising certificate is relevant.
- (2) The prescribed authority may, in considering whether or not the person is a fit and proper person to hold a local practising certificate, take into account any suitability matter relating to the person, and any of the following, whether happening before or after the commencement of this section:
 - (a) whether the person obtained an Australian practising certificate because of incorrect or misleading information;
 - (b) whether the person has contravened a condition of an Australian practising certificate held by the person;
 - (c) whether the person has contravened this Act or a corresponding law, or the regulations or legal profession rules under this Act or a corresponding law;
 - (d) whether the person has contravened –

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- (i) an order of the Supreme Court, Tribunal or Board; or
 - (ii) an order of a corresponding disciplinary body or of a court or tribunal of another jurisdiction exercising jurisdiction or powers by way of appeal or review of an order of a corresponding disciplinary body;
 - (e) without limiting any other paragraph –
 - (i) whether the person has failed to pay a required contribution or levy to the Guarantee Fund; or
 - (ii) whether the person has contravened a requirement imposed by the prescribed authority about professional indemnity insurance; or
 - (iii) whether the person has failed to pay other costs or expenses for which the person is liable under this Act or the regulations;
 - (f) other matters the prescribed authority thinks appropriate.
- (3) A person may be considered a fit and proper person to hold a local practising certificate even though the person is within any of the categories of the matters referred to in subsection (2), if the prescribed authority considers that the circumstances warrant such a determination.

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(4) If a matter was –

- (a) disclosed in an application for admission to the legal profession in this or another jurisdiction; and
- (b) determined by a Supreme Court, or by the certifying body or a corresponding authority, not to be sufficient for refusing admission –

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

44. Duration of local practising certificate

- (1) A local practising certificate granted under this Act is in force from the date specified in it until the end of the financial year in which it is granted, unless the certificate is sooner suspended or cancelled.
- (2) A local practising certificate renewed under this Act is in force until the end of the financial year following its previous period of currency, unless the certificate is sooner suspended or cancelled.
- (3) If an application for the renewal of a local practising certificate has been made but has not been finally determined by the prescribed

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authority by the following 1 July, the certificate –

- (a) continues in force on and from that 1 July until the prescribed authority renews or refuses to renew the certificate or the holder withdraws the application for renewal, unless the certificate is sooner cancelled or suspended; and
 - (b) if renewed, is taken to have been renewed on and from that 1 July.
- (4) For the purposes of subsection (3), an application is finally determined –
- (a) by the renewal of the certificate; or
 - (b) by the exhaustion of all rights of review in relation to a decision to refuse to renew the certificate.

45. Requirement for professional indemnity insurance

- (1) In this section –

“government lawyer” means an Australian lawyer, or a person eligible for admission to the legal profession, employed under the *State Service Act 2000* or by a council and includes the Director of Public Prosecutions, the Solicitor-General and the Director of Legal Aid.

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- (2) This section applies to each of the following persons who make an application for the grant or renewal of a local practising certificate:
 - (a) an Australian lawyer who is a government lawyer who, in the lawyer's application for the grant or renewal of the certificate, stated that the lawyer did not intend to engage in legal practice otherwise than as a government lawyer engaged in government work;
 - (b) an Australian lawyer who is employed by a corporation, that is not an incorporated legal practice, and who provides only in-house legal services to the corporation concerning a proceeding or transaction to which the corporation or related body corporate is a party;
 - (c) an Australian lawyer other than an Australian lawyer mentioned in paragraph (a) or (b).
- (3) The prescribed authority must not grant or renew a local practising certificate unless the prescribed authority –
 - (a) in the case of an application by an Australian lawyer mentioned in subsection (2)(a), imposes a condition on the certificate that the lawyer must not engage in legal practice otherwise than as a government lawyer engaged in government work; or

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- (b) in the case of an application by an Australian lawyer mentioned in subsection (2)(b), imposes a condition on the certificate that the lawyer must not engage in legal practice otherwise than by providing in-house legal services to a corporation by which the lawyer is employed; or
 - (c) in the case of an application by an Australian lawyer mentioned in subsection (2)(c), is satisfied that the lawyer will, and imposes a condition on the certificate that the lawyer must, be covered by professional indemnity insurance that complies with this Act during the currency of the local practising certificate unless the lawyer is exempted from professional indemnity insurance requirements under section 346 (Exemption from insurance requirements).
- (4) Professional indemnity insurance complies with this Act in relation to a local practising certificate if it complies with the requirements under Part 3.4 (Professional Indemnity Insurance).

46. Continuing obligation for professional indemnity insurance for local practising certificate

- (1) A person commits an offence if –

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- (a) the person is a local legal practitioner;
and
- (b) the person engages in legal practice in
this jurisdiction; and
- (c) the person fails to comply with a
condition imposed under section 45(3)
on the person's practising certificate.

Penalty: Fine not exceeding 50 penalty units.

- (2) If a person must, under a condition imposed
under section 45(3) on the person's local
practising certificate, be covered by professional
indemnity insurance and the person becomes
aware that the person will not be covered by
professional indemnity insurance that complies
with the requirements prescribed by the
regulations or the Indemnity Rules, the person
must advise the prescribed authority in an
approved form of that fact as soon as possible,
but no later than 7 days after the day the person
becomes aware of that fact.

Penalty: Fine not exceeding 50 penalty units.

47. Local legal practitioner is officer of Supreme Court

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

Division 4 – Grant or renewal of local practising certificates

48. Application for grant or renewal of local practising certificate

- (1) An Australian lawyer may apply to the prescribed authority for the grant or renewal of a local practising certificate if eligible to do so under this section.
- (2) An Australian lawyer is eligible to apply for the grant or renewal of a local practising certificate if the lawyer complies with any regulations and legal profession rules relating to eligibility for the practising certificate and if –
 - (a) in the case of a lawyer who is not an Australian legal practitioner at the time of making the application –
 - (i) the lawyer reasonably expects to be engaged in legal practice solely or principally in this jurisdiction during the currency of the certificate or renewal applied for; or
 - (ii) if subparagraph (i) does not apply to the lawyer or it is not reasonably practicable to determine whether subparagraph (i) applies to the lawyer, the lawyer's place of residence in Australia is this jurisdiction or the lawyer does

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not have a place of residence in
Australia; or

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

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- (3) For the purposes of subsection (2)(b), the jurisdiction in which an Australian lawyer engages in legal practice solely or principally is to be decided by reference to the lawyer's legal practice during the certificate period current at the time –
 - (a) the application is made; or
 - (b) in the case of a late application, the application should have been made.
- (4) An Australian lawyer is not eligible to apply for the grant or renewal of a local practising certificate in respect of a financial year if the lawyer would also be the holder of another Australian practising certificate for that year, but this subsection does not limit the factors determining ineligibility to apply for the grant or renewal of a local practising certificate.
- (5) An Australian lawyer must not apply for the grant or renewal of a local practising certificate if the lawyer is not eligible to make the application.
- (6) An Australian legal practitioner who –
 - (a) engages in legal practice solely or principally in this jurisdiction during a financial year; and
 - (b) reasonably expects to engage in legal practice solely or principally in this jurisdiction in the following financial year –

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

- (7) Subsection (6) does not apply to an interstate legal practitioner who applied for the grant or renewal of an interstate practising certificate on the basis that the practitioner reasonably expected to engage in legal practice solely or principally in this jurisdiction under an arrangement that is of a temporary nature.
- (8) The exemption provided by subsection (7) ceases to operate at the end of the period prescribed by the regulations for the purposes of this subsection.
- (9) A reference in this section to engaging in legal practice principally in this or any other jurisdiction applies only to legal practice in Australia. Accordingly, an Australian lawyer who is engaged or expects to be engaged in legal practice principally in a foreign country is nevertheless eligible to apply for the grant or renewal of a local practising certificate if the lawyer otherwise meets the requirements of this section so that eligibility is determined by reference to the person's practice in Australia.

49. Manner of application and fees

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

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- (b) accompanied by the prescribed fees and prescribed levies (if any).
 - (2) The regulations may prescribe different fees for local practising certificates according to different factors determined by the prescribed authority.
 - (3) The approved form may require the applicant to disclose matters that may affect the applicant's eligibility for the grant or renewal of a local practising certificate or the question whether the applicant is a fit and proper person to hold a local practising certificate.
 - (4) The approved form may indicate that particular kinds of matters previously disclosed in a particular manner need not be disclosed for the purposes of the current application.

50. Advice relating to grant or renewal of local practising certificates

- (1) The prescribed authority must advise the Board of an application for the grant or renewal of a local practising certificate.
- (2) The Board must advise the prescribed authority of any disciplinary action taken under Chapter 4.
- (3) The prescribed authority may take into account any matter referred to it in subsection (2).

51. Timing of application for renewal of local practising certificate

- (1) An application for the renewal of a local practising certificate must be made within –
 - (a) the period prescribed by the regulations as the standard renewal period; or
 - (b) a later period prescribed by the regulations as the late fee period.
- (2) Those periods must be within the currency of the local practising certificate being renewed.
- (3) The prescribed authority may reject an application for renewal made during the late fee period, and must reject an application for renewal made outside those periods unless the prescribed authority accepts the application under subsection (4).
- (4) The prescribed authority may accept an application made within 6 months after that period (even after the expiry of the local practising certificate being sought to be renewed) if satisfied the delay was caused by reasons beyond the control of the applicant, or other special circumstances exist warranting acceptance of the application.
- (5) For an application accepted under subsection (4) after the expiry of the local practising certificate on 30 June in the year concerned, the certificate –

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- (a) is taken to have continued in force on and from the 1 July immediately following its expiry until the prescribed authority renews or refuses to renew the certificate or the holder withdraws the application for renewal, unless the certificate is sooner suspended or cancelled; and
- (b) if renewed, is taken to have been renewed on and from that 1 July.

Note. Section 52 authorises the charging of a late fee for applications received during the late fee period. If an application is rejected under subsection (3), the applicant will have to apply for the grant of a new local practising certificate.

52. Late fee

- (1) This section applies if an application for renewal of a local practising certificate is made during the late fee period prescribed by the regulations.
- (2) Payment of a late fee prescribed by or determined under the regulations may, if the prescribed authority thinks fit, be required as a condition of acceptance of the application.

53. Grant or renewal of local practising certificate

- (1) The prescribed authority must consider an application that has been made for the grant or renewal of a local practising certificate and may –

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- (a) grant or refuse to grant the certificate; or
 - (b) renew or refuse to renew the certificate –
- and in granting or renewing the certificate may impose conditions as referred to in section 56 (Conditions imposed by prescribed authority).
- (2) The prescribed authority may refuse –
 - (a) to consider an application if –
 - (i) it is not made in accordance with this Act or the legal profession rules; or
 - (ii) the required fees and costs have not been paid; or
 - (b) to grant or renew a local practising certificate if the applicant has not complied with the regulations or the legal profession rules in relation to the application.
- (3) The prescribed authority must not grant a local practising certificate unless it is satisfied that the applicant –
 - (a) was eligible to apply for the grant when the application was made; and
 - (b) is a fit and proper person to hold the certificate.

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Note. Section 43 (Suitability to hold local practising certificate) deals with the question of whether or not a person is a fit and proper person to hold a local practising certificate.

- (4) The prescribed authority must not renew a local practising certificate if it is satisfied that the applicant –
 - (a) was not eligible to apply for the renewal when the application was made; or
 - (b) is not a fit and proper person to continue to hold the certificate.
- (5) The prescribed authority must not grant or renew a local practising certificate if the prescribed authority considers the applicant's circumstances have changed since the application was made and the applicant would (having regard to information that has come to the prescribed authority's attention) not have been eligible to make the application when the application is being considered.
- (6) Without limiting any other provision of this section, the prescribed authority may refuse to grant or renew a local practising certificate if a finding of unsatisfactory professional conduct or professional misconduct has been made in respect of the applicant and –
 - (a) a fine imposed because of the finding has not been paid; or

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- (b) costs awarded against the applicant have not been paid or, if an arrangement for their payment has been made, the applicant is in default under the arrangement.
- (7) Without limiting any other provision of this section, the prescribed authority may refuse to grant or renew a local practising certificate if –
 - (a) any costs of an investigation or examination payable under Part 3.2 (Trust Money and Trust Accounts) by or in respect of the applicant have not been paid; or
 - (b) any fees, costs or expenses of external intervention payable under Chapter 5 (External Intervention) by or in respect of the applicant have not been paid; or
 - (c) any other fees, costs or levies required under the Act have not been paid.
- (8) Without limiting any other provision of this section, the prescribed authority may refuse to grant or renew a local practising certificate on any ground on which the local practising certificate could be suspended or cancelled.
- (9) This section does not affect any other provision of this Act that provides for the refusal to grant a local practising certificate.
- (10) If the prescribed authority grants or renews a local practising certificate, the prescribed

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authority must, as soon as practicable, give the applicant –

- (a) for the grant of a certificate, a local practising certificate; or
 - (b) for the renewal of a certificate, a new local practising certificate.
- (11) Within 30 days after receiving an application for the grant of a local practising certificate, the prescribed authority must –
 - (a) grant the certificate; or
 - (b) refuse to grant the certificate.
- (12) Within 60 days after receiving an application for renewal of a local practising certificate, the prescribed authority must –
 - (a) renew the certificate; or
 - (b) refuse to renew the certificate.
- (13) If the prescribed authority –
 - (a) refuses to grant or renew a local practising certificate; or
 - (b) imposes a condition on the certificate and the applicant does not agree to the condition –

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

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54. Advice to Board of grant, renewal or refusal to grant or renew local practising certificate

- (1) The prescribed authority must advise the Board of any of the following actions taken by the prescribed authority in relation to an Australian lawyer or Australian legal practitioner:
 - (a) a decision to grant or renew a local practising certificate with or without conditions;
 - (b) a decision to refuse to grant or renew a local practising certificate.
- (2) If the prescribed authority grants or renews a local practising certificate subject to conditions, it must advise the Board of those conditions and the reasons why the prescribed authority imposed those conditions.

Division 5 – Conditions on local practising certificates

55. Conditions generally

- (1) A local practising certificate is subject to –
 - (a) any conditions imposed by the prescribed authority; and
 - (b) any statutory conditions imposed by this or any other Act; and
 - (c) any conditions imposed by or under the legal profession rules or the regulations; and

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- (d) any conditions imposed or varied by the Supreme Court under section 57 (Imposition or variation of conditions pending criminal proceedings); and
 - (e) any conditions imposed under Chapter 4 (Complaints and discipline) or under provisions of a corresponding law that correspond to Chapter 4.
- (2) If a condition is imposed, varied or revoked under this Act (other than a statutory condition) during the currency of the local practising certificate concerned, the certificate is to be amended by the prescribed authority, or a new certificate is to be issued by the prescribed authority, to reflect on its face the imposition, variation or revocation.

56. Conditions imposed by prescribed authority

- (1) The prescribed authority may impose conditions on a local practising certificate –
 - (a) when it is granted or renewed; or
 - (b) during its currency.
- (2) A condition imposed under this section must be reasonable and relevant.
- (3) A condition imposed under this section may be about any of the following:

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- (a) requiring the holder of the local practising certificate to undertake and complete –
 - (i) continuing legal education; or
 - (ii) specific legal education or training; or
 - (iii) a period of supervised legal practice;
- (b) restricting the areas of law practised;
- (c) controlling, restricting or prohibiting the operation of a trust account;
- (d) restricting the holder of the practising certificate to particular conditions concerning employment or supervision;
- (e) requiring the holder of the practising certificate to undergo counselling or medical treatment or to act in accordance with medical advice given to the holder;
- (f) requiring the holder of the practising certificate to use the services of an accountant or other financial specialist in connection with his or her practice;
- (g) requiring the holder of the practising certificate to provide the prescribed authority with evidence as to any outstanding tax obligations of the holder and as to provision made by the holder to satisfy any such outstanding obligations;

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- (h) a matter agreed to by the holder of the practising certificate.
 - (4) Subsection (3) does not limit the matters about which a condition may be imposed under this section.
 - (5) The prescribed authority must not impose a condition requiring the holder of a local practising certificate to undertake and complete specific legal education or training unless –
 - (a) the prescribed authority is satisfied, having regard to –
 - (i) the nature or currency of the holder's academic studies, legal training or legal experience; or
 - (ii) the holder's conduct –

that it is reasonable to require the specific legal education or training to be undertaken and completed; or
 - (b) the condition is one that is imposed generally on holders of local practising certificates or any class of holders of local practising certificates.

Note. A class of holders might comprise newly qualified lawyers, or lawyers returning to legal practice after suspension or an extended break.

- (6) The prescribed authority may vary or revoke conditions imposed under this section.

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- (7) If the prescribed authority imposes, varies or revokes a condition during the currency of the local practising certificate concerned, the imposition, variation or revocation takes effect when the holder has been notified of it or at a later time specified by the prescribed authority.
- (8) If the prescribed authority imposes a condition on the certificate when it is granted or renewed and the holder of the certificate notifies the prescribed authority in writing within one month after the grant or renewal that he or she does not agree to the condition, the prescribed authority must, as soon as practicable, give the holder an information notice.
- (9) This section has effect subject to section 65 (Amending, suspending or cancelling local practising certificate) in relation to the imposition of a condition on a local practising certificate during its currency.

57. Imposition or variation of conditions pending criminal proceedings

- (1) If a local legal practitioner has been charged with a relevant offence but the charge has not been determined, the prescribed authority may apply to the Supreme Court for an order under this section.
- (2) On an application under subsection (1), the Supreme Court, if it considers it appropriate to do so having regard to the seriousness of the

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offence and to the public interest, may make either or both of the following orders:

- (a) an order varying the conditions on the practitioner's local practising certificate;
 - (b) an order imposing further conditions on the practitioner's local practising certificate.
- (3) An order under this section has effect until the sooner of –
 - (a) the end of the period specified by the Supreme Court; or
 - (b) if the practitioner is convicted of the offence, 28 days after the day of the conviction; or
 - (c) if the charge is dismissed, the day of the dismissal.
- (4) The Supreme Court, on application by any party, may vary or revoke an order under this section at any time.
- (5) In this section –

“relevant offence” means a serious offence or an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under this Act.

58. Statutory condition regarding conditions imposed on interstate admission

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

Note. Contravention of a condition imposed on admission locally is dealt with in section 62 (Compliance with conditions).

59. Statutory condition regarding legal practice

- (1) It is a statutory condition of a local practising certificate that the holder must engage in supervised legal practice only, until the holder has completed –
 - (a) if the holder completed practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise, to qualify for admission to the legal profession in this or another jurisdiction, a period or periods equivalent to 18 months' supervised legal practice, worked out under relevant regulations, after the day the holder's first local practising certificate was granted; or

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- (b) if the holder completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction, a period or periods equivalent to 2 years' supervised legal practice, worked out under the relevant regulations, after the day the holder's first local practising certificate was granted.
 - (2) Subsection (1) has effect subject to any other conditions that relate to engaging in supervised legal practice after a period or periods referred to in that subsection.
 - (3) The prescribed authority may exempt a person or class of persons from the requirement for supervised legal practice under subsection (1) or may reduce a period referred to in that subsection for a person or class of persons, if satisfied that the person or class of persons do not need to be supervised or need to be supervised only for a shorter period, having regard to –
 - (a) the length and nature of any legal practice previously engaged in by the person or class of persons; and
 - (b) the length and nature of any legal practice engaged in by the supervisors (if any) who previously supervised the legal practice engaged in by the person or class of persons.

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- (4) An exemption under subsection (3) may be given unconditionally or subject to such conditions as the prescribed authority thinks appropriate.
- (5) The prescribed authority may exempt a person from the requirement for supervised legal practice under subsection (1) if the person has satisfied any requirements relating to training or qualifications prescribed by the regulations as a precondition to becoming a barrister.

60. Statutory condition regarding notification of offence

- (1) It is a statutory condition of a local practising certificate that the holder of the certificate –
 - (a) must notify the prescribed authority in an approved form that the holder has been –
 - (i) convicted of an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under this Act; or
 - (ii) charged with a serious offence; and
 - (b) must do so within 7 days of the event.
- (2) The giving of notice in accordance with Division 7 (Special powers in relation to local practising certificates – show cause events) of a

conviction for a serious offence satisfies the requirements of subsection (1)(a)(i) in relation to the conviction.

61. Conditions imposed by legal profession rules

The legal profession rules may –

- (a) impose conditions on local practising certificates or any class of local practising certificates; or
- (b) authorise conditions to be imposed on local practising certificates or any class of local practising certificates.

62. Compliance with conditions

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

Penalty: Fine not exceeding 100 penalty units.

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

63. Application of this Division

This Division does not apply in relation to matters referred to in Division 7 (Special powers

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in relation to local practising certificates – show cause events).

64. Grounds for amending, suspending or cancelling local practising certificate

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

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

65. Amending, suspending or cancelling local practising certificate

- (1) If the prescribed authority believes a ground exists to amend, suspend or cancel a local practising certificate (the “**proposed action**”), the prescribed authority must give the holder a notice that –

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

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considers appropriate because of the representations; or

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

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

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

(c) if the notice stated the proposed action was to cancel the local practising certificate –

(i) cancel the certificate; or

(ii) suspend the certificate for a period; or

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

(3) If the prescribed authority decides to amend, suspend or cancel the local practising certificate, the prescribed authority must give the holder an information notice about the decision.

(4) In this section –

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“amend” a local practising certificate means amend the certificate under section 56 (Conditions imposed by prescribed authority) during its currency, other than at the request of the holder of the certificate.

Note. Section 68 provides for immediate suspension of local practising certificates.

66. Advice to Board of decision to amend, suspend or cancel local practising certificate

- (1) The prescribed authority must advise the Board of any of the following actions taken by the prescribed authority in relation to an Australian lawyer or Australian legal practitioner:
 - (a) a decision to amend a local practising certificate;
 - (b) a decision to suspend or cancel a local practising certificate.
- (2) If the prescribed authority amends, suspends or cancels a local practising certificate, it must advise the Board of the amendment, suspension or cancellation and the reasons for the amendment, suspension or cancellation.

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67. Operation of amendment, suspension or cancellation of local practising certificate

- (1) This section applies if a decision is made to amend, suspend or cancel a local practising certificate under section 65 (Amending, suspending or cancelling local practising certificate).
- (2) Subject to subsections (3) and (4), the amendment, suspension or cancellation of the local practising certificate takes effect on the later of the following:
 - (a) the day notice of the decision is given to the holder;
 - (b) the day specified in the notice.
- (3) If the local practising certificate is amended, suspended or cancelled because the holder 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 local 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

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- (b) the amendment, suspension or cancellation does not have effect during any period in respect of which the stay is in force.
 - (4) If the local 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.

68. Immediate suspension of local practising certificate

- (1) This section applies, despite Divisions 6 and 7, if the prescribed authority considers it necessary in the public interest to immediately suspend a local practising certificate on –
 - (a) any of the grounds on which the certificate could be suspended or cancelled under Division 6; or
 - (b) the ground of the happening of a show cause event (within the meaning of Division 7) in relation to the holder of the certificate; or

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- (c) any other ground that the prescribed authority considers warrants suspension of the local practising certificate in the public interest –

whether or not any action has been taken or commenced under Division 6 or 7 in relation to the holder.

- (2) The prescribed authority may, by written notice given to the holder of the certificate, immediately suspend the local practising certificate until the earlier of the following:
 - (a) the time at which the prescribed authority informs the holder of the prescribed authority's decision by notice under section 65 (Amending, suspending or cancelling local practising certificate);
 - (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 an information notice about the suspension; and
 - (b) state that the holder of the local practising certificate may make written representations to the prescribed authority about the suspension; and
 - (c) state that the holder of the local practising certificate may appeal against the suspension under section 84 (Review

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of decisions about local practising certificates).

- (4) The holder of the local practising certificate may make written representations to the prescribed authority about the suspension, and the prescribed authority must consider the representations.
- (5) The prescribed authority may revoke the suspension at any time, whether or not in response to any written representations made to it by the holder.
- (6) Nothing in this section prevents the prescribed authority from making a complaint under Chapter 4 about a matter to which this section relates.
- (7) The suspension of a local practising certificate under this section does not affect any disciplinary processes in respect of matters arising before the suspension.

69. Advice to Board of immediate suspension of local practising certificate and revocation of suspension

- (1) The prescribed authority must advise the Board of the suspension of a local practising certificate under section 68 and the reasons for the suspension.
- (2) The prescribed authority must advise the Board if the suspension is revoked and the reasons for the revocation.

70. Other ways of amending or cancelling local practising certificate

- (1) The prescribed authority may amend or cancel a local practising certificate if the holder requests the prescribed authority to do so.
- (2) The prescribed authority may amend a local practising certificate –
 - (a) for a formal or clerical reason; or
 - (b) in another way that does not adversely affect the holder's interests.
- (3) The prescribed authority must cancel a local practising certificate if the holder's name has been removed from the local roll or the holder ceases to be an Australian lawyer.
- (4) The amendment or cancellation of a local practising certificate under this section is effected by written notice given to the holder.
- (5) Section 65 (Amending, suspending or cancelling local practising certificate) does not apply in a case to which this section applies.
- (6) The prescribed authority must advise the Board of any amendment or cancellation of a local practising certificate under this section.

71. Relationship of this Division with Chapter 4

Nothing in this Division prevents a complaint from being made under Chapter 4 (Complaints

and discipline) about a matter to which this Division relates.

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

72. Applicant for local practising certificate – show cause event

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

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certificate or as the holder of a local practising certificate previously in force) has previously provided to the prescribed authority –

- (a) a statement under this section; or
- (b) a notice and statement under section 73 –

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

73. Holder of local practising certificate – show cause event

- (1) This section applies to a show cause event that happens in relation to the holder of a local practising certificate.
- (2) The holder must provide to the prescribed authority 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 himself or herself to be a fit and proper person to hold a local practising certificate.
- (3) If a written statement is provided after the period of 28 days referred to in subsection (2)(b), the

prescribed authority may accept the statement and take it into consideration.

74. Refusal, amendment, suspension or cancellation of local practising certificate – failure to show cause

- (1) The prescribed authority may refuse to grant or renew, or may amend, suspend or cancel, a local practising certificate if the applicant or holder –
 - (a) is required by section 72 (Applicant for local practising certificate – show cause event) or section 73 (Holder of local practising certificate – show cause event) 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 72 or section 73 but the prescribed authority does not consider that the applicant or holder has shown in the statement that, despite the show cause event concerned, he or she is a fit and proper person to hold a local practising certificate.
- (2) For the purposes of this section only, a written statement accepted by the prescribed authority under section 73(3) is taken to have been provided in accordance with section 73.
- (3) The prescribed authority must give the applicant or holder an information notice about the

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decision to refuse to grant or renew, or to amend, suspend or cancel, the certificate.

75. Restriction on making further applications

- (1) This section applies if the prescribed authority decides under section 74 to refuse to grant or renew a local practising certificate to a person or to cancel a person's local practising certificate.
- (2) The prescribed authority may also decide that the person is not entitled to apply for the grant of a local practising certificate for a specified period not exceeding 5 years.
- (3) If the prescribed authority makes a decision under subsection (2), the prescribed authority must include the decision in the information notice required under section 74(3).
- (4) A person in respect of whom a decision has been made under this section, or under a provision of a corresponding law, is not entitled to apply for the grant of a local practising certificate during the period specified in the decision.

76. Relationship of this Division with Chapter 4

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

Division 8 – Further provisions relating to local practising certificates

77. Surrender and cancellation of local practising certificate

- (1) The holder of a local practising certificate may surrender the certificate to the prescribed authority.
- (2) The prescribed authority may cancel the certificate after it has been surrendered under subsection (1).

78. Return of local practising certificate

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

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Penalty: Fine not exceeding 20 penalty units.

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

Division 9 – Interstate legal practitioner

79. Requirement for professional indemnity insurance

- (1) An interstate legal practitioner must not engage in legal practice in this jurisdiction, or represent or advertise that the practitioner is entitled to engage in legal practice in this jurisdiction, unless the practitioner –
 - (a) is covered by professional indemnity insurance that –
 - (i) covers legal practice in this jurisdiction; and
 - (ii) has been approved under or complies with the requirements of the corresponding law of the practitioner's home jurisdiction; and

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- (iii) is for at least \$1.5 million (inclusive of defence costs), unless (without affecting subparagraph (i) or (ii)) the practitioner engages in legal practice solely as or in the manner of a barrister; or
- (b) is employed by a corporation, other than an incorporated legal practice, and the only legal services provided by the practitioner in this jurisdiction are in-house legal services.

Penalty: Fine not exceeding 100 penalty units.

- (2) Subsection (1) does not apply to an interstate legal practitioner who –
 - (a) is a government lawyer as defined in section 91; and
 - (b) is engaged in legal practice in this jurisdiction only to the extent that the practitioner is engaging in government work; and
 - (c) has an indemnity or immunity (whether provided by law or governmental policy) that is applicable in respect of that legal practice; and
 - (d) is exempted from professional indemnity insurance requirements under section 346 (Exemption from insurance requirements).

80. Extent of entitlement of interstate legal practitioner to practise in this jurisdiction

- (1) This Part does not authorise an interstate legal practitioner to engage in legal practice in this jurisdiction to a greater extent than a local legal practitioner could be authorised under a local practising certificate.
- (2) Also, an interstate legal practitioner's right to engage in legal practice in this jurisdiction –
 - (a) is subject to –
 - (i) any conditions imposed by the prescribed authority under section 81; and
 - (ii) any conditions imposed by or under the legal profession rules as referred to in that section; and
 - (b) is, to the greatest practicable extent and with all necessary changes –
 - (i) the same as the practitioner's right to engage in legal practice in the practitioner's home jurisdiction; and
 - (ii) subject to any condition on the practitioner's right to engage in legal practice in that jurisdiction, including any conditions imposed on his or her admission to the legal profession in this or another jurisdiction.

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

81. Additional conditions on practice of interstate legal practitioners

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

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

Penalty: Fine not exceeding 100 penalty units.

82. Special provisions about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction

- (1) An interstate legal practitioner must not engage in unsupervised legal practice in this jurisdiction unless –
- (a) if the interstate legal practitioner completed practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise, to qualify for admission to the legal profession in this or another jurisdiction, the interstate legal practitioner has undertaken a period or periods equivalent to 18 months' supervised legal practice, worked out under relevant regulations, after the day the practitioner's first practising certificate was granted; or
 - (b) if the interstate legal practitioner completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction, the interstate legal practitioner has undertaken a period or periods equivalent to 2 years' supervised legal practice,

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worked out under relevant regulations,
after the day the practitioner's first
practising certificate was granted.

(2) Subsection (1) –

- (a) does not apply if the interstate legal practitioner is exempt from the requirement for supervised legal practice in the practitioner's home jurisdiction; or
- (b) applies only to the extent of a shorter period if the required period of supervised legal practice has been reduced for the interstate legal practitioner in the practitioner's home jurisdiction.

83. Interstate legal practitioner is an officer of Supreme Court

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

Division 10 – Appeals

84. Appeal against decisions about local practising certificates

- (1) A person whose interests are affected by a decision of the prescribed authority may appeal to the Supreme Court against a decision –
 - (a) to refuse to grant or renew a local practising certificate under section 53 or 74; or
 - (b) to amend, suspend or cancel a local practising certificate under section 65 or 74; or
 - (c) to suspend a local practising certificate under section 68; or
 - (d) to refuse a request to amend a local practising certificate under section 70; or
 - (e) to restrict a person's entitlement to apply for a local practising certificate for a specified period under section 75 (Restriction on making further applications).
- (2) The Supreme Court may make any order that it considers appropriate on the appeal.
- (3) An appeal must be made within 28 days after the day on which the information notice about the decision was given to the person.

- (4) The prescribed authority must advise the Board of the outcome of an appeal under this section.

85. Appeal against decisions about interstate legal practitioners

- (1) An interstate legal practitioner may appeal to the Supreme Court against a decision of the prescribed authority to impose a condition on the practitioner's practice under section 81.
- (2) The Supreme Court may make any order that it considers appropriate on the appeal.
- (3) An appeal must be made within 28 days after the day on which the information notice about the decision was given to the practitioner.
- (4) The prescribed authority must advise the Board of the outcome of an appeal under this section.

Division 11 – Miscellaneous

86. Protocols

- (1) The prescribed authority may enter into arrangements ("**protocols**") with regulatory authorities of other jurisdictions about determining –
 - (a) the jurisdiction in which an Australian lawyer engages in legal practice principally or can reasonably expect to engage in legal practice principally; or

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- (b) the circumstances in which an arrangement under which an Australian legal practitioner practises in a jurisdiction –
 - (i) can be regarded as being of a temporary nature; or
 - (ii) ceases to be of a temporary nature; or
 - (c) the circumstances in which an Australian legal practitioner can reasonably expect to engage in legal practice principally in a jurisdiction during the currency of an Australian practising certificate.
- (2) For the purposes of this Act, and to the extent that the protocols are relevant, a matter referred to in subsection (1)(a), (b) or (c) is to be determined in accordance with the protocols.
 - (3) The prescribed authority may enter into arrangements that amend, revoke or replace a protocol.
 - (4) A protocol does not have effect in this jurisdiction unless it is adopted in the regulations.

87. Consideration and investigation of applicants or holders

- (1) To help it consider whether or not to grant, renew, amend, suspend or cancel a local practising certificate, the prescribed authority

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may, by notice to the applicant or holder, require the applicant or holder –

- (a) to give it specified documents or information; or
 - (b) to co-operate with any inquiries by the prescribed authority that it considers appropriate; or
 - (c) to be medically examined by a registered medical practitioner nominated by the prescribed authority and to provide to the prescribed authority a report of that examination, at the applicant's or holder's expense; or
 - (d) to obtain from the Commissioner of Police, at the applicant's or holder's expense, a report in relation to the criminal record (if any) of the applicant or holder in this or any other jurisdiction, including the Commonwealth and to provide that report to the prescribed authority.
- (2) A failure to comply with a notice under subsection (1) by the date specified in the notice and in the way required by the notice is a ground for making a decision adverse to the applicant or holder in relation to the action being considered by the prescribed authority.
- (3) Without limiting subsection (2), a failure to comply with a requirement under subsection (1)(c) or (d) may be accepted by the

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prescribed authority as evidence of the unfitness of the person to engage in legal practice.

- (4) A report of a medical examination of an applicant or holder is not admissible in any proceeding, and a person cannot be compelled to produce the report or to give evidence about the report or its contents in any proceeding.
- (5) Subsection (4) does not apply if the report is admitted or produced, or evidence about the report or its contents is given, in a proceeding with the consent of the applicant or holder to whom the report relates.
- (6) Subsection (1) does not apply in relation to a proceeding on a review or appeal by the applicant or holder against a decision of the prescribed authority, or of a decision of a corresponding authority in another jurisdiction –
 - (a) refusing to grant or renew a local practising certificate; or
 - (b) imposing conditions on a local practising certificate; or
 - (c) amending, suspending or cancelling a local practising certificate.

88. Register of local practising certificates

- (1) The Board must keep a register of the names of Australian lawyers to whom the prescribed authority grants local practising certificates.

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- (2) The register must –
 - (a) state the conditions (if any) imposed on a local practising certificate in relation to engaging in legal practice; and
 - (b) include other particulars prescribed by the regulations.
 - (3) The register may be kept in the way the Board decides.
 - (4) The Board may publish, in circumstances that it considers appropriate, the names of persons kept on the register and any other information included in the register concerning those persons that it considers appropriate.
 - (5) The register must be available for inspection, without charge, at the Board's office during normal business hours.
 - (6) The Board is to make the register available to the prescribed authority.

89. Holders of local practising certificates as barristers

- (1) The regulations or legal profession rules may make provision for or with respect to prohibiting the holder of a local practising certificate as a barrister (but not a solicitor and barrister) from any or all of the following:
 - (a) engaging in legal practice –

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- (i) otherwise than as a sole practitioner; or
 - (ii) in partnership with any person; or
 - (iii) as the employee of any person;
 - (b) holding office as a legal practitioner director of an incorporated legal practice.
- (2) Conditions may be imposed on a local practising certificate granted to a barrister (but not a solicitor and barrister) that the barrister must not –
- (a) engage in legal practice –
 - (i) otherwise than as a sole practitioner; or
 - (ii) in partnership with any person; or
 - (iii) as the employee of any person; or
 - (b) hold office as a legal practitioner director of an incorporated legal practice.
- (3) The regulations may provide for the training or qualification requirement that a local legal practitioner must satisfy before becoming a barrister.

90. Supreme Court orders about conditions

- (1) The Board or prescribed authority may apply to the Supreme Court for an order that an

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Australian lawyer not contravene a condition imposed under this Part.

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

91. Government lawyers of other jurisdictions

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

(a) any prohibition under this Act about –

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

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

(b) conditions imposed on a local practising certificate –

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

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

- (3) Without affecting the generality of subsection (1), that subsection extends to

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prohibitions under section 79 relating to professional indemnity insurance.

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

“another jurisdiction” means –

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

“government agency” of another jurisdiction means –

- (a) a government department of that jurisdiction; or
- (b) a body or organisation that is established by or under the law of that jurisdiction for a public purpose or to perform governmental functions, and includes a body or organisation (or a class of bodies or organisations) prescribed by the regulations as being within this definition;

“government lawyer” means an Australian lawyer, or a person eligible for admission to the legal profession, employed by a

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government agency of another
jurisdiction.

92. Fees

- (1) The prescribed authority may charge fees prescribed in the regulations for the functions or services that it performs or provides under this Part.
- (2) The fees must be reasonable having regard to the funding that the prescribed authority receives under this Act and the cost to the prescribed authority of performing its functions under this Act.
- (3) Despite subsection (1), the prescribed authority may not charge a fee for a service provided to another body that has functions under this Act, except so far as the other body has arranged, on a commercial basis, for the prescribed authority to perform a service that is the responsibility of the other body.
- (4) The prescribed authority may waive any fees referred to in subsection (1).

93. Refund of fees

- (1) The regulations may provide for the refund of a portion of a fee paid in respect of a local practising certificate if it is suspended or cancelled during its currency.

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- (2) Without limiting subsection (1), the regulations may specify –
- (a) the circumstances in which a refund is to be made; and
 - (b) the amount of the refund or the manner in which the amount of the refund is to be determined.

**PART 2.4 – INTER-JURISDICTIONAL PROVISIONS
REGARDING ADMISSION AND PRACTISING
CERTIFICATES**

Division 1 – Preliminary

94. Purpose

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

95. Definition

In this Part –

“foreign regulatory action” taken in relation to a person means –

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

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Part 2.4 – Inter-jurisdictional Provisions Regarding Admission and
Practising Certificates

96. Other requirements not affected

This Part does not affect any functions or powers
under Chapter 4 (Complaints and discipline).

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

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

- (1) This section applies if an application for admission to the legal profession is made under this Act.
- (2) The Supreme Court may give the corresponding authority for another jurisdiction written notice of any of the following (as relevant):
 - (a) the making of the application;
 - (b) the withdrawal of the application after an inquiry is proposed or commenced in relation to the application or a suitability report is sought or obtained;
 - (c) the refusal to admit the applicant to the legal profession under this Act.
- (3) The notice must state the applicant's name and address as last known to the Supreme Court and may contain other relevant information.

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98. Official notification to other jurisdictions of removal from local roll

- (1) This section applies if a person's name is removed from the local roll, except where the removal occurs under section 104 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction).
- (2) The Registrar must, as soon as practicable, give written notice of the removal to –
 - (a) the corresponding authority of every other jurisdiction; and
 - (b) the registrar or other proper officer of the High Court of Australia.
- (3) The notice must state –
 - (a) the person's name and address as last known to the Registrar; and
 - (b) the date the person's name was removed from the roll; and
 - (c) the reason for removing the person's name –

and may contain other relevant information.

99. Prescribed authority to notify other jurisdictions of certain matters

- (1) This section applies if –

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- (a) the prescribed authority takes any of the following actions:
 - (i) refuses to grant an Australian lawyer a local practising certificate;
 - (ii) suspends, cancels or refuses to renew an Australian lawyer's local practising certificate; or
 - (b) the lawyer successfully appeals against the action taken.
- (2) The prescribed authority must, as soon as practicable, give the corresponding authorities of other jurisdictions written notice of the action taken or the result of the appeal.
- (3) The notice must state –
- (a) the lawyer's name and address as last known to the authority; and
 - (b) particulars of –
 - (i) the action taken and the reasons for it; or
 - (ii) the result of the appeal –
- and may contain other relevant information.
- (4) The prescribed authority may give corresponding authorities written notice of a condition imposed on an Australian lawyer's local practising certificate.

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- (5) The prescribed authority must advise the Board of any action taken under this section.

***Division 3 – Notifications to be given by lawyers to local
authorities***

100. Lawyer to give notice of removal in another jurisdiction

- (1) If a local lawyer's name has been removed from an interstate roll, the lawyer must, as soon as practicable, give the Supreme Court, the Board and the prescribed authority a written notice of the removal.

Penalty: Fine not exceeding 50 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

- (3) This section does not apply where the name has been removed from an interstate roll under a provision that corresponds to section 104 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction).

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101. Lawyer to give notice of interstate orders

- (1) If an order is made under a corresponding law recommending that the name of a local lawyer be removed from the local roll, the lawyer must, as soon as practicable, give the Supreme Court, prescribed authority and Board written notice of the order.

Penalty: Fine not exceeding 50 penalty units.

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

the practitioner must, as soon as practicable, give the prescribed authority and Board written notice of the order.

Penalty: Fine not exceeding 50 penalty units.

102. Lawyer to give notice of foreign regulatory action

- (1) If foreign regulatory action has been taken in relation to a local lawyer, the lawyer must, as soon as practicable, give the Supreme Court,

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Board and prescribed authority written notice of the action taken.

Penalty: Fine not exceeding 50 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

103. Provisions relating to requirement to notify

A notice to be given under this Division by a person must –

- (a) state his or her name and address; and
- (b) disclose full details of the action to which the notice relates, including the date on which that action was taken; and
- (c) be accompanied by a copy of any official notification provided to him or her in connection with that action.

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

**104. Peremptory removal of local lawyer’s name from
local roll following removal in another jurisdiction**

- (1) This section applies if the Registrar is satisfied that –
 - (a) a local lawyer’s name has been removed from an interstate roll; and
 - (b) no order referred to in section 108(1)(a) (Order for non-removal of name or non-cancellation of local practising certificate) is, at the time of that removal, in force in relation to it.
- (2) The Registrar must remove the lawyer’s name from the local roll.
- (3) The Registrar may, but need not, give the lawyer notice of the date on which the Registrar proposes to remove the name from the local roll.
- (4) The Registrar must, as soon as practicable, give the former local lawyer notice of the removal of the name from the local roll, unless notice of the date of the proposed removal was previously given.
- (5) The name of the former local lawyer is, on his or her application to the Registrar or on the Registrar’s own initiative, to be restored to the local roll if the name is restored to the interstate roll.

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- (6) Nothing in this section prevents the former local lawyer from afterwards applying for admission under Part 2.2 (Admission of local lawyers).

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

- (1) This section applies if –
 - (a) a person's name is removed from an interstate roll but he or she remains an Australian lawyer; and
 - (b) he or she is the holder of a local practising certificate; and
 - (c) no order referred to in section 108(1)(b) (Order for non-removal of name or non-cancellation of local practising certificate) is, at the time of that removal, in force in relation to it.
- (2) The prescribed authority must cancel the local practising certificate as soon as practicable after receiving official written notification of the removal.
- (3) The prescribed authority may, but need not, give the person notice of the date on which the prescribed authority proposes to cancel the local practising certificate.
- (4) The prescribed authority must, as soon as practicable, give the person notice of the

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cancellation, unless notice of the date of the proposed cancellation was previously given.

- (5) Nothing in this section prevents the former local lawyer from afterwards applying for a local practising certificate.
- (6) The prescribed authority must advise the Board of any action taken under this section.

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

- (1) This section applies if the prescribed authority is satisfied that –
 - (a) foreign regulatory action has been taken in relation to a local lawyer; and
 - (b) no order referred to in section 108(1)(a) (Order for non-removal of name or non-cancellation of local practising certificate) is in force in relation to the action taken.
- (2) The prescribed authority may serve on the lawyer a notice stating that the prescribed authority will apply to the Supreme Court for an order that the lawyer's name be removed from the local roll unless the lawyer shows cause to the prescribed authority why his or her name should not be removed.
- (3) If the lawyer does not satisfy the prescribed authority that his or her name should not be

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removed from the local roll, the prescribed authority may apply to the Supreme Court for an order that his or her name be removed from the local roll.

- (4) Before applying for an order that the lawyer's name be removed, the prescribed authority must afford the lawyer a reasonable opportunity to show cause why his or her name should not be removed.
- (5) The lawyer is entitled to appear before and be heard by the Supreme Court at a hearing in respect of an application under this section.
- (6) The Supreme Court may, on application made under this section, order that the lawyer's name be removed from the local roll, or may refuse to do so.
- (7) The prescribed authority must advise the Board of the Supreme Court's decision to remove a lawyer's name from the local roll under this section.

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

- (1) This section applies if the prescribed authority is satisfied that –
 - (a) foreign regulatory action has been taken in relation to a local legal practitioner; and

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- (b) no order referred to in section 108(1)(b) (Order for non-removal of name or non-cancellation of local practising certificate) is in force in relation to the action taken.
- (2) The prescribed authority may serve on the practitioner a notice stating that the prescribed authority proposes to cancel his or her local practising certificate unless the practitioner shows cause to the prescribed authority why his or her practising certificate should not be cancelled.
- (3) The prescribed authority must afford the practitioner a reasonable opportunity to show cause why his or her local practising certificate should not be cancelled.
- (4) If the practitioner does not satisfy the prescribed authority that the local practising certificate should not be cancelled, the prescribed authority may cancel the certificate.
- (5) The prescribed authority must, as soon as practicable, give the practitioner an information notice about its decision to cancel the local practising certificate.
- (6) The practitioner may appeal to the Supreme Court against a decision of the prescribed authority to cancel the local practising certificate.
- (7) The Supreme Court may make any order it considers appropriate on the appeal.

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- (8) The prescribed authority must advise the Board of the cancellation of a local practising certificate under this section.

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

- (1) If an Australian lawyer reasonably expects that his or her name will be removed from an interstate roll or that foreign regulatory action will be taken against the lawyer, the lawyer may apply to the Supreme Court for –
- (a) an order that his or her name not be removed from the local roll under section 104 (Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction); or
 - (b) an order that his or her local practising certificate not be cancelled under section 105 (Peremptory cancellation of local practising certificate following removal of name from interstate roll) or section 107 (Show cause procedure for cancellation of local practising certificate following foreign regulatory action) –
- or both.
- (2) The Supreme Court may make the order or orders applied for if satisfied that –
- (a) the lawyer's name is likely to be removed from the interstate roll or the

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foreign regulatory action is likely to be taken; and

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

or may refuse to make an order.

- (3) An order under this section may be made subject to any conditions the Supreme Court considers appropriate and remains in force for the period specified in it.
- (4) The Supreme Court may revoke an order made under this section, and sections 104, 105, 106 and 107 (as relevant) then apply as if the lawyer's name were removed from the interstate roll or the foreign regulatory action were taken when the revocation takes effect.
- (5) Nothing in this section affects action being taken in relation to the lawyer under other provisions of this Act.

109. Local authority may give information to other local authorities

A regulatory authority of this jurisdiction that receives information from a regulatory authority of another jurisdiction under provisions of a corresponding law that correspond to this Part may furnish the information to other authorities

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of this jurisdiction that have functions or powers
under this Act.

**PART 2.5 – INCORPORATED LEGAL PRACTICES
AND MULTI-DISCIPLINARY PARTNERSHIPS**

Division 1 – Preliminary

110. Purposes

The purposes of this Part are –

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

111. Definitions

In this Part –

“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;

“director” means –

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

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

“legal practitioner partner” means a partner of a multi-disciplinary partnership who is an Australian legal practitioner holding an unrestricted practising certificate;

“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;

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“professional obligations” of an Australian legal practitioner includes –

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

“related body corporate” means –

- (a) in relation to a company within the meaning of the *Corporations Act 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.

Division 2 – Incorporated legal practices

112. Nature of incorporated legal practice

- (1) An incorporated legal practice is a corporation that engages in legal practice in this jurisdiction,

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whether or not it also provides services that are not legal services.

- (2) However, a corporation is not an incorporated legal practice if –
- (a) the 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 an Australian legal practitioner and that are provided by an officer or employee who is not an Australian legal practitioner; or
 - (c) the corporation is a complying community legal centre; or
 - (d) this Part or the regulations so provide.
- (3) The regulations may make provision for or with respect to the application (with or without specified modifications) of provisions of this Act

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to corporations that are not incorporated legal practices because of the operation of subsection (2).

- (4) Nothing in this Part affects or applies to the provision by an incorporated legal practice of legal services in one or more other jurisdictions.

113. Non-legal services and businesses of incorporated legal practices

- (1) An incorporated legal practice may provide any service and conduct any business that the corporation may lawfully provide or conduct, except as provided by this section.
- (2) An incorporated legal practice (or a related body corporate) must not conduct a managed investment scheme.
- (3) The regulations may prohibit an incorporated legal practice (or a related body corporate) from providing a service or conducting a business of a kind specified by the regulations.

114. Corporations eligible to be incorporated legal practices

- (1) Any corporation is, subject to this Part, eligible to be an incorporated legal practice.
- (2) This section does not authorise a corporation to provide legal services if the corporation is prohibited from doing so by any Act or law

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(whether of this jurisdiction, the Commonwealth or any other jurisdiction) under which it is incorporated or its affairs are regulated.

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

115. 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 prescribed authority written notice, in the approved form, of its intention to do so.
- (2) A corporation must not engage in legal practice in this jurisdiction if it is in default of this section.

Penalty: Fine not exceeding 500 penalty units.

- (3) A corporation that starts to engage in legal practice in this jurisdiction without giving a notice under subsection (1) is in default of this section until it gives the prescribed authority written notice, in the approved form, of the failure to comply with that subsection and the fact that it has started to engage in legal practice.
- (4) The giving of a notice under subsection (3) does not affect a corporation's liability under subsection (1) or (2).
- (5) A corporation is not entitled to recover any amount for anything the corporation did in contravention of subsection (2).

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- (6) A person may recover from a corporation, as a debt due to the person, any amount the person paid to or at the direction of the corporation for anything the corporation did in contravention of subsection (2).
- (7) This section does not apply to a corporation referred to in section 112(2)(a) or (b).

116. Prohibition on representations that corporation is incorporated legal practice

- (1) A corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under section 115.

Penalty: Fine not exceeding 500 penalty units.

- (2) A director, officer, employee or agent of a corporation must not, without reasonable excuse, represent or advertise that the corporation is an incorporated legal practice unless a notice in relation to the corporation has been given under section 115.

Penalty: Fine not exceeding 100 penalty units.

- (3) A reference in this section to a person, being –
 - (a) a corporation, representing or advertising that the corporation is an incorporated legal practice; or

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- (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.

117. 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 prescribed authority a written notice, in the approved form, of that fact.

Penalty: Fine not exceeding 50 penalty units.

- (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.

118. Incorporated legal practice must have legal practitioner director

- (1) An incorporated legal practice is required to have at least one legal practitioner director.
- (2) Each legal practitioner director of an incorporated legal practice is, for the purposes of this Act only, responsible for the management of

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the legal services provided in this jurisdiction by the incorporated legal practice.

- (3) Each legal practitioner director of an incorporated legal practice must ensure that appropriate management systems are implemented and maintained to enable the provision of legal services by the incorporated legal practice –
 - (a) in accordance with the professional obligations of Australian legal practitioners and other obligations imposed by or under this Act, the regulations or the legal profession rules; and
 - (b) so that those obligations of Australian legal practitioners who are officers or employees of the practice are not affected by other officers or employees of the practice.
- (4) If it ought reasonably to be apparent to a legal practitioner director of an incorporated legal practice that the provision of legal services by the practice will result in breaches of the professional obligations of Australian legal practitioners or other obligations imposed by or under this Act, the regulations or the legal profession rules, the director must take all reasonable action available to the director to ensure that –
 - (a) the breaches do not occur; and

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- (b) appropriate remedial action is taken in respect of breaches that do occur.
- (5) Nothing in this Part derogates from the obligations or liabilities of a director of an incorporated legal practice under any other law.
- (6) The reference in subsection (1) to a legal practitioner director does not include a reference to a person who is not validly appointed as a director, but this subsection does not affect the meaning of the expression “legal practitioner director” in other provisions of this Act.

119. Obligations of legal practitioner director relating to misconduct

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

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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 subsection (1) if the director establishes that he or she took all reasonable steps to ensure that –

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

as the case requires.

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

120. Incorporated legal practice without legal practitioner director

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

Penalty: Fine not exceeding 500 penalty units.

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

Penalty: Fine not exceeding 500 penalty units.

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

Penalty: Fine not exceeding 100 penalty units.

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

- (a) it has at least one legal practitioner director; or
- (b) a person is appointed under this section or a corresponding law in relation to the practice.

- (5) The prescribed authority may, if it thinks it appropriate, appoint an Australian legal

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practitioner who is an employee of the incorporated legal practice or another person nominated by the prescribed authority, in the absence of a legal practitioner director, to perform or exercise functions or powers imposed or conferred on a legal practitioner director under this Part.

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

121. Obligations and privileges of practitioners who are officers or employees

- (1) An Australian legal practitioner who provides legal services on behalf of an incorporated legal practice in the capacity of an officer or employee of the practice –
 - (a) is not excused from compliance with professional obligations as an Australian legal practitioner, or any obligations as an Australian legal practitioner under any law; and
 - (b) does not lose the professional privileges of an Australian legal practitioner.
- (2) For the purposes only of subsection (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 one legal practitioner director of an incorporated legal practice, the practice were a sole practitioner and the employees of the practice were employees of the legal practitioner director.

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- (3) The law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because an Australian legal practitioner is acting in the capacity of an officer or employee of an incorporated legal practice.
- (4) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by an Australian legal practitioner employed by the practice.

122. Conflicts of interest

- (1) For the purposes of the application of any law (including the common law) or legal profession rules relating to conflicts of interest to the conduct of an Australian legal practitioner who is –
 - (a) a legal practitioner director of an incorporated legal practice; or
 - (b) an officer or employee of an incorporated legal practice –

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

- (2) Legal profession rules may be made for or with respect to additional duties and obligations in

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connection with conflicts of interest arising out of the conduct of an incorporated legal practice.

Note. Under section 121 (Obligations and privileges of practitioners who are officers or employees), an Australian legal practitioner who is an officer or employee of an incorporated legal practice must comply with the same professional obligations as other practitioners.

123. Disclosure obligations

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

Penalty: Fine not exceeding 50 penalty units.

- (3) The disclosure must be made by giving the person a notice in writing –
 - (a) setting out the services to be provided;
and

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- (b) stating whether or not all the legal services to be provided will be provided by an Australian legal practitioner; and
- (c) if some or all of the legal services to be provided will not be provided by an Australian legal practitioner, identifying those services and indicating the status or qualifications of the person or persons who will provide the services; and

Note. For example, the person might be a licensed conveyancer. However, this paragraph would not apply in a case where a law applying in the jurisdiction prohibits a particular legal service from being provided by a person who is not an Australian legal practitioner.

- (d) stating that this Act applies to the provision of legal services but not to the provision of the non-legal services.
- (4) The regulations may make provision for or with respect to the following matters:
- (a) the manner in which a disclosure is to be made;
 - (b) additional matters required to be disclosed in connection with the provision of legal services or non-legal services by an incorporated legal practice.
- (5) Without limiting subsection (4), the additional matters may include the kind of services provided by the incorporated legal practice and

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whether those services are or are not covered by the insurance or other provisions of this Act.

- (6) A disclosure under this section to a person about the provision of legal services may relate to the provision of legal services on one occasion or on more than one occasion or on an on-going basis.

124. Effect of non-disclosure of provision of certain services

- (1) This section applies if –
- (a) section 123 applies in relation to a service that is provided to a person who has engaged an incorporated legal practice to provide the service and that the person might reasonably assume to be a legal service; and
 - (b) a disclosure has not been made under that section in relation to the service.
- (2) The standard of care owed by the incorporated legal practice in respect of the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

125. Application of legal profession rules

Legal profession rules, so far as they apply to Australian legal practitioners, also apply to Australian legal practitioners who are officers or

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employees of an incorporated legal practice,
unless the rules otherwise provide.

126. Requirements relating to advertising

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

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

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

128. Sharing of receipts, revenue or other income

- (1) Nothing in this Act, the regulations or the legal profession rules prevents an Australian legal practitioner from sharing with an incorporated legal practice receipts, revenue or other income arising from the provision of legal services by the practitioner.
- (2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 129, and has effect subject to section 89 (Holders of local practising certificates as barristers).

129. Disqualified persons

- (1) An incorporated legal practice is guilty of an offence if a person who is a disqualified person –
 - (a) is an officer or employee of the incorporated legal practice (whether or not the person provides legal services) or is an officer or employee of a related body corporate; or
 - (b) is a partner of the incorporated legal practice in a business that includes the provision of legal services; or
 - (c) shares the receipts, revenue or other income arising from the provision of legal services by the incorporated legal practice; or

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

Penalty: Fine not exceeding 100 penalty units.

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

130. Audit of incorporated legal practices

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

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Note. Section 118(3) (Incorporated legal practice must have legal practitioner director) requires legal practitioner directors to ensure that appropriate management systems are implemented and maintained.

- (2) The prescribed authority may appoint, in writing, a suitably qualified person to conduct the audit.
- (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 an Australian lawyer 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 prescribed authority or to the prescribed authority (as the case may be); and
 - (c) may be provided by the prescribed authority to a corresponding authority; and
 - (d) may be provided by the prescribed authority to the Board; and
 - (e) may be taken into account in connection with any disciplinary proceedings taken against legal practitioner directors or other persons or in connection with the

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grant, amendment, suspension or
cancellation of Australian practising
certificates.

131. Application of Chapter 6

Chapter 6 (Investigatory Powers) applies to an
audit under this Division.

132. Banning of incorporated legal practices

- (1) The Supreme Court may, on the application of the prescribed authority, make an order disqualifying a corporation from providing legal services in this jurisdiction for the period the Court considers appropriate if satisfied that –
 - (a) a ground for disqualifying the corporation under this section has been established; and
 - (b) the disqualification is justified.
- (2) An order under this section may, if the Supreme Court thinks it appropriate, be made –
 - (a) subject to conditions as to the conduct of the incorporated legal practice; or
 - (b) subject to conditions as to when or in what circumstances the order is to take effect; or

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- (c) together with orders to safeguard the interests of clients or employees of the incorporated legal practice.
- (3) Action may be taken against an incorporated legal practice on any of the following grounds:
 - (a) that a legal practitioner director or an Australian legal practitioner who is a officer or employee of the corporation is found guilty of professional misconduct under a law of this jurisdiction or another jurisdiction;
 - (b) that the prescribed authority is satisfied, after conducting an audit of the incorporated legal practice, that the incorporated legal practice has failed to implement satisfactory management and supervision of its provision of legal services;
 - (c) that the incorporated legal practice (or a related body corporate) has contravened section 113 (Non-legal services and businesses of incorporated legal practices) or the regulations made under that section;
 - (d) that the incorporated legal practice has contravened section 129 (Disqualified persons);
 - (e) that a person who is an officer of the incorporated legal practice and who is the subject of an order under –

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- (i) section 133 or under provisions of a corresponding law that correspond to that section; or
- (ii) section 158 (Prohibition on partnerships with certain partners who are not Australian legal practitioners) or under provisions of a corresponding law that correspond to that section –

is acting in the management of the incorporated legal practice.

- (4) If a corporation is disqualified under this section, the prescribed authority must, as soon as practicable, notify the corresponding authority of every other jurisdiction.
- (5) If a corporation is disqualified from providing legal services in another jurisdiction under a corresponding law, the prescribed authority may determine that the corporation is taken to be disqualified from providing legal services in this jurisdiction for the same period, but nothing in this subsection prevents the prescribed authority from instead applying for an order under this section.
- (6) A corporation that provides legal services in contravention of a disqualification under this section is guilty of an offence.

Penalty: Fine not exceeding 500 penalty units.

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- (7) A corporation that is disqualified under this section ceases to be an incorporated legal practice.
- (8) Conduct of an Australian legal practitioner who provides legal services on behalf of a corporation in the capacity of an officer or employee of the corporation is capable of constituting unsatisfactory professional conduct or professional misconduct where the practitioner ought reasonably to have known that the corporation is disqualified under this section.
- (9) The regulations may make provision for or with respect to the publication and notification of orders made under this section, including notification of appropriate authorities of other jurisdictions.

133. Disqualification from managing incorporated legal practice

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

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- (b) the disqualification is justified.
- (2) The Supreme Court may, on the application of a person subject to a disqualification order under this section, revoke the order.
 - (3) A disqualification order made under this section 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 section.
 - (5) A person who is disqualified from managing a corporation under provisions of a corresponding law that correspond to this section is taken to be disqualified from managing a corporation under this section.

134. Disclosure of information to Australian Securities and Investments Commission

- (1) This section applies if the prescribed authority, in connection with performing functions or exercising powers under this Act, acquired information concerning a corporation that is or was an incorporated legal practice.
- (2) The prescribed authority may disclose to the Australian Securities and Investments Commission information concerning the corporation that is relevant to the Commission's functions.

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

135. External administration proceedings under *Corporations Act 2001* of the Commonwealth

- (1) This section 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 prescribed authority and Board 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.

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- (4) Subsection (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 subsections (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.

136. External administration proceedings under other legislation

- (1) This section applies to proceedings for the external administration (however expressed) of an incorporated legal practice, but does not apply to proceedings to which section 135 applies.
- (2) The prescribed authority and Board 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

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the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice.

- (4) Subsection (3) does not authorise the court to make any decision that is contrary to a specific provision of any legislation applicable to the incorporated legal practice.

137. Incorporated legal practice that is subject to receivership under this Act and external administration under *Corporations Act 2001* of the Commonwealth

- (1) This section applies if an incorporated legal practice is the subject of both –
- (a) the appointment of a Chapter 5 receiver; and
 - (b) the appointment of a Corporations Act administrator.
- (2) The Chapter 5 receiver is under a duty to notify the Corporations Act administrator of the appointment of the Chapter 5 receiver, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.
- (3) The Chapter 5 receiver or the Corporations Act administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers,

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except where proceedings referred to in section 135 (External administration proceedings under *Corporations Act 2001* of the Commonwealth) have been commenced.

- (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the Chapter 5 receiver or the Corporations Act administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out or acting in accordance with the orders.
- (5) The Board is entitled to intervene in the proceedings, unless the Supreme Court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) The provisions of subsections (3) and (4) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapter 5 of that Act.
- (7) In this section –

“Chapter 5 receiver” means a receiver appointed under Part 5.5 of this Act;

“Corporations Act administrator” means –

- (a) a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed

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administrator appointed under the
Corporations Act 2001 of the
Commonwealth; or

- (b) a person who is appointed to
exercise powers under that Act
and who is prescribed, or is of a
class prescribed, by the
regulations for the purposes of
this definition.

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

- (1) This section applies if an incorporated legal
practice is the subject of both –
 - (a) the appointment of a Chapter 5 receiver;
and
 - (b) the appointment of an external
administrator.
- (2) The Chapter 5 receiver is under a duty to notify
the external administrator of the appointment of
the Chapter 5 receiver, whether the appointment
precedes, follows or is contemporaneous with
the appointment of the external administrator.
- (3) The Chapter 5 receiver or the external
administrator (or both of them jointly) may
apply to the Supreme Court for the resolution of
issues arising from or in connection with the
dual appointments and their respective powers.

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- (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the Chapter 5 receiver or the external administrator for any act or omission done by the receiver or administrator in good faith for the purpose of carrying out, or acting in accordance with, the orders.
- (5) The prescribed authority and Board are entitled to intervene in the proceedings, unless the Supreme Court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (6) In this section –

“Chapter 5 receiver” means a receiver appointed under Part 5.5 of this Act;

“external administrator” means a person who is appointed to exercise powers under other legislation (whether or not of this jurisdiction) and who is prescribed, or is of a class prescribed, by the regulations for the purposes of this definition.

139. Co-operation between courts

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

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140. 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.

141. Relationship of Act to legislation establishing incorporated legal practice

- (1) This section applies to a corporation that is established by or under a law (whether or not of this jurisdiction) and 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.

142. 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.

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- (2) The regulations may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 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 section –
- “matter”** includes act, omission, body, person or thing.

143. 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

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- (b) another Australian legal practitioner who provides legal services on behalf of an incorporated legal practice –

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

Penalty: Fine not exceeding 100 penalty units.

Division 3 – Multi-disciplinary partnerships

144. Nature of multi-disciplinary partnership

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

145. Conduct of multi-disciplinary partnerships

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

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

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

Penalty: Fine not exceeding 50 penalty units.

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147. General obligations of legal practitioner partners

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

148. Obligations of legal practitioner partner relating to misconduct

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

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

149. Actions of partner who is not an Australian legal practitioner

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

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

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

150. Obligations and privileges of practitioners who are partners or employees

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

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obligations as an Australian legal practitioner under any law; and

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

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

151. Conflicts of interest

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

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

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

the interests of the partnership or any partner of the multi-disciplinary partnership are also taken to be those of the practitioner concerned (in addition to any interests that the practitioner has apart from this subsection).

(2) Legal profession rules may be made for or with respect to additional duties and obligations in connection with conflicts of interest arising out

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of the conduct of a multi-disciplinary partnership.

152. Disclosure obligations

- (1) This section applies if a person engages a multi-disciplinary partnership to provide services that the person might reasonably assume to be legal services.
- (2) Each legal practitioner partner of the multi-disciplinary partnership, and any employee of the partnership who is an Australian legal practitioner and who provides the services on behalf of the partnership, must ensure that a disclosure, complying with the requirements of this section and the regulations made for the purposes of this section, is made to the person in connection with the provision of the services.

Penalty: Fine not exceeding 50 penalty units.

- (3) The disclosure must be made by giving the person a notice in writing –
 - (a) setting out the services to be provided; and
 - (b) stating whether or not all the legal services to be provided will be provided by an Australian legal practitioner; and
 - (c) if some or all of the legal services to be provided will not be provided by an Australian legal practitioner, identifying those services and indicating the status or

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qualifications of the person or persons
who will provide the services; and

Note. For example, the person might be a licensed conveyancer. However, this paragraph would not apply in a case where a law applying in the jurisdiction prohibits a particular legal service from being provided by a person who is not an Australian legal practitioner.

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

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153. Effect of non-disclosure of provision of certain services

- (1) This section applies if –
 - (a) section 152 applies in relation to a service that is provided to a person who has engaged a multi-disciplinary partnership to provide the service and that the person might reasonably assume to be a legal service; and
 - (b) a disclosure has not been made under that section in relation to the service.
- (2) The standard of care owed by the multi-disciplinary partnership in respect of the service is the standard that would be applicable if the service had been provided by an Australian legal practitioner.

154. Application of legal profession rules

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

155. Requirements relating to advertising

- (1) Any restriction imposed by or under this or any other Act, the regulations or the legal profession

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rules in connection with advertising by Australian legal practitioners applies to advertising by a multi-disciplinary partnership with respect to the provision of legal services.

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

156. Sharing of receipts, revenue or other income

- (1) Nothing in this Act, the regulations or the legal profession rules prevents a legal practitioner partner, or an Australian legal practitioner who is an employee of a multi-disciplinary partnership, from sharing receipts, revenue or other income arising from the provision of legal services by the partner or practitioner with a partner or

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partners who are not Australian legal practitioners.

- (2) This section does not extend to the sharing of receipts, revenue or other income in contravention of section 157, and has effect subject to section 89 (Holders of local practising certificates as barristers).

157. Disqualified persons

A legal practitioner partner of a multi-disciplinary partnership must not knowingly –

- (a) be a partner of a disqualified person in the multi-disciplinary partnership; or
- (b) share with a disqualified person the receipts, revenue or other income arising from the provision of legal services by the multi-disciplinary partnership; or
- (c) employ or pay a disqualified person in connection with the provision of legal services by the multi-disciplinary partnership.

Penalty: Fine not exceeding 100 penalty units.

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

- (1) This section applies to a person who –

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

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- (4) The death of an Australian legal practitioner does not prevent an application being made for, or the making of, an order under this section in relation to a person who was a partner of the practitioner.
- (5) The regulations may make provision for or with respect to the publication and notification of orders made under this section.

159. Undue influence

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

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

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

Penalty: Fine not exceeding 100 penalty units.

Division 4 – Miscellaneous

160. Obligations of individual practitioners not affected

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

- (a) a legal practitioner director or an Australian legal practitioner who is an employee of an incorporated legal practice; or
- (b) a legal practitioner partner or an Australian legal practitioner who is an employee of a multi-disciplinary partnership; or
- (c) an Australian legal practitioner who is an officer or employee of, or whose services are used by, a complying community legal centre –

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

161. Regulations

- (1) The regulations may make provision for or with respect to the following matters:
 - (a) the legal services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships;

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- (b) other services provided by incorporated legal practices or legal practitioner partners or employees of multi-disciplinary partnerships in circumstances where a conflict of interest relating to the provision of legal services may arise.
- (2) A regulation prevails over any inconsistent provision of the legal profession rules.
- (3) A regulation may provide that a breach of the regulations is capable of constituting unsatisfactory professional conduct or professional misconduct –
 - (a) in the case of an incorporated legal practice, by a legal practitioner director, or by an Australian legal practitioner responsible for the breach, or both; or
 - (b) in the case of a multi-disciplinary partnership, by a legal practitioner partner, or by an Australian legal practitioner responsible for the breach, or both.

PART 2.6 – LEGAL PRACTICE BY FOREIGN LAWYERS

Division 1 – Preliminary

162. Purpose

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

163. Definitions

In this Part –

“**Australia**” includes the external Territories;

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

“**domestic registration authority**” means the prescribed authority;

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

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

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

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

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

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

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

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Note. The terms Australian-registered foreign lawyer, foreign country, interstate-registered foreign lawyer and locally registered foreign lawyer are defined in section 4 (Interpretation).

164. This Part does not apply to Australian legal practitioners

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

Division 2 – Practice of foreign law

165. Requirement for registration

- (1) A person must not practise foreign law in this jurisdiction unless the person is –
 - (a) an Australian-registered foreign lawyer;
or
 - (b) an Australian legal practitioner.

Penalty: Fine not exceeding 200 penalty units.

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(2) However, a person does not contravene subsection (1) if the person is an overseas-registered foreign lawyer –

(a) who –

(i) practises foreign law in this jurisdiction for one or more periods that do not in aggregate exceed 90 days in any period of 12 months; or

(ii) is subject to a restriction imposed under the *Migration Act 1958* of the Commonwealth that has the effect of limiting the period during which work may be done, or business transacted, in Australia by the person; and

(b) who –

(i) does not maintain an office for the purpose of practising foreign law in this jurisdiction; or

(ii) does not become a partner or director of a law practice.

166. Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction

An Australian-registered foreign lawyer is, subject to this Act, entitled to practise foreign law in this jurisdiction.

167. Scope of practice

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

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

168. Form of practice

- (1) An Australian-registered foreign lawyer may (subject to any conditions attaching to the foreign lawyer's registration) practise foreign law –
- (a) on the foreign lawyer's own account; or
 - (b) in partnership with one or more Australian-registered foreign lawyers or one or more Australian legal practitioners, or both, in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the partnership would be permitted under a law of this jurisdiction; or
 - (c) as a director or employee of an incorporated legal practice or a partner or employee of a multi-disciplinary

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partnership that is permitted by a law of this jurisdiction; or

(d) as an employee of an Australian legal practitioner or law firm in circumstances where, if the Australian-registered foreign lawyer were an Australian legal practitioner, the employment would be permitted under a law of this jurisdiction; or

(e) as an employee of an Australian-registered foreign lawyer.

(2) An affiliation referred to in subsection (1)(b), (c), (d) or (e) does not entitle the Australian-registered foreign lawyer to practise Australian law in this jurisdiction.

169. Application of Australian professional ethical and practice standards

(1) An Australian-registered foreign lawyer must not engage in any conduct in practising foreign law that would, if the conduct were engaged in by an Australian legal practitioner in practising Australian law in this jurisdiction, be capable of constituting professional misconduct or unsatisfactory professional conduct.

(2) Chapter 4 (Complaints and discipline) applies to a person who –

(a) is an Australian-registered foreign lawyer; or

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- (b) was an Australian-registered foreign lawyer when the relevant conduct allegedly occurred, but is no longer an Australian-registered foreign lawyer (in which case Chapter 4 applies as if the person were an Australian-registered foreign lawyer) –

and so applies as if references in Chapter 4 to an Australian legal practitioner were references to a person of that kind.

- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of Chapter 4 for the purposes of this section.
- (4) Without limiting the matters that may be taken into account in determining whether a person should be disciplined for a contravention of subsection (1), the following matters may be taken into account:
 - (a) whether the conduct of the person was consistent with the standard of professional conduct of the legal profession in any foreign country where the person is registered;
 - (b) whether the person contravened the subsection wilfully or without reasonable excuse.
- (5) Without limiting any other provision of this section or the orders that may be made under Chapter 4 as applied by this section, the

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following orders may be made under that Chapter as applied by this section:

- (a) an order that a person's registration under this Act as a foreign lawyer be cancelled;
- (b) an order that a person's registration under a corresponding law as a foreign lawyer be cancelled.

170. Designation

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

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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 domestic registration authority with acceptable evidence that the lawyer is a principal of the foreign law practice.
- (3) An Australian-registered foreign lawyer who is a principal of a foreign law practice may use the name of the practice as referred to in this section whether or not other principals of the practice are Australian-registered foreign lawyers.
- (4) This section does not authorise the use of a name or other designation that contravenes any requirements of the law of this jurisdiction concerning the use of business names or that is likely to lead to any confusion with the name of any established domestic law practice or foreign law practice in this jurisdiction.

171. Letterhead and other identifying documents

- (1) An Australian-registered foreign lawyer must indicate, in each public document distributed by the lawyer in connection with the lawyer's practice of foreign law, the fact that the lawyer is an Australian-registered foreign lawyer and is restricted to the practice of foreign law.
- (2) Subsection (1) is satisfied if the lawyer includes in the public document the words –
 - (a) “registered foreign lawyer” or “registered foreign practitioner”; and
 - (b) “entitled to practise foreign law only”.
- (3) An Australian-registered foreign lawyer may (but need not) include any or all of the following in any public document:
 - (a) an indication of all foreign countries in which the lawyer is registered to engage in legal practice;
 - (b) a description of himself or herself, and any law practice with which the lawyer is affiliated or associated, in any of the ways designated in section 170.
- (4) In this section –

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

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172. Advertising

- (1) An Australian-registered foreign lawyer is required to comply with any advertising restrictions imposed by the domestic registration authority 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 subsection (1), an Australian-registered foreign lawyer must not advertise (or use any description on the lawyer's letterhead or any other document used in this jurisdiction to identify the lawyer as a lawyer) in any way that –
 - (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.

173. Foreign lawyer employing Australian legal practitioner

- (1) An Australian-registered foreign lawyer may employ one or more Australian legal practitioners.
- (2) Employment of an Australian legal practitioner does not entitle an Australian-registered foreign

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lawyer to practise Australian law in this jurisdiction.

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

174. Trust money and trust accounts

- (1) The provisions of Part 3.2 (Trust money and trust accounts), and any other provisions of this Act, the regulations or any legal profession rule

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relating to requirements for trust money and trust accounts, apply (subject to this section) to Australian-registered foreign lawyers in the same way as they apply to law practices and Australian legal practitioners.

- (2) In this section, a reference to money is not limited to a reference to money in this jurisdiction.
- (3) The regulations may make provision with respect to the application (with or without modification) of the provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts for the purposes of this section.

175. Professional indemnity insurance

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

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- (i) must have professional indemnity insurance that covers the practice of foreign law in this jurisdiction and that complies with the relevant requirements of a foreign law or foreign registration authority; and
 - (ii) if the insurance is for less than \$1.5 million (inclusive of defence costs), must provide a disclosure statement to each client disclosing the level of cover;
 - (c) if the foreign lawyer does not have professional indemnity insurance that complies with paragraph (a) or (b), the foreign lawyer must provide a disclosure statement to each client stating that the lawyer does not have complying professional indemnity insurance.
- (2) A disclosure statement must be made in writing before, or as soon as practicable after, the foreign lawyer is retained in the matter.
 - (3) A disclosure statement provided to a person before the foreign lawyer is retained in a matter is taken to be provided to the person as a client for the purposes of this section.
 - (4) A disclosure statement is not valid unless it is given in accordance with, and otherwise complies with, any applicable requirements of the regulations.

176. Guarantee Fund

The regulations may provide that provisions of Part 3.5 (Solicitors' Guarantee Fund) apply to prescribed classes of Australian-registered foreign lawyers and so apply with any modifications specified in the regulations.

Division 3 – Local registration of foreign lawyers generally

177. Local registration of foreign lawyers

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

178. Duration of registration

- (1) Registration as a foreign lawyer granted under this Act is in force from the day 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 –

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- (a) continues in force on and from that 1 July until the domestic registration authority renews or refuses to renew the registration or the holder withdraws the application for renewal, unless the registration is sooner suspended or cancelled; and
- (b) if renewed, is taken to have been renewed on and from that 1 July.

179. Locally registered foreign lawyer is not officer of Supreme Court

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

Division 4 – Applications for grant or renewal of local registration

180. Application for grant or renewal of registration

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

181. Manner of application

- (1) An application for the grant or renewal of registration as a foreign lawyer must be –
 - (a) made in the approved form; and

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- (b) accompanied by the prescribed fees.
- (2) Different fees may be set according to different factors determined by the domestic registration authority.
- (3) The fees are not to be greater than the maximum fees for a local practising certificate.
- (4) The domestic registration authority may also require the applicant to pay any reasonable costs and expenses incurred by the domestic registration authority in considering the application, including (for example) costs and expenses of making inquiries and obtaining information or documents about whether the applicant meets the criteria for registration.
- (5) The fees and costs must not include any component for compulsory membership of any professional association.
- (6) The approved form may require the applicant to disclose –
 - (a) matters that may affect the domestic registration authority's consideration of the application for the grant or renewal of registration; and
 - (b) particulars of any offences for which the applicant has been convicted in Australia or a foreign country, whether before or after the commencement of this section.

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- (7) The approved form may indicate that convictions of a particular kind need not be disclosed for the purposes of the current application.
 - (8) The approved form may indicate that specified kinds of matters or particulars previously disclosed in a particular manner need not be disclosed for the purposes of the current application.

182. Requirements regarding applications for grant or renewal of registration

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

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

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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 domestic registration authority 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 section 175(1) (Professional indemnity insurance) 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

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provided by the domestic registration authority.

- (3) The application must (if the domestic registration authority 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 domestic registration authority so requires) certify in the application that the accompanying instrument is the original or a complete and accurate copy of the original.
- (5) The domestic registration authority may require the applicant to verify the statements in the application by statutory declaration or by other proof acceptable to the authority.

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- (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 domestic registration authority.

Division 5 – Grant or renewal of registration

183. Grant or renewal of registration

- (1) The domestic registration authority 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 domestic registration authority may, when granting or renewing registration, impose conditions as referred to in section 203 (Conditions imposed by domestic registration authority).
- (3) If the domestic registration authority grants or renews registration, the authority must, as soon as practicable, give the applicant a registration certificate or a notice of renewal.
- (4) If the domestic registration authority –
- (a) refuses to grant or renew registration; or

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- (b) imposes a condition on the registration and the applicant does not agree to the condition –

the authority 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 domestic registration authority considers appropriate.
- (6) The domestic registration authority must advise the Board of the decision to –
 - (a) grant or refuse to grant the registration;
or
 - (b) renew or refuse to renew the registration;
or
 - (c) impose any conditions on the grant or renewal of registration –

and any reasons for the decision.

184. Requirement to grant or renew registration if criteria satisfied

- (1) The domestic registration authority must grant an application for registration as a foreign lawyer if the authority –
 - (a) is satisfied the applicant is registered to engage in legal practice in one or more

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foreign countries and is not an Australian legal practitioner; and

- (b) considers an effective system exists for regulating engaging in legal practice in one or more of the foreign countries; and
- (c) considers the applicant is not, as a result of criminal, civil or disciplinary proceedings in any of the foreign countries, subject to –
 - (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 domestic registration authority refuses the application under this Part.

- (2) The domestic registration authority must grant an application for renewal of a person's registration, unless the authority refuses renewal under this Part.

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- (3) Residence or domicile in this jurisdiction is not to be a prerequisite for or a factor in entitlement to the grant or renewal of registration.

185. Refusal to grant or renew registration

- (1) The domestic registration authority may refuse to consider an application if it is not made in accordance with this Act or the regulations.
- (2) The domestic registration authority may refuse to grant or renew registration if –
 - (a) the application is not accompanied by, or does not contain, the information required by this Part or prescribed by the regulations; or
 - (b) the applicant has contravened this Act or a corresponding law; or
 - (c) the applicant has contravened an order of the Board, 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 Guarantee Fund; or

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- (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 domestic registration authority 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 domestic registration authority may refuse to grant registration if the authority 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 section; and
 - (b) how long ago the offence was committed; and

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- (c) the person's age when the offence was committed.
- (5) The domestic registration authority may refuse to renew registration if the authority 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 section, other than an offence disclosed in a previous application to the domestic registration authority; and
 - (b) how long ago the offence was committed; and
 - (c) the person's age when the offence was committed.
- (6) The domestic registration authority may refuse to grant or renew registration on any ground on which registration could be suspended or cancelled.
- (7) If the domestic registration authority refuses to grant or renew registration, the authority must, as soon as practicable, give the applicant an information notice.
- (8) Nothing in this section affects the operation of Division 7 (Special powers in relation to local registration – show cause events).

- (9) The domestic registration authority must advise the Board of any refusal to grant or renew registration under this section and the reasons for the refusal.

Division 6 – Amendment, suspension or cancellation of local registration

186. Application of this Division

This Division does not apply in relation to matters referred to in Division 7 (Special powers in relation to local registration – show cause events).

187. Grounds for amending, suspending or cancelling registration

- (1) Each of the following is a ground for amending, suspending or cancelling a person's registration as a foreign lawyer:
- (a) the registration was obtained because of incorrect or misleading information;
 - (b) the person fails to comply with a requirement of this Part;
 - (c) the person fails to comply with a condition imposed on the person's registration;
 - (d) the person becomes the subject of disciplinary proceedings in Australia or a

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

- (i) an overseas-registered foreign lawyer; or
 - (ii) an Australian-registered foreign lawyer; or
 - (iii) an Australian lawyer;
- (e) the person has been convicted of an offence in Australia or a foreign country;
- (f) the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action in Australia or a foreign country;
- (g) the person does not meet the requirements of section 175 (Professional indemnity insurance);
- (h) another ground the domestic registration authority considers sufficient.
- (2) Subsection (1) does not limit the grounds on which conditions may be imposed on registration as a foreign lawyer under section 203 (Conditions imposed by domestic registration authority).

188. Amending, suspending or cancelling registration

- (1) If the domestic registration authority considers reasonable grounds exist to amend, suspend or cancel a person's registration by it as a foreign lawyer (the "**action**"), the authority 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 authority's belief; and
 - (d) invites the person to make written representations to the authority, within a specified time of 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 domestic registration authority still believes grounds exist to take the action, the authority may –

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- (a) if the notice under subsection (1) stated the action proposed was to amend the registration, amend the registration in the way specified or in another way the authority 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 authority considers appropriate because of the representations.
- (3) The domestic registration authority may, at its discretion, consider representations made after the specified time.
- (4) The domestic registration authority must give the person notice of the authority's decision.
- (5) If the domestic registration authority amends, suspends or cancels the registration, the authority must give the person an information notice about the decision.

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(6) In this section –

“amend” registration means amend the registration under section 203 (Conditions imposed by domestic registration authority) during its currency, otherwise than at the request of the foreign lawyer concerned.

(7) The domestic registration authority must advise the Board of –

- (a) the amendment, suspension or cancellation of a person’s registration as a foreign lawyer; and
- (b) any reasons for that amendment, suspension or cancellation.

189. Operation of amendment, suspension or cancellation of registration

- (1) This section applies if a decision is made to amend, suspend or cancel a person’s registration under section 188.
- (2) Subject to subsections (3) and (4), the amendment, suspension or cancellation of the 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.

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- (3) If the registration is amended, suspended or cancelled because the person has been convicted of an offence –
 - (a) the Supreme Court may, on the application of the person, order that the operation of the amendment, suspension or cancellation of the registration be stayed until –
 - (i) the end of the time to appeal against the 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.

190. Other ways of amending or cancelling registration

- (1) This section applies if –
- (a) a locally registered foreign lawyer requests the domestic registration authority to amend or cancel the registration and the authority proposes to give effect to the request; or
 - (b) the domestic registration authority 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 domestic registration authority may amend or cancel the registration as referred to in subsection (1) by written notice given to the lawyer, and section 188 (Amending, suspending or cancelling registration) does not apply in that case.
- (3) The domestic registration authority must advise the Board of any amendment or cancellation under this section and the reasons for the amendment or cancellation of the registration.

191. Relationship of this Division with Chapter 4

Nothing in this Division prevents a complaint from being made under Chapter 4 (Complaints

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and discipline) about a matter to which this Division relates.

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

192. Applicant for local registration – show cause event

- (1) This section applies if –
 - (a) a person is applying for registration as a foreign lawyer under this Act; and
 - (b) a show cause event in relation to the person happened, whether before or after the commencement of this section, after the person first became an overseas-registered foreign lawyer.
- (2) As part of the application, the person must provide to the domestic registration authority 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 himself or herself to be a fit and proper person to be a locally registered foreign lawyer.
- (3) However, the person need not provide a statement under subsection (2) if the person has previously provided to the domestic registration authority a statement under this section, or a notice and statement under section 193

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explaining why, despite the show cause event, the person considers himself or herself to be a fit and proper person to be a locally registered foreign lawyer.

193. Locally registered foreign lawyer – show cause event

- (1) This section applies to a show cause event that happens in relation to a locally registered foreign lawyer.
- (2) The locally registered foreign lawyer must provide to the domestic registration authority 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 himself or herself to be a fit and proper person to be a locally registered foreign lawyer.
- (3) If a written statement is provided after the period mentioned in subsection (2)(b), the domestic registration authority may accept the statement and take it into consideration.

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194. Refusal, amendment, suspension or cancellation of local registration – failure to show cause

- (1) The domestic registration authority may refuse to grant or renew, or may amend, suspend or cancel, local registration if the applicant for registration or the locally registered foreign lawyer –
 - (a) is required by section 192 or section 193 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 192 or section 193 but the domestic registration authority does not consider that the applicant or foreign lawyer has shown in the statement that, despite the show cause event concerned, he or she is a fit and proper person to be a locally registered foreign lawyer.
- (2) For the purposes of this section only, a written statement accepted by the domestic registration authority under section 193(3) is taken to have been provided in accordance with section 193.
- (3) The domestic registration authority must give the applicant or foreign lawyer an information notice about the decision to refuse to grant or renew, or to amend, suspend or cancel, the registration.
- (4) The domestic registration authority must advise the Board of any refusal, amendment, suspension

or cancellation of local registration of a locally registered foreign lawyer under this section and the reasons for the refusal, amendment, suspension or cancellation.

195. Restriction on making further applications

- (1) If the domestic registration authority determines under this Division to cancel a person's registration, the authority may also determine that the person is not entitled to apply for registration under this Part 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 section, or under a provision of a corresponding law that corresponds to this section, is not entitled to apply for registration under this Part during the period specified in the determination.
- (3) If the domestic registration authority makes a determination under this section, the authority must, as soon as practicable, give the applicant an information notice.
- (4) The domestic registration authority must advise the Board of any determination under this section and the reasons for the determination.

196. Relationship of this Division with Chapter 4

Nothing in this Division prevents a complaint from being made under Chapter 4 (Complaints

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and Discipline) about a matter to which this Division relates.

Division 8 – Further provisions relating to local registration

197. Immediate suspension of registration

- (1) This section applies, despite section 188 (Amending, suspending or cancelling registration) and section 189 (Operation of amendment, suspension or cancellation of registration) if the domestic registration authority considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer.
- (2) The domestic registration authority may, by written notice given to the person, immediately suspend the registration until the earlier of the following:
 - (a) the time at which the authority informs the person of the authority's decision by notice under section 188;
 - (b) the end of the period of 56 days after the notice is given to the person under this section.
- (3) The notice under this section must state –
 - (a) the reasons for the suspension; and
 - (b) that the person may make written representations to the authority about the suspension; and

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- (c) that the person may appeal against the suspension to the Supreme Court within 28 days after the date of the notice.
 - (4) The person may make written representations to the domestic registration authority about the suspension, and the authority must consider the representations.
 - (5) The domestic registration authority may revoke the suspension at any time, whether or not in response to any written representations made to it by the person.
 - (6) The domestic registration authority must advise the Board of an immediate suspension of registration under this section and the reasons for that suspension.

198. Surrender of local registration certificate and cancellation of registration

- (1) A person registered as a foreign lawyer under this Part may surrender the local registration certificate to the domestic registration authority.
- (2) The domestic registration authority may cancel the registration after the certificate has been surrendered under subsection (1).
- (3) The domestic registration authority must advise the Board of the surrender of a local registration certificate and cancellation of registration under this section.

199. Automatic cancellation of registration on grant of practising certificate

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

200. Suspension or cancellation of registration not to affect disciplinary processes

The suspension or cancellation of a person's registration as a foreign lawyer under this Part does not affect any disciplinary processes in respect of matters arising before the suspension or cancellation.

201. Return of local registration certificate on amendment, suspension or cancellation of registration

- (1) This section applies if a person's registration under this Part as a foreign lawyer is amended, suspended or cancelled.
- (2) The domestic registration authority may give the person a notice requiring the person to return the local registration certificate to the authority 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.

Penalty: Fine not exceeding 20 penalty units.

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- (4) If the registration is amended, the domestic registration authority must return the local registration certificate to the person as soon as practicable after amending it.

Division 9 – Conditions on registration

202. Conditions generally

Registration as a foreign lawyer under this Part is subject to –

- (a) any conditions imposed by the domestic registration authority; and
- (b) any statutory conditions imposed by this or any other Act; and
- (c) any conditions imposed by or under the legal profession rules or the regulations; and
- (d) any conditions imposed under Chapter 4 (Complaints and discipline) or under provisions of a corresponding law that correspond to Chapter 4; and
- (e) any conditions imposed by the Supreme Court under section 204.

203. Conditions imposed by domestic registration authority

- (1) The domestic registration authority may impose conditions on registration as a foreign lawyer –

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- (a) when it is granted or renewed; or
 - (b) during its currency.
- (2) A condition imposed under this section must be reasonable and relevant.
- (3) A condition imposed under this section may be about any of the following:
 - (a) any matter in respect of which a condition could be imposed on a local practising certificate;
 - (b) a matter agreed to by the foreign lawyer.
- (4) The domestic registration authority must not impose a condition under subsection (3)(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.
- (5) The domestic registration authority may vary or revoke conditions imposed by it under this section.
- (6) The domestic registration authority must advise the Board of any imposition, variation or revocation of a condition on the local registration certificate of a foreign lawyer under this section and the reasons for the imposition, variation or revocation.

204. Imposition or variation of conditions pending criminal proceedings

- (1) If a person registered as a foreign lawyer under this Part has been charged with a relevant offence but the charge has not been determined, the domestic registration authority may apply to the Supreme Court for an order under this section.
- (2) On an application under subsection (1), the Supreme Court, if it considers it appropriate to do so having regard to the seriousness of the offence and to the public interest, may make any or all of the following orders:
 - (a) an order varying the conditions on the registration;
 - (b) an order imposing further conditions on the registration;
 - (c) any other order that it thinks appropriate.
- (3) An order under this section has effect until the sooner of –
 - (a) the end of the period specified by the Supreme Court; or
 - (b) if the foreign lawyer is convicted of the offence, 28 days after the day of the conviction; or
 - (c) if the charge is dismissed, the day of the dismissal.

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- (4) The Supreme Court, on application by any party, may vary or revoke an order under this section at any time.
- (5) The domestic registration authority must advise the Board of any order made by the Supreme Court under this section.
- (6) In this section –

“relevant offence” means a serious offence or an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under this Act.

205. 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 domestic registration authority 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.

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- (2) The legal profession rules may specify the form of the notice to be used and the person to whom or the address to which it is to be sent or delivered.
 - (3) This section does not apply to an offence to which Division 7 (Special powers in relation to local registration – show cause events) applies.

206. 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 on the registration of any class of foreign lawyers.

207. Compliance with conditions

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

Penalty: Fine not exceeding 100 penalty units.

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Division 10 – Interstate-registered foreign lawyers

208. Extent of entitlement of interstate-registered foreign lawyer to practise in this jurisdiction

- (1) This Part does not authorise an interstate-registered foreign lawyer to practise foreign law in this jurisdiction to a greater extent than a locally registered foreign lawyer could be authorised under a local registration certificate.
- (2) Also, an interstate-registered foreign lawyer's right to practise foreign law in this jurisdiction –
 - (a) is subject to –
 - (i) any conditions imposed by the domestic registration authority under section 209; and
 - (ii) any conditions imposed by or under the legal profession rules as referred to in that section; and
 - (b) is, to the greatest practicable extent and with all necessary changes –
 - (i) the same as the interstate-registered foreign lawyer's right to practise foreign law in the lawyer's home jurisdiction; and
 - (ii) subject to any condition on the interstate-registered foreign lawyer's right to practise foreign law in that jurisdiction.

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- (3) If there is an inconsistency between conditions mentioned in subsection (2)(a) and conditions mentioned in subsection (2)(b), the conditions that are, in the opinion of the domestic registration authority, 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 section.
 - (5) The domestic registration authority must advise the Board of any additional conditions imposed on the practice of an interstate-registered foreign lawyer and the reasons for the imposition of those conditions.

209. Additional conditions on practice of interstate-registered foreign lawyers

- (1) The domestic registration authority 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.

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- (3) Conditions imposed under or referred to in this section must not be more onerous than conditions applying to locally registered foreign lawyers in the same or similar circumstances.
- (4) A notice under this section must include an information notice about the decision to impose a condition.
- (5) The domestic registration authority must advise the Board of any additional conditions imposed on the practice of an interstate-registered foreign lawyer and the reasons for the imposition of those conditions.

Division 11 – Miscellaneous

210. Consideration and investigation of applicants and locally registered foreign lawyers

- (1) To help it consider whether or not to grant, renew, amend, suspend or cancel registration under this Part, or impose conditions on a person's registration under this Part, the domestic registration authority may, by notice to the applicant or locally registered foreign lawyer, require the applicant or locally registered foreign lawyer –
 - (a) to give it specified documents or information; or
 - (b) to co-operate with any inquiries that it considers appropriate.

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- (2) A failure to comply with a notice under subsection (1) by the date specified in the notice and in the way required by the notice is a ground for making an adverse decision in relation to the action being considered by the domestic registration authority.

211. Register of locally registered foreign lawyers

- (1) The Board 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 Board decides.
- (4) The Board may publish, in circumstances that it considers appropriate, the names of persons kept on the register and any other information included in the register concerning those persons that it considers appropriate.
- (5) The register must be available for inspection, without charge, at the Board’s office during normal business hours.
- (6) The Board is to make the register available to the domestic registration authority.

212. Publication of information about locally registered foreign lawyers

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

213. Supreme Court orders about conditions

- (1) The domestic registration authority may apply to the Supreme Court for an order that an Australian-registered foreign lawyer not contravene a condition imposed under this Part.
- (2) The Supreme Court may make any order it considers appropriate on the application.

214. Exemption by domestic registration authority

- (1) The domestic registration authority 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.

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- (3) The domestic registration authority may revoke or vary any conditions imposed under this section or impose new conditions.
 - (4) The domestic registration authority must advise the Board of any exemption under this section and the reasons for the exemption.

215. Membership of professional association

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

216. Refund of fees

- (1) The regulations may provide for the refund of a portion of a fee paid in respect of registration as a foreign lawyer if it is suspended or cancelled during its currency.
- (2) Without limiting subsection (1), the regulations may specify –
 - (a) the circumstances in which a refund is to be made; and
 - (b) the amount of the refund or the manner in which the amount of the refund is to be determined.

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217. Appeals

- (1) If the domestic registration authority –
 - (a) refuses to grant or renew the registration of a person as a foreign lawyer; or
 - (b) amends, suspends or cancels a person's registration as a foreign lawyer; or
 - (c) takes any action under Divisions 4 and 5 of Part 3.2 –

the foreign lawyer may appeal to the Supreme Court against the refusal, amendment, suspension, cancellation or action taken.
- (2) The Supreme Court may make such an order in the matter as it thinks fit.

PART 2.7 – COMMUNITY LEGAL CENTRES

218. Community legal centres

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

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income (if any) from which cannot or will not be distributed to any member or employee of the centre otherwise than by way of reasonable remuneration under a contract of service or for services; and

(iv) that are funded or expected to be funded to a significant level by donations or by grants from government, charitable or other organisations; and

(c) at least one of the persons who is employed or otherwise used by it to provide those legal services is an Australian legal practitioner and is generally responsible for the provision of those legal services (whether or not the person has an unrestricted practising certificate).

(2) An organisation, whether incorporated or not, may be prescribed as a complying community legal centre for the purposes of this Act.

(3) A complying community legal centre does not contravene this Act merely because –

(a) it employs, or otherwise uses the services of, Australian legal practitioners to provide legal services to members of the public; or

(b) it has a contractual relationship with a member of the public to whom those

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legal services are provided or receives any fee, gain or reward for providing those legal services; or

- (c) it shares with an Australian legal practitioner employed or otherwise used by it to provide those legal services, receipts, revenue or other income arising from the business of the centre, being business of a kind usually conducted by an Australian legal practitioner; or
- (d) it adopts or uses the word “legal” or a name, description or title referred to in section 15 (Presumptions about taking or using name, title or description specified in regulations) (or some related term) in its name or any registered business name under which it provides legal services to members of the public.

(4) This section has effect despite anything to the contrary in this Act.

(5) The regulations may make provision for or with respect to –

- (a) the application (with or without specified modifications) of provisions of this Act to complying community legal centres; and
- (b) the legal services provided by complying community legal centres or officers or employees of, or persons whose services are used by, complying community legal centres.

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- (6) A regulation may provide that a breach of the regulations is capable of constituting unsatisfactory professional conduct or professional misconduct by, in the case of a complying community legal centre, an Australian legal practitioner responsible for the breach.

219. Application of legal profession rules

Legal profession rules, so far as they apply to Australian legal practitioners, also apply to Australian legal practitioners who are officers or employees of, or whose services are used by, a complying community legal centre, unless the rules otherwise provide.

CHAPTER 3 – CONDUCT OF LEGAL PRACTICE

PART 3.1 – LEGAL PROFESSION RULES

Division 1 – Preliminary

220. Purpose

The purpose of this Part is to promote the maintenance of high standards of professional conduct by Australian legal practitioners and Australian-registered foreign lawyers by providing for the making and enforcement of rules of professional conduct that apply to them when they practise in this jurisdiction.

Division 2 – Rules for Australian legal practitioners and Australian-registered foreign lawyers

221. Rules for Australian legal practitioners

The prescribed authority may make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners.

222. Rules for Australian-registered foreign lawyers

The prescribed authority may make rules about engaging in legal practice in this jurisdiction as an Australian-registered foreign lawyer.

223. Subject matter of legal profession rules

- (1) Legal profession rules for Australian legal practitioners or Australian-registered foreign lawyers may make provision about any aspect of legal practice, including standards of conduct expected of practitioners or lawyers to whom the rules apply.
- (2) The power to make rules is not limited to any matters for which this Act specifically authorises the making of legal profession rules.

224. Prior consultation with professional associations and Board

- (1) If the prescribed authority proposes to make legal profession rules under this Part, it must consult with the Board and any relevant professional association before publishing notice of the proposed rules under section 225.
- (2) In this section –

“professional association” means the Law Society, the Tasmanian Bar Association, the Tasmanian Independent Bar or other prescribed body.

225. Public notice of proposed legal profession rules

- (1) The prescribed authority proposing to make legal profession rules under this Division must ensure that a notice is published, in the *Gazette* and in

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each of the daily newspapers published and circulating in this jurisdiction –

- (a) explaining the object of the proposed rule; and
 - (b) advising where or how a copy of the proposed rule may be accessed, obtained or inspected; and
 - (c) inviting comments and submissions within a specified period of not less than 21 days from the date of first publication of the notice.
- (2) The prescribed authority must ensure that a copy of the proposed rule is given to the Minister and the Board before the notice is published.
- (3) The prescribed authority must not make the rule before the end of the period specified in the notice for making comments and submissions and must ensure that any comments and submissions received within that period are appropriately considered.
- (4) However, the prescribed authority may make the rule before the end of the period specified in the notice for making comments and submissions if –
 - (a) the prescribed authority considers that the urgency of the case warrants immediate action; and

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- (b) the notice indicates that the prescribed authority is of that view and intends to act immediately.
- (5) Subsections (1), (2), (3) and (4) do not apply to a proposed rule that the Minister considers does not warrant publication because of its minor or technical nature.

Division 3 – Rules for incorporated legal practices and multi-disciplinary partnerships

226. Rules

- (1) The Board may make legal profession rules for or with respect to the following matters:
 - (a) the provision of legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, and in particular the provision of legal services by –
 - (i) officers or employees of incorporated legal practices; or
 - (ii) partners or employees of multi-disciplinary partnerships;
 - (b) the provision of services that are not legal services by or in connection with incorporated legal practices or multi-disciplinary partnerships, but only if the provision of those services by –

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- (i) officers or employees of incorporated legal practices; or
- (ii) partners or employees of multi-disciplinary partnerships –

may give rise to a conflict of interest relating to the provision of legal services.

- (2) Without limiting subsection (1), legal profession rules may be made for or with respect to professional obligations relating to legal services provided by or in connection with incorporated legal practices or multi-disciplinary partnerships.
- (3) However, the legal profession rules cannot –
 - (a) regulate any services that an incorporated legal practice may provide or conduct (other than the provision of legal services, or other services that may give rise to a conflict of interest relating to the provision of legal services); or
 - (b) regulate or prohibit the conduct of officers or employees of an incorporated legal practice (other than in connection with the provision of legal services, or other services that may give rise to a conflict of interest relating to the provision of legal services); or
 - (c) regulate any services that a multi-disciplinary partnership or partners or employees of a multi-disciplinary partnership may provide or conduct (other than the provision of legal

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services, or other services that may give rise to a conflict of interest relating to the provision of legal services); or

- (d) regulate or prohibit the conduct of partners or employees of a multi-disciplinary partnership (other than in connection with the provision of legal services, or other services that may give rise to a conflict of interest relating to the provision of legal services).

- (4) The power to make rules is not limited to any matters for which this Act specifically authorises the making of legal profession rules.

Division 4 – General

227. Binding nature of legal profession rules

- (1) Legal profession rules are binding on Australian legal practitioners and Australian-registered foreign lawyers to whom they apply.
- (2) Failure to comply with legal profession rules is capable of constituting unsatisfactory professional conduct or professional misconduct.

228. Availability of rules

The prescribed authority must ensure that the legal profession rules are available for public inspection (including on its internet site, if any,

or on any other internet site determined by the prescribed authority).

229. Rule-making procedure

Legal profession rules made under this Part are –

- (a) statutory rules within the meaning of the *Rules Publication Act 1953*; and
- (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

PART 3.2 – TRUST MONEY AND TRUST ACCOUNTS

Division 1 – Preliminary

230. Purposes

The purposes of this Part are as follows:

- (a) to ensure trust money is held by law practices in a way that protects the interests of persons for or on whose behalf money is held, both inside and outside this jurisdiction;
- (b) to minimise compliance requirements for law practices that provide legal services within and outside this jurisdiction;
- (c) to ensure the prescribed authority can work effectively with corresponding authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

231. Interpretation

(1) In this Part –

“deposit record” includes a deposit slip or duplicate deposit slip;

“external examination” means an external examination under Division 5 of a law practice’s trust records;

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“external examiner” means a person holding an appointment as an external examiner under Division 5;

“investigation” means an investigation under Division 4 of the affairs of a law practice;

“investigator” means a person holding an appointment as an investigator under Division 4;

“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 money” means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, and includes –

- (a) money received by the practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the practice; and

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- (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;

“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;

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- (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 Part to a law practice's trust account or trust records includes a reference to an associate's trust account or trust records.
- (3) A reference in this Part to a power given to a law practice or an associate of the practice to deal with money for or on behalf of another person is a reference to a power given to the practice or associate that is exercisable by –
- (a) the practice alone; or

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- (b) an associate of the practice alone (otherwise than in a private and personal capacity); or
- (c) the practice or an associate of the practice jointly or severally, or jointly and severally, with either or both of the following:
 - (i) one or more associates of the practice;
 - (ii) the person, or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

232. Money involved in financial services or investments

- (1) Money that is entrusted to or held by a law practice for or in connection with –
 - (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not such a licence is held at any relevant time); or
 - (b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or

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associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time) –

is not trust money for the purposes of this Act.

- (2) Without limiting subsection (1), money that is entrusted to or held by a law practice for or in connection with –
- (a) a managed investment scheme; or
 - (b) mortgage financing; or
 - (c) a mortgage investment scheme –

undertaken by the practice is not trust money for the purposes of this Act.

- (3) Without limiting subsections (1) and (2), money that is entrusted to or held by a law practice for investment purposes, whether on its own account or as agent, is not trust money for the purposes of this Act, unless –
- (a) the money was entrusted to or held by the practice –
 - (i) in the ordinary course of legal practice; and
 - (ii) primarily in connection with the provision of legal services to or at the direction of the client; and

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- (b) the investment is or is to be made –
 - (i) in the ordinary course of legal practice; and
 - (ii) for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

(4) In this section –

“Australian financial services licence”, “authorised representative”, “financial service” and “financial services business” have the same meanings as in Chapter 7 of the *Corporations Act 2001* of the Commonwealth.

233. Determinations about status of money

- (1) This section applies to money received by a law practice if the prescribed authority considers that there is doubt or a dispute as to whether the money is trust money.
- (2) The prescribed authority may determine that the money is or is not trust money.
- (3) The prescribed authority may revoke or modify a determination under this section.

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- (4) While a determination under this section is in force that money is trust money, the money is taken to be trust money for the purposes of this Act.
 - (5) While a determination under this section is in force that money is not trust money, the money is taken not to be trust money for the purposes of this Act.
 - (6) This section has effect subject to a decision of a court made in relation to the money concerned.

234. Application of Part to law practices and trust money

- (1) This Part applies to the following law practices in respect of trust money received by them in this jurisdiction:
 - (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.

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- (2) This Part applies to the following law practices in respect of trust money received by them in another jurisdiction:
- (a) a law practice that has an office in this jurisdiction and in no other jurisdiction;
 - (b) a law practice that has an office in this jurisdiction and in one or more other jurisdictions but not in the jurisdiction in which the trust money was received, unless the money is dealt with in accordance with the corresponding law of another jurisdiction.
- (3) However, this Part does not apply to –
- (a) prescribed law practices or classes of law practices; or
 - (b) prescribed law practices or classes of law practices in prescribed circumstances; or
 - (c) prescribed kinds of trust money; or
 - (d) prescribed kinds of trust money in prescribed circumstances.
- (4) A reference in this section to having an office in a jurisdiction is a reference to having, or engaging in legal practice from, an office or business address in the jurisdiction.

Note. Section 174 (Trust money and trust accounts) applies this Part to Australian-registered foreign lawyers.

235. Protocols for determining where trust money is received

- (1) The prescribed authority may enter into arrangements (referred to in this Part as protocols) with corresponding authorities about any or all of the following:
 - (a) determining the jurisdiction where a law practice receives trust money;
 - (b) sharing information about whether, and (if so) how, trust money is being dealt with under this Act or a corresponding law.
- (2) For the purposes of this Act, to the extent that the protocols are relevant, the jurisdiction where a law practice receives trust money is to be determined in accordance with the protocols.
- (3) The prescribed authority may enter into arrangements that amend, revoke or replace a protocol.
- (4) A protocol does not have effect in this jurisdiction unless it is adopted in the regulations.

236. 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

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- (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.

237. 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;

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- (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 352 (Deposit of trust money into designated trust deposit account);
 - (g) an action of a kind prescribed by the regulations.
- (2) If the legal practitioner associate maintains a trust account in relation to trust money received by the law practice, the provisions of this Part and the regulations made for the purposes of this Part apply to the associate in the same way as they apply to a law practice.
- (3) Subsection (1) does not apply to the extent that the associate is prevented by the regulations from taking any action referred to in that subsection.

238. Liability of principals of law practice

- (1) A provision of this Part or the regulations made for the purposes of this Part expressed as imposing an obligation on a law practice imposes the same obligation on the principals of the law practice jointly and severally, but

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discharge of the practice's obligation also discharges the corresponding obligation imposed on the principals.

- (2) References in this Part and the regulations made for the purposes of this Part to a law practice include references to the principals of the law practice.

239. Former practices, principals and associates

This Part applies in relation to former law practices and former principals and associates of law practices in relation to conduct occurring while they were respectively law practices, principals and associates in the same way as it applies to law practices, principals and associates, and so applies with any necessary modifications.

240. Barristers not to receive money on behalf of other person

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

Division 2 – Trust accounts and trust money

241. Maintenance of general trust account

- (1) A law practice that receives trust money to which this Part applies must maintain a general trust account in this jurisdiction.

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Penalty: Fine not exceeding 100 penalty units.

- (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.

Penalty: Fine not exceeding 100 penalty units.

- (3) Subsection (1) does not apply to a law practice in respect of any period during which the practice receives or holds only either or both of the following:
- (a) controlled money;
 - (b) transit money received in a form other than cash.
- (4) Subject to any requirements of the regulations, a requirement of this section 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 one general trust account in this jurisdiction, whether during the same period or during different periods.
- (5) Without limiting the other provisions of this section, the regulations may provide that a law practice must not close a general trust account except as permitted by the regulations, either generally or in any prescribed circumstances.

242. Certain trust money to be deposited in general trust account

- (1) Subject to section 249 (Trust money received in the form of cash), 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.

Penalty: Fine not exceeding 100 penalty units.

- (2) Subject to section 249, a law practice that has received money that is the subject of a written direction mentioned in subsection (1)(a) must deal with the money in accordance with the direction –
- (a) within the period (if any) specified in the direction; or
 - (b) subject to paragraph (a), as soon as practicable after it is received.

Penalty: Fine not exceeding 100 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

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

243. 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.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (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.

Penalty: Fine not exceeding 50 penalty units.

244. 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.

Penalty: Fine not exceeding 50 penalty units.

- (2) Without limiting subsection (1), the following are specifically prohibited:
- (a) cash withdrawals;
 - (b) ATM withdrawals or transfers;
 - (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (4) This section has effect despite anything to the contrary in any directions given to the law practice 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.

245. 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.

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Penalty: Fine not exceeding 50 penalty units.

- (2) The law practice must hold controlled money deposited in a controlled money account in accordance with subsection (1) exclusively for the person on whose behalf it was received.

Penalty: Fine not exceeding 50 penalty units.

- (3) The law practice that holds controlled money deposited in a controlled money account in accordance with subsection (1) must not disburse the money except in accordance with –

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

Penalty: Fine not exceeding 50 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

- (6) The law practice must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the

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person referred to in subsection (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent that the regulations otherwise permit.

Penalty: Fine not exceeding 50 penalty units.

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

246. 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.

Penalty: Fine not exceeding 30 penalty units.

- (2) Without limiting subsection (1) the following are specifically prohibited:
- (a) cash withdrawals;
 - (b) ATM withdrawals or transfers;
 - (c) telephone banking withdrawals or transfers.
- (3) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.

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- (4) This section has effect despite anything to the contrary in any directions given to the law practice concerned, even if the directions are given by a person who is otherwise legally entitled to give the law practice directions in respect of dealings with the controlled money.

247. Transit money

- (1) Subject to section 249, a law practice that has received transit money must pay or deliver the money as required by the instructions relating to the money –
- (a) within the period (if any) specified in the instructions; or
 - (b) subject to paragraph (a), as soon as practicable after it is received.

Penalty: Fine not exceeding 50 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

248. Trust money subject to specific powers

- (1) Subject to section 249, 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

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only in accordance with the power relating to the money.

Penalty: Fine not exceeding 50 penalty units.

- (2) The law practice must account for the money in the way prescribed by the regulations.

Penalty: Fine not exceeding 50 penalty units.

249. Trust money received in the form of cash

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

Penalty: Fine not exceeding 50 penalty units.

- (2) If the law practice has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the practice –

- (a) the money must nevertheless be deposited in a general trust account of the practice in accordance with subsection (1); and
- (b) the money is thereafter to be dealt with in accordance with any applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).

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- (3) Controlled money received in the form of cash must be deposited in a controlled money account in accordance with section 245.
- (4) A law practice must deposit transit money received in the form of cash in a general trust account of the practice before the money is otherwise dealt with in accordance with the instructions relating to the money.

Penalty: Fine not exceeding 50 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

- (6) This section has effect despite anything to the contrary in any relevant direction, instruction or power.
- (7) In this section –

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

“general trust money” means trust money, other than –

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- (a) controlled money; and
- (b) transit money; and
- (c) money that is the subject of a power.

250. 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 section does not apply to money to which a law practice or associate is entitled.

251. Intermixing money

- (1) A law practice must not, otherwise than as permitted by subsection (2), mix trust money with other money.

Penalty: Fine not exceeding 50 penalty units.

- (2) A law practice is permitted to mix trust money with other money to the extent only that is authorised by the prescribed authority and in accordance with any conditions imposed by the

prescribed authority in relation to the authorisation.

252. 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 section 258 (Unclaimed money).
- (2) Subsection (1) applies despite any other provision of this Part but has effect subject to Part 3.3 (Costs disclosure and assessment).

253. Deficiency in trust account

- (1) An Australian 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.

Penalty: Fine not exceeding 200 penalty units.

- (2) A reference in subsection (1) to an account includes a reference to an account of the practitioner or of the law practice of which the practitioner is an associate.
- (3) In this section –

“**cause**” includes be responsible for;

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

254. 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

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associate must give written notice of the irregularity to –

- (a) the prescribed authority; and
- (b) if a corresponding authority is responsible for the regulation of the accounts concerned, the corresponding authority.

Penalty: Fine not exceeding 50 penalty units.

- (2) If an Australian legal practitioner believes on reasonable grounds that there is an irregularity in connection with the receipt, recording or disbursement of any trust money received by a law practice of which the practitioner is not a legal practitioner associate, the practitioner must, as soon as practicable after forming the belief, give written notice of it to –

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

Penalty: Fine not exceeding 50 penalty units.

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

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

255. Keeping trust records

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

Penalty: Fine not exceeding 100 penalty units.

- (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.

Penalty: Fine not exceeding 100 penalty units.

256. 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.

Penalty: Fine not exceeding 100 penalty units.

- (2) If a person on whose behalf trust money is received by a law practice is commonly known by more than one name, the practice must ensure that the practice's trust records record all names by which the person is known.

Penalty: Fine not exceeding 100 penalty units.

Division 3 – Unclaimed money

257. Register of unclaimed money

- (1) A law practice must keep a register of any unclaimed money in its trust account.
- (2) A register is to specify the following details relating to each amount of unclaimed money:
- (a) the name and address of the person entitled to that unclaimed money;
 - (b) the total amount due to that person;
 - (c) the description of that unclaimed money;
 - (d) the date of the last claim.

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- (3) A law practice must, on or before the last day of January in each year, lodge a copy of the register with the Trust.
- (4) On receipt of the copy of the register, the Trust is to cause the information referred to in subsection (2) to be published in the *Gazette* and in the daily newspapers published and circulating in Tasmania.
- (5) A law practice must make available the register at all reasonable times to any person for inspection at the office from which the law practice normally carries on business.

258. Unclaimed money

- (1) If a law practice holding money in a trust account cannot find the person on whose behalf the money is held or a person authorised to receive it, the practice may, after a period of 2 years after the date on which the entitlement to the money accrued –
 - (a) pay the money into a trust deposit account established by the Trust under section 636 (Trust deposit accounts); and
 - (b) provide the Trust with such information as the Trust requires, in relation to the money and the person on whose behalf the money was held by the practice, within 7 days of that payment.

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- (2) If a law practice pays money into a trust deposit account under subsection (1), the practice is relieved from any further liability in relation to the money.
 - (3) The Trust may pay any interest or income arising from any unclaimed money invested by it under section 637 (Application of funds in trust deposit accounts) into the Guarantee Fund.
 - (4) The Trust, with the approval in writing of the Minister, may use any unclaimed money to find any person entitled to that money.
 - (5) The Trust, if of the view that the cost of finding a person is likely to exhaust the whole or a substantial part of the unclaimed money, may pay the money into the Guarantee Fund.
 - (6) Payment of unclaimed money (or balance thereof) to a person who has satisfied the Trust as to their entitlement to the money –
 - (a) discharges the Trust from any liability in relation to the money; and
 - (b) does not discharge the person from any liability to another person who establishes a right to the money.
 - (7) The Trust may require any person to provide information that the person has, or can obtain, about the entitlement of a person to unclaimed money paid to the Trust under this section and attempts made to locate the person.

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- (8) A person of whom a requirement is made under subsection (7) –
 - (a) must comply with the requirement; and
 - (b) must not, in purported compliance with the requirement, give information that he or she knows is false or misleading in a material particular.

Penalty: Fine not exceeding 20 penalty units.

259. Claims for unclaimed money

- (1) A person who claims to be entitled to any unclaimed money paid into a trust deposit account pursuant to section 258(1)(a) may make an application to the Trust for the payment of that money.
- (2) If the Trust is satisfied that a person making an application in relation to unclaimed money is entitled to the payment of that money, the Trust may pay the money to that person.
- (3) A payment of unclaimed money may, if the Trust so decides, include such interest or income arising from the investment of that money as the Trust may determine.
- (4) The Trust is to pay into the Guarantee Fund any money that remains unclaimed 12 months after the date of publication of a copy of a register under section 257.

Division 4 – Investigations

260. Appointment of investigators

- (1) The prescribed authority 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.
- (3) An investigator may, with the approval of the prescribed authority, appoint an assistant.
- (4) The prescribed authority must advise the Board of an appointment of an investigator under this Division and the reasons for the appointment.

261. 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 property, trust accounts or any other aspect of the affairs of the law practice.
- (2) The principal purposes of an investigation are –

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- (a) to ascertain whether the law practice has complied with or is complying with –
 - (i) the requirements of this Part and the regulations under this Part; and
 - (ii) any relevant legal profession rules; and
- (b) to detect and prevent fraud or defalcation –

but this subsection does not limit the scope of the investigation or the powers of the investigator.

262. Application of Chapter 6

Chapter 6 (Investigatory powers) applies to an investigation under this Division.

263. Investigator's report

- (1) As soon as practicable after completing an investigation, the investigator must give a written report of the investigation to the prescribed authority.
- (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

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- (b) as is necessary for properly conducting the investigation and making the report of the investigation; or
- (c) as provided in section 587 (Permitted disclosure of confidential information); or
- (d) to the Board.

Penalty: Fine not exceeding 50 penalty units.

- (3) The prescribed authority must give a copy of the investigator's report to the Board.

264. 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 default, within the meaning of Part 3.5 (Solicitors' Guarantee Fund), has occurred in relation to the law practice whose affairs are under investigation; and
- (b) the prescribed authority is satisfied that the breach or default is wilful or of a substantial nature –

the prescribed authority may decide that the whole or part of the costs of carrying out the investigation is payable, by the law practice

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whose affairs have been subject to investigation, to the prescribed authority and may specify the amount payable.

- (2) The amount specified by the prescribed authority is a debt owing to the prescribed authority by the law practice whose affairs have been investigated.

Division 5 – External examinations

265. Designation of external examiners

- (1) The prescribed authority 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 by a law practice as external examiners.
- (3) A person appointed as an external examiner may, with the approval of the prescribed authority, appoint an assistant.
- (4) An employee or agent of the prescribed authority may be a designated person.
- (5) The prescribed authority may revoke a person’s designation under this section.

266. Trust records to be externally examined

- (1) A law practice must at least once in each financial year have its trust records examined by

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an external examiner appointed in accordance with the regulations.

Penalty: Fine not exceeding 100 penalty units.

- (2) The prescribed authority may appoint an external examiner to examine a law practice's trust records if the prescribed authority is not satisfied –
 - (a) that the practice has had its trust records examined as required by this section; or
 - (b) that an examination of the practice's trust records has been carried out in accordance with the regulations.
- (3) Without affecting the generality of section 281 (Regulations), this section 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 section.

267. 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) If the law practice is an incorporated legal practice or multi-disciplinary partnership, the reference in subsection (1) to the affairs of the

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law practice extends to the affairs of the incorporated legal practice or multi-disciplinary partnership or of an associate, so far as they are relevant to trust money, trust records and associated matters.

- (3) A reference in this Division to “**trust records**” includes a reference to the affairs of a law practice that may be examined under this section for the purposes of and in connection with an examination of the practice’s trust records.

268. Designation and appointment of associates as external examiners

- (1) The prescribed authority may designate an associate of a law practice under this Division only if the prescribed authority 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.

269. Final examination of trust records

- (1) This section applies if a law practice –
- (a) ceases to be authorised to receive trust money; or
 - (b) ceases to engage in legal practice in this jurisdiction.

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- (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.

Penalty: Fine not exceeding 50 penalty units.

- (3) The law practice must lodge with the prescribed authority –
- (a) a report of each examination under subsection (2) within 60 days after the end of the period to which the examination relates; and
 - (b) a statutory declaration in the approved form within 60 days of ceasing to hold trust money.

Penalty: Fine not exceeding 20 penalty units.

- (4) If an Australian legal practitioner dies, the practitioner's legal personal representative must comply with this section as if the representative were the practitioner.
- (5) Nothing in this section affects any other requirements under this Part.

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270. Carrying out examination

- (1) Chapter 6 (Investigatory powers) applies to an external examination under this Division.
- (2) Subject to Chapter 6, an external examination of trust records is to be carried out in accordance with the regulations.
- (3) Without limiting subsection (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.

271. External examiner's report

- (1) As soon as practicable after completing an external examination, an external examiner must give a written report of the examination to the prescribed authority.
- (2) The examiner must not disclose information in the report or acquired in carrying out the examination, unless permitted to do so under subsection (3) or under section 587 (Permitted disclosure of confidential information) or if otherwise required to do so by law.

Penalty: Fine not exceeding 20 penalty units.

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- (3) 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 under this Act; or
 - (c) to the law practice concerned or an associate of the law practice; or
 - (d) to the Board.
- (4) The prescribed authority must give a copy of the written report to the Board.

272. 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 prescribed authority appointed the external examiner to carry out the examination, the prescribed authority 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 prescribed authority must, before seeking to recover the amount payable, give the law practice an information notice about the

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prescribed authority's decision and the amount specified as being payable.

Division 6 – Provisions relating to ADIs

273. Approval of ADIs

- (1) The prescribed authority may approve ADIs at which trust accounts to hold trust money may be maintained.
- (2) The prescribed authority may impose conditions, of the kinds prescribed by the regulations, on an approval under this section, when the approval is given or during the currency of the approval, and may amend or revoke any conditions imposed.
- (3) The prescribed authority may revoke an approval given under this section.

274. 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-

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off, counterclaim, charge or otherwise)
against money in the account.

- (2) Subsection (1) does not relieve an ADI from any liability to which it is subject apart from this Act.

275. Reports, records and information

- (1) An ADI at which a trust account is maintained must report any deficiency in the account to the prescribed authority as soon as practicable after becoming aware of the deficiency.

Penalty: Fine not exceeding 50 penalty units.

- (2) An ADI at which a trust account is maintained must report a suspected offence in relation to the trust account to the prescribed authority as soon as practicable after forming the suspicion.

Penalty: Fine not exceeding 50 penalty units.

- (3) An ADI must furnish to the prescribed authority reports about trust accounts in accordance with the regulations.

Penalty: Fine not exceeding 50 penalty units.

- (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

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- (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 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.

Penalty: Fine not exceeding 50 penalty units.

- (5) Subsections (1), (2), (3) and (4) apply despite any 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 subsection (1); or
 - (b) making or furnishing a report in accordance with subsection (2) or (3); or
 - (c) producing records or providing details in accordance with subsection (4).

Division 7 – Miscellaneous provisions

276. Restrictions on receipt of trust money

- (1) A law practice (other than an incorporated legal practice) must not receive trust money if a

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principal holds an Australian practising certificate which does not authorise the receipt of trust money.

Penalty: Fine not exceeding 200 penalty units.

(2) An incorporated legal practice must not receive trust money unless –

(a) at least one legal practitioner director of the practice holds an Australian practising certificate authorising the receipt of trust money; or

(b) a person is holding an appointment under section 120 (Incorporated legal practice without legal practitioner director) in relation to the practice and the person holds an Australian practising certificate authorising the receipt of trust money; or

(c) the money is received during any period during which the practice –

(i) does not have any legal practitioner directors; and

(ii) is not in default of director requirements under section 120 –

so long as there was, immediately before the start of that period, at least one legal practitioner director of the practice who held an Australian practising certificate authorising the receipt of trust money.

Penalty: Fine not exceeding 200 penalty units.

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277. Application of Part to incorporated legal practices and multi-disciplinary partnerships

- (1) The obligations imposed on law practices by this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts, apply to an incorporated legal practice or multi-disciplinary partnership only in connection with legal services provided by the practice or partnership.
- (2) The regulations may provide that specified provisions of this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts, do not apply to incorporated legal practices or multi-disciplinary partnerships, or both, or apply to them with specified modifications.

278. Application of Part to community legal centres

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust accounts, do not apply to complying community legal centres or apply to them with specified modifications.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act, the regulations or any legal profession rule relating to trust money and trust

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accounts, to a complying community legal centre –

- (a) the obligations and rights of an Australian legal practitioner under those provisions extend to a complying community legal centre that is a body corporate, but only in connection with legal services provided by the centre; and
- (b) money received by an Australian legal practitioner on behalf of another person in the course of practising as an Australian legal practitioner includes money received by any officer or employee of the complying community legal centre on behalf of another person in the course of providing legal services.

(3) In this section –

“**employee**” of a complying community legal centre includes a person whose services are made use of by the community legal centre in connection with the provision of legal services by the centre.

279. Disclosure to clients – money not received or held as trust money

(1) In this section –

“**non-trust money**” means money that is not trust money for the purposes of this Act because of section 232 (Money involved

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in financial services or investments) or because of a determination under section 233 (Determinations about status of money).

- (2) When money entrusted to a law practice is or becomes non-trust money, the practice must, in accordance with this section 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 audit requirements of this Act; and
 - (b) a claim against the Guarantee Fund under this Act cannot be made in respect of the money.

Penalty: Fine not exceeding 50 penalty units.

- (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 section is to be given and the contents of the notification.

280. 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 prescribed authority 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.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) applies whether or not the money is trust money and whether or not section 232 (Money involved in financial services or investments) or section 233 (Determinations about status of money) applies to the money.

281. Regulations

- (1) The regulations may make provision for or with respect to any matter to which this Part 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) –

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- (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 prescribed authority and the Board of information relating directly or indirectly to matters to which this Part relates, including information about –
 - (i) trust accounts, trust money and trust records; and
 - (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

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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 Part.

(2) The regulations may provide for any of the
following:

(a) penalties for offences against the
regulations not exceeding 25 penalty
units for a natural person and 50 penalty
units for a body corporate;

(b) the payment of a prescribed amount
instead of a penalty that may otherwise
be imposed for an offence against this
Part or the regulations;

(c) the service of an infringement notice, in
respect of payment of a prescribed
amount, on a person alleged to have
committed an offence referred to in
paragraph (b) and the particulars to be
included in the notice.

PART 3.3 – COSTS DISCLOSURE AND ASSESSMENT

Division 1 – Preliminary

282. Purposes

The purposes of this Part are as follows:

- (a) to provide for law practices to make disclosures to clients regarding legal costs;
- (b) to regulate the making of costs agreements in respect of legal services, including conditional costs agreements;
- (c) to regulate the billing of costs for legal services;
- (d) to provide a mechanism for the assessment of legal costs and the setting aside of certain costs agreements.

283. Definitions

In this Part –

“business day” means a day other than a Saturday, a Sunday or a statutory holiday within the meaning of the *Statutory Holidays Act 2000*;

“conditional costs agreement” means a costs agreement that provides that the payment of some or all of the legal costs is

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conditional on the successful outcome of the matter to which those costs relate, as referred to in section 307 (Conditional costs agreements), but does not include a costs agreement to the extent to which section 308 (Conditional costs agreements involving uplift fees) or section 309 (Contingency fees prohibited) applies;

“costs agreement” means an agreement about the payment of legal costs;

“costs assessment” means an assessment of legal costs under Division 7;

“costs assessor” means a person who is a taxing officer of the Supreme Court under section 10 of the *Supreme Court Act 1959*;

“disbursements” includes outlays;

“itemised bill” means a bill that specifies in detail how the legal costs are made up in a way that would allow them to be assessed under Division 7;

“litigious matter” means a matter that involves, or is likely to involve, the issue of proceedings in a court or tribunal;

Note. A matter is a litigious matter when proceedings are initiated or at any stage when proceedings are in a court or tribunal.

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“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;

“sophisticated client” means a client to whom, because of section 295(1)(c) or (d), disclosure under section 291 or section 293(1) is not or was not required;

“third party payer” see section 284 (Terms relating to third party payers);

“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.

284. Terms relating to third party payers

(1) For the purposes of this Part –

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- (a) a person is a “**third party payer**”, in relation to a client of a law practice, if the person is not the client and –
 - (i) is under a legal obligation to pay all or any part of the legal costs for legal services provided to the client; or
 - (ii) being under that obligation, has already paid all or a part of those legal costs; and
 - (b) a third party payer is an “**associated third party payer**” if the legal obligation referred to in paragraph (a) is owed to the law practice, whether or not it is also owed to the client or another person; and
 - (c) a third party payer is a “**non-associated third party payer**” if the legal obligation referred to in paragraph (a) is owed to the client or another person but not the law practice.
- (2) The legal obligation referred to in subsection (1) can arise by or under contract or legislation or otherwise.
 - (3) A law practice that retains another law practice on behalf of a client is not on that account a third party payer in relation to that client.

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Division 2 – Application of this Part

285. Application of Part – first instructions rule

This Part applies to a matter if the client first instructs the law practice in relation to the matter in this jurisdiction.

286. Part also applies by agreement or at client's election

(1) This Part applies to a matter if –

(a) either –

(i) this Part does not currently apply to the matter; or

(ii) it is not possible to determine the jurisdiction in which the client first instructs the law practice in relation to the matter; and

(b) either –

(i) the legal services are or will be provided wholly or primarily in this jurisdiction; or

(ii) the matter has a substantial connection with this jurisdiction –

or both; and

(c) either –

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- (i) the client accepts, in writing or by other conduct, a written offer to enter into an agreement under subsection (2)(a) in respect of the matter; or
 - (ii) the client gives a notification under subsection (2)(b) in respect of the matter.
 - (2) For the purposes of subsection (1)(c), the client may –
 - (a) accept, in writing or by other conduct, a written offer that complies with subsection (3) to enter into an agreement with the law practice that this Part is to apply to the matter; or
 - (b) notify the law practice in writing that the client requires this Part to apply to the matter.
 - (3) An offer referred to in subsection (2)(a) must clearly state –
 - (a) that it is an offer to enter into an agreement that this Part is to apply to the matter; and
 - (b) that the client may accept it in writing or by other conduct; and
 - (c) the type of conduct that will constitute acceptance.

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- (4) A notification has no effect for the purposes of subsection (2)(b) if it is given after the period of 28 days after the law practice discloses to the client (under a corresponding law) information about the client's right to make a notification of that kind, but nothing in this subsection prevents an agreement referred to in subsection (2)(a) from coming into effect at any time.

287. Displacement of Part

- (1) This section applies if this Part applies to a matter by the operation of section 285 or 286.
- (2) This Part 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

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corresponding law apply to the matter; or

- (ii) the client notifies under the corresponding law of the other jurisdiction (and within the time allowed by the corresponding law) the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

- (3) Nothing in this section prevents the application of this Part to the matter by means of a later agreement or notification under section 286.

288. How and where does a client first instruct a law practice?

A client first instructs a law practice in relation to a matter in a particular jurisdiction if the law practice first receives instructions from or on behalf of the client in relation to the matter in that jurisdiction, whether in person or by post, telephone, fax, email or other form of communication.

289. How and when does a matter have a substantial connection with this jurisdiction?

The regulations may prescribe the circumstances in which, or the rules to be used to determine whether, a matter has or does not have a

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substantial connection with this jurisdiction for the purposes of this Part.

290. What happens when different laws apply to a matter?

- (1) This section applies if this Part applies to a matter for a period and a corresponding law applies for another period.
- (2) If this Part applied to a matter for a period and a corresponding law applies to the matter afterwards, this Part continues to apply in respect of legal costs (if any) incurred while this Part applied to the matter.
- (3) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not apply in respect of legal costs (if any) incurred while the corresponding law applied to the matter, so long as the corresponding law continues to apply in respect of those costs.
- (4) However –
 - (a) the client may enter into a written agreement with the law practice that the cost assessment provisions of this Part are to apply in respect of all legal costs incurred in relation to the matter, and Division 7 (Costs assessment) accordingly applies in respect of those legal costs; or

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- (b) if the client enters into a written agreement with the law practice that the cost assessment provisions of a corresponding law are to apply in respect of all legal costs incurred in relation to the matter, Division 7 accordingly does not apply in respect of those legal costs.
- (5) A written agreement referred to in subsection (4) need not be signed by the client but in that case the client's acceptance must be communicated to the law practice by fax, email or some other written form.
- (6) If a corresponding law applied to a matter for a period and this Part applies to the matter afterwards, this Part does not require disclosure of any matters to the extent that they have already been disclosed under a corresponding law.
- (7) This section has effect despite any other provisions of this Part.

Division 3 – Costs disclosure

291. Disclosure of costs to clients

- (1) A law practice must disclose to a client in accordance with this Division –
- (a) the basis on which legal costs will be calculated, including whether a scale of costs applies to any of the legal costs; and

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- (b) the client's right to –
 - (i) negotiate a costs agreement with the law practice; and
 - (ii) receive a bill from the law practice; and
 - (iii) request an itemised bill within 30 days after receipt of a lump sum bill; and
 - (iv) be notified under section 299 (Ongoing obligation to disclose) of any substantial change to the matters disclosed under this section; and
- (c) an estimate of the total legal costs if reasonably practicable or, if it is not reasonably practicable to estimate the total legal costs, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs; and
- (d) details of the intervals (if any) at which the client will be billed; and
- (e) the rate of interest (if any) that the law practice charges on overdue legal costs, whether that rate is a specific rate of interest or is a benchmark rate of interest (as referred to in subsection (2)); and
- (f) if the matter is a litigious matter, an estimate of –

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- (i) the range of costs that may be recovered if the client is successful in the litigation; and
 - (ii) the range of costs the client may be ordered to pay if the client is unsuccessful; and
 - (g) the client's right to progress reports in accordance with section 301 (Progress reports); and
 - (h) details of the person whom the client may contact to discuss the legal costs; and
 - (i) the following avenues that are open to the client in the event of a dispute in relation to legal costs:
 - (i) costs assessment under Division 7;
 - (ii) the setting aside of a costs agreement under section 312 (Setting aside costs agreements);
 - (iii) making a complaint under Chapter 4; and
 - (j) any time limits that apply to the taking of any action referred to in paragraph (i); and
 - (k) that the law of this jurisdiction applies to legal costs in relation to the matter; and
 - (l) information about the client's right –

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- (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.

Note. The client's right to enter into an agreement or give a notification as mentioned in paragraph (1) will be under provisions of the law of the other jurisdiction that correspond to section 286 (Part also applies by agreement or at client's election).

- (2) For the purposes of subsection (1)(e), a benchmark rate of interest is a rate of interest for the time being equal to or calculated by reference to a rate of interest that is 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.

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- (4) For the purposes of subsection (1)(f) the disclosure must include –
- (a) a statement that an order by a court for the payment of costs in favour of the client will not necessarily cover the whole of the client’s legal costs; and
 - (b) if applicable, a statement that disbursements may be payable by the client even if the client enters into a conditional costs agreement.
- (5) A law practice may disclose any or all of the details referred to in subsection (1)(b)(i), (ii) and (iii), (g), (i), (j) and (l) in or to the effect of a form prescribed by the regulations for the purposes of this subsection and, if it does so at the time the other details are disclosed as required by this section, the practice is taken to have complied with this section in relation to the details so disclosed.

292. Disclosure of other information to clients

In addition to disclosure under section 291, a law practice must disclose to the client in writing –

- (a) the name of the legal practitioner who is to primarily perform the work; and
- (b) if the whole or part of the work is to be performed by someone other than a legal practitioner, information relating to that fact.

293. 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 section 291(1)(a), (c) and (d) in relation to the other law practice, in addition to any information required to be disclosed to the client under section 291.
- (2) A law practice retained or to be retained on behalf of a client by another law practice is not required to make disclosure to the client under section 291, but must disclose to the other law practice the information necessary for the other law practice to comply with subsection (1).
- (3) This section does not apply if the first law practice ceases to act for the client in the matter when the other law practice is retained.

Note. An example of the operation of this section is where a barrister is retained by a firm of solicitors on behalf of a client of the firm. The barrister must disclose to the firm details of the barrister's legal costs and billing arrangements, and the firm must disclose those details to the client. The barrister is not required to make a disclosure directly to the client.

294. How and when must disclosure be made?

- (1) Disclosure under section 291 must be made in writing before, or as soon as practicable after, the law practice is retained in the matter.

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- (2) Disclosure under section 293(1) must be made in writing before, or as soon as practicable after, the other law practice is retained.
 - (3) Disclosure made to a person before the law practice is retained in a matter is taken to be disclosure to the person as a client for the purposes of sections 291 and 293.

295. Exceptions to requirement for disclosure

- (1) Disclosure under section 291 or section 293(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 one or more disclosures under section 291 or section 293(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

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the relevant circumstances, the
further disclosure is not
warranted;

(c) if the client is –

- (i) a law practice or an Australian legal practitioner; or
- (ii) a public company, a subsidiary of a public company, a large proprietary company, a foreign company, a subsidiary of a foreign company or a registered Australian body (each within the meaning of the *Corporations Act 2001* of the Commonwealth); or
- (iii) a financial services licensee (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
- (iv) a liquidator, administrator or receiver (as respectively referred to in the *Corporations Act 2001* of the Commonwealth); or
- (v) a partnership that carries on the business of providing professional services if the partnership consists of more than 20 members or if the partnership would be a large proprietary company (within the meaning of the *Corporations Act 2001* of the

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Commonwealth) if it were a company; or

- (vi) a proprietary company (within the meaning of the *Corporations Act 2001* of the Commonwealth) 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 one or more members of the group are persons to whom disclosure of costs is not required and one or more members of the group are not such persons and if all of the 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;

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- (e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice;

Note. For instance, disclosure would not be required where the law practice acts in the matter on a pro bono basis.

- (f) in any circumstances prescribed by the regulations.
- (2) Despite subsection (1)(a), if a law practice becomes aware that the total legal costs are likely to exceed \$1 500 (exclusive of GST) or the prescribed amount (whichever is higher), the law practice must disclose the matters in section 291 or 293 (as the case requires) to the client as soon as practicable.
 - (3) A law practice must ensure that a written record of a principal's decision that further disclosure is not warranted as mentioned in subsection (1)(b) is made and kept with the files relating to the matter concerned.
 - (4) The reaching of a decision referred to in subsection (3) otherwise than on reasonable grounds is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of the principal.
 - (5) Nothing in this section affects or takes away from any client's right –
 - (a) to progress reports in accordance with section 301; or

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- (b) to obtain reasonable information from the law practice in relation to any of the matters specified in section 291; or
- (c) to negotiate a costs agreement with a law practice and to obtain a bill from the law practice.

296. Additional disclosure – settlement of litigious matters

- (1) If a law practice negotiates the settlement of a litigious matter on behalf of a client, the law practice must disclose to the client, before the settlement is executed –
 - (a) a reasonable estimate of the amount of legal costs payable by the client if the matter is settled (including any legal costs of another party that the client is to pay); and
 - (b) a reasonable estimate of any contributions towards those costs likely to be received from another party.
- (2) A law practice retained on behalf of a client by another law practice is not required to make a disclosure to the client under subsection (1), if the other law practice makes the disclosure to the client before the settlement is executed.

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297. Additional disclosure – uplift fees

- (1) If a costs agreement involves an uplift fee, the law practice must, before entering into the agreement, disclose to the client in writing –
 - (a) the law practice’s legal costs; and
 - (b) the uplift fee (or the basis of calculation of the uplift fee); and
 - (c) the reasons why the uplift fee is warranted.
- (2) A law practice is not required to make a disclosure under subsection (1) to a sophisticated client.

298. Form of disclosure

- (1) Written disclosures to a client under this Division –
 - (a) must be expressed in clear plain language; and
 - (b) may be in a language other than English if the client is more familiar with that language.
- (2) If the law practice is aware that the client is unable to read, the law practice must arrange for the information required to be given to a client under this Division to be conveyed orally to the client in addition to providing the written disclosure.

299. Ongoing obligation to disclose

A law practice must, in writing, disclose to a client any substantial change to anything included in a disclosure already made under this Division as soon as is reasonably practicable after the law practice becomes aware of that change.

300. Effect of failure to disclose

- (1) If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed, the client or associated third party payer (as the case may be) need not pay the legal costs unless they have been assessed under Division 7.
- (2) A law practice that does not disclose to a client or an associated third party payer anything required by this Division to be disclosed may not maintain proceedings against the client or associated third party payer (as the case may be) for the recovery of legal costs unless the costs have been assessed under Division 7.
- (3) If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed and the client or associated third party payer has entered into a costs agreement with the law practice, the client or associated third party payer may also apply under section 312 for the costs agreement to be set aside.

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- (4) If a law practice does not disclose to a client or an associated third party payer anything required by this Division to be disclosed, then, on an assessment of the relevant legal costs, the amount of the costs may be reduced by an amount considered by the costs assessor to be proportionate to the seriousness of the failure to disclose.
- (5) If a law practice retains another law practice on behalf of a client and the first law practice fails to disclose something to the client solely because the retained law practice failed to disclose relevant information to the first law practice as required by section 293(2), then subsections (1), (2), (3) and (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 one of them but not the other –
 - (a) subsection (1) does not affect the liability of the one to whom disclosure was made to pay the legal costs; and

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- (b) subsection (2) does not prevent proceedings being maintained against the one to whom the disclosure was made for the recovery of those legal costs.
- (7) Failure by a law practice to comply with this Division is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any Australian legal practitioner or Australian-registered foreign lawyer involved in the failure.

301. Progress reports

- (1) A law practice must give a client, on reasonable request –
 - (a) a written report of the progress of the matter in which the law practice is retained; and
 - (b) a written report of the legal costs incurred by the client to date, or since the last bill (if any), in the matter.
- (2) A law practice may charge a client a reasonable amount for a report under subsection (1)(a) but must not charge a client for a report under subsection (1)(b).
- (3) A law practice retained on behalf of a client by another law practice is not required to give a report to the client under subsection (1), but must disclose to the other law practice any

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information necessary for the other law practice to comply with that subsection.

- (4) Subsection (3) does not apply if the other law practice ceases to act for the client in the matter when the law practice is retained.

302. Disclosure to associated third party payers

- (1) If a law practice is required to make a disclosure to a client of the practice under this Division, the practice must, in accordance with subsections (2) and (3), also make the same disclosure to any associated third party payer for the client, but only to the extent that the details or matters disclosed are relevant to the associated third party payer and relate to costs that are payable by the associated third party payer in respect of legal services provided to the client.
- (2) A disclosure under subsection (1) must be made in writing –
- (a) at the time the disclosure to the client is required under this Division; or
 - (b) if the law practice only afterwards becomes aware of the legal obligation of the associated third party payer to pay legal costs of the client, as soon as practicable after the practice became aware of the obligation.
- (3) Section 298 (Form of disclosure) applies to a disclosure to an associated third party payer

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under subsection (1) in the same way as it applies to a client.

- (4) An associated third party payer for a client of a law practice has the same right as the client to obtain reports under section 301(1)(b) (Progress reports) of legal costs incurred by the client, but only to the extent that the costs are payable by the associated third party payer in respect of legal services provided to the client, and the law practice must comply with that section accordingly.

Division 4 – Legal costs generally

303. On what basis are legal costs recoverable?

Subject to this Division, legal costs are recoverable –

- (a) under a costs agreement made in accordance with Division 5 or the corresponding provisions of a corresponding law; or
- (b) if paragraph (a) does not apply, in accordance with an applicable scale of costs; or
- (c) if neither paragraph (a) nor (b) applies, according to the fair and reasonable value of the legal services provided.

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Note. See section 327 for the criteria that are to be applied on a costs assessment to determine whether legal costs are fair and reasonable.

304. 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.

305. 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 Part.
- (2) A law practice may also charge interest on unpaid legal costs in accordance with a costs agreement.
- (3) A law practice must not charge interest under subsection (1) or (2) on unpaid legal costs unless the bill for those costs contains a statement that interest is payable and of the rate of interest.
- (4) A law practice may not charge interest under this section or under a costs agreement at a rate that exceeds the rate prescribed by the regulations.

Division 5 – Costs agreements

306. 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 subsection (4) that is accepted in writing or by other conduct.

Note. Acceptance by other conduct is not permitted for conditional costs agreements – see section 307(3)(c)(i).

- (4) The offer must clearly state –
 - (a) that it is an offer to enter a costs agreement; and
 - (b) that the offer can be accepted in writing or by other conduct; and

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(c) the type of conduct that will constitute acceptance.

- (5) Except as provided by section 338 (Contracting out of Division by sophisticated clients), a costs agreement cannot provide that the legal costs to which it relates are not subject to costs assessment under Division 7.

Note. If it attempts to do so, the costs agreement will be void – see section 311(1).

- (6) A reference in section 312 (Setting aside costs agreements) and in any prescribed provisions of this Part to a client is, in relation to a costs agreement that is entered into between a law practice and an associated third party payer as referred to in subsection (1)(d) and to which a client of the law practice is not a party, a reference to the associated third party payer.

307. Conditional costs agreements

- (1) A costs agreement may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which those costs relate.
- (2) A conditional costs agreement may relate to any matter, except a matter that involves criminal proceedings or proceedings under the *Adoption Act 1988*, *Children, Young Persons and Their Families Act 1997*, *Youth Justice Act 1997* or *Relationships Act 2003* or under the *Family Law*

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Act 1975 of the Commonwealth or a matter prescribed by the regulations.

- (3) A conditional costs agreement –
- (a) must set out the circumstances that constitute the successful outcome of the matter to which it relates; and
 - (b) may provide for disbursements to be paid irrespective of the outcome of the matter; and
 - (c) must be –
 - (i) in writing; and
 - (ii) in clear plain language; and
 - (iii) signed by the client; and
 - (d) must contain a statement that the client has been informed of the client's right to seek independent legal advice before entering into the agreement; and
 - (e) must contain a cooling-off period of not less than 5 clear business days during which the client, by written notice, may terminate the agreement.
- (4) Subsection (3)(c)(iii), (d) and (e) do not apply to a conditional costs agreement made under section 306(1)(c) (Making costs agreements).
- (5) Subsection (3)(c)(iii), (d) and (e) do not apply to a conditional costs agreement made with a sophisticated client.

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- (6) If a client terminates an agreement within the period referred to in subsection (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).

308. Conditional costs agreements involving uplift fees

- (1) A conditional costs agreement may provide for the payment of an uplift fee.
- (2) The basis of calculation of the uplift fee must be separately identified in the agreement.
- (3) The agreement must contain an estimate of the uplift fee or, if that is not reasonably practicable –
 - (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 –

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- (a) the agreement must not provide for the payment of an uplift fee unless the law practice has a reasonable belief that a successful outcome of the matter is reasonably likely; and
 - (b) the uplift fee must not exceed 25% of the legal costs (excluding disbursements) otherwise payable.
- (5) A law practice must not enter into a costs agreement in contravention of this section.

Penalty: Fine not exceeding 100 penalty units.

309. Contingency fees 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.

Penalty: Fine not exceeding 100 penalty units.

- (2) Subsection (1) does not apply to the extent that the costs agreement adopts an applicable scale of costs.

310. Effect of costs agreement

- (1) Subject to this Division and Division 7, a costs agreement may be enforced in the same way as any other contract.
- (2) Nothing in this Part prevents a person making a complaint under Chapter 4 in relation to legal costs that are the subject of a costs agreement.

311. Certain costs agreements void

- (1) A costs agreement that contravenes, or is entered into in contravention of, any provision of this Division is void.
- (2) Subject to this section and Division 7, legal costs under a void costs agreement are recoverable as set out in section 303 (On what basis are legal costs recoverable?).
- (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 section 308 (Conditional costs agreements involving uplift fees) 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.

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- (5) A law practice that has entered into a costs agreement in contravention of section 309 (Contingency fees prohibited) is not entitled to recover any amount in respect of the provision of legal services in the matter to which the costs agreement related and must repay any amount received in respect of those services to the person from whom it was received.
 - (6) If a law practice does not repay an amount required by subsection (3), (4) or (5) to be repaid, the person entitled to be repaid may recover the amount from the law practice as a debt in a court of competent jurisdiction.

312. Setting aside costs agreements

- (1) On application by a client, the costs assessor may order that a costs agreement be set aside if satisfied that the agreement is not fair or reasonable.

Note. Section 300(2) (Effect of failure to disclose) also enables a client to make an application under this section for an order setting aside a costs agreement where the law practice concerned has failed to make the disclosures concerning costs required by Division 3.

- (2) In determining whether or not a costs agreement is fair or reasonable, and without limiting the matters to which the costs assessor can have regard, the costs assessor may have regard to any or all of the following matters:

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- (a) whether the client was induced to enter into the agreement by the fraud or misrepresentation of the law practice or of any representative of the law practice;
- (b) whether any Australian legal practitioner or Australian-registered foreign lawyer acting on behalf of the law practice has been found guilty of unsatisfactory professional conduct or professional misconduct in relation to the provision of legal services to which the agreement relates;
- (c) whether the law practice failed to make any of the disclosures required under Division 3;
- (d) the circumstances and conduct of the parties before and when the agreement was made;
- (e) the circumstances and 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

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nature of legal services provided under the agreement.

- (3) The costs assessor may adjourn the hearing of an application under this section pending the completion of any investigation or determination of any complaint in relation to the conduct of any Australian legal practitioner or Australian-registered foreign lawyer.
- (4) If the costs assessor orders that a costs agreement be set aside, the assessor may make an order in relation to the payment of legal costs the subject of the agreement.
- (5) In making an order under subsection (4) –
 - (a) the costs assessor must apply the applicable scale of costs (if any); or
 - (b) if there is no applicable scale of costs, the costs assessor must determine the fair and reasonable legal costs in relation to the work to which the agreement related, taking into account –
 - (i) the seriousness of the conduct of the law practice or any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf; and
 - (ii) whether or not it was reasonable to carry out the work; and

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- (iii) whether or not the work was carried out in a reasonable manner.
- (6) In making an order under subsection (4), the costs assessor may not order the payment of an amount in excess of the amount that the law practice would have been entitled to recover if the costs agreement had not been set aside.
- (7) For the purposes of subsection (5), the costs assessor may have regard to any or all of the following matters:
 - (a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act, any relevant legislation, the regulations or the legal profession rules;
 - (b) any disclosures made by the law practice under Division 3, or the failure to make any disclosures required under that Division;
 - (c) any relevant advertisement as to –
 - (i) the law practice's costs; or
 - (ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;
 - (d) the skill, labour and responsibility displayed on the part of the Australian

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- 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 costs assessor may determine whether or not a costs agreement exists.
 - (9) The costs assessor may order the payment of the costs of and incidental to determining an application under this section.
 - (10) A costs assessor must ensure that an order or determination under this section is accompanied by a statement of the reasons for the order or determination.
 - (11) A party to a costs agreement may apply to the Supreme Court for a review of a determination to make, or not make, an order under subsection (1) or (4).
 - (12) In this section –

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“client” means a person to whom or for whom legal services are or have been provided.

Note. See also section 306(6) which extends the application of this section to associated third party payers.

Division 6 – Billing

313. Legal costs cannot be recovered unless bill has been given

- (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 sections 314 and 315.
- (2) A court of competent jurisdiction may make an order authorising a law practice to commence legal proceedings against a person sooner if satisfied that –
 - (a) the law practice has given a bill to the person in accordance with sections 314 and 315; and
 - (b) the person is about to leave this jurisdiction.
- (3) A court or tribunal before which any proceedings are brought in contravention of subsection (1) must stay those proceedings on the application of a party, or on its own initiative.

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- (4) This section applies whether or not the legal costs are the subject of a costs agreement.

314. Bills

- (1) A bill may be in the form of a lump sum bill or an itemised bill.
- (2) A bill must be signed on behalf of a law practice by an Australian legal practitioner or an employee of the law practice.
- (3) It is sufficient compliance with subsection (2) if a letter signed on behalf of a law practice by an Australian legal practitioner or an employee of the law practice is attached to, or enclosed with, the bill.
- (4) A bill or letter is taken to have been signed by a law practice that is an incorporated legal practice if it has the practice's seal affixed to it or is signed by a legal practitioner director of the practice or employee of the practice who is an Australian legal practitioner.
- (5) A bill is to be given to a person –
- (a) by delivering it personally to the person or to an agent of the person; or
 - (b) by sending it by post to the person or agent at –
 - (i) the usual or last known business or residential address of the person or agent; or

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- (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 sending it by fax to a number specified by the person (by correspondence or otherwise) as a number to which faxes to that person may be sent; or
 - (e) by delivering it to the appropriate place in a document exchange in which the person has receiving facilities; or
 - (f) by emailing it to a client who requested that the bill be emailed; or
 - (g) in any other way authorised by the regulations.
- (6) A reference in subsection (5) to any method of giving a bill to a person includes a reference to arranging for the bill to be given to that person

by that method (for example, by delivery by courier).

(7) In this section –

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

315. 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) requesting an itemised bill under section 316;
 - (ii) applying for a costs assessment under Division 7;
 - (iii) applying for the setting aside of a costs agreement under section 312;
 - (iv) making a complaint under Chapter 4; and
 - (b) any time limits that apply to the taking of any action referred to in paragraph (a).

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Note. These matters will already have been disclosed under section 291 (Disclosure of costs to clients).

- (2) Subsection (1) does not apply in relation to a sophisticated client.
- (3) A law practice may provide the written statement referred to in subsection (1) in or to the effect of a form prescribed by the regulations for the purposes of this subsection, and if it does so the practice is taken to have complied with this section in relation to the statement.

316. Request for itemised bill

- (1) If a bill is given by a law practice in the form of a lump sum bill, any person who is entitled to apply for an assessment of the legal costs to which the bill relates may request the law practice to give the person an itemised bill.
- (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 subsection (5), a law practice must not commence legal proceedings to recover legal costs from a person who has been given a lump

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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 section, 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) Section 314(2), (5) and (6) apply to the giving of an itemised bill under this section.

317. Interim bills

- (1) A law practice may give a person an interim bill covering part only of the legal services the law practice was retained to provide.
- (2) Legal costs that are the subject of an interim bill may be assessed under Division 7, either at the time of the interim bill or at the time of the final bill, whether or not the interim bill has previously been assessed or paid.

Division 7 – Costs assessment

318. Definition

In this Division –

“**client**” means a person to whom or for whom legal services are or have been provided.

319. Application by clients or third party payers for costs assessment

- (1) A client may apply to a costs assessor for an assessment of the whole or any part of legal costs.
- (2) A third party payer may apply to a costs assessor for an assessment of the whole or any part of legal costs payable by the third party payer.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) If any legal costs have been paid without a bill having been given, the client or third party payer may nevertheless apply for a costs assessment.
- (5) An application by a client or third party payer for a costs assessment under this section must be made within 60 days after –
 - (a) the bill was given or the request for payment was made to the client or third party payer; or
 - (b) the costs were paid if neither a bill was given nor a request was made.
- (6) However, an application that is made out of time, otherwise than by –
 - (a) a sophisticated client; or
 - (b) a third party payer who would be a sophisticated client if the third party

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payer were a client of the law practice concerned –

may be dealt with by the costs assessor if the Supreme Court, on application by the costs assessor or the client or third party payer who made the application for assessment, determines, after having regard to the delay and the reasons for the delay, that it is just and fair for the application for assessment to be dealt with after the 60-day period.

Note. It is intended that only a Court will be able to make a determination under subsection (6).

- (7) If the third party payer is a non-associated third party payer, the law practice must provide the third party payer, on the written request of the third party payer, with sufficient information to allow the third party payer to consider making, and if thought fit to make, an application for a costs assessment under this section.
- (8) If there is an associated third party payer for a client of a law practice –
 - (a) nothing in this section prevents –
 - (i) the client from making one or more applications for assessment under this section in relation to costs for which the client is solely liable; and
 - (ii) the associated third party payer from making one or more

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applications for assessment under this section in relation to costs for which the associated third party payer is solely liable –

and those applications may be made by them at the same time or at different times and may be dealt with jointly or separately; and

- (b) the client or the associated third party payer –
 - (i) may participate in the costs assessment process where the other of them makes an application for assessment under this section in relation to costs for which they are both liable; and
 - (ii) is taken to be a party to the assessment and is bound by the assessment; and
- (c) the law practice –
 - (i) must participate in the costs assessment process where an application is made under this section by the associated third party payer in the same way as the practice must participate in the process where an application is made under this section by a client; and

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-
- (ii) is taken to be a party to the assessment and is bound by the assessment.
 - (9) If there is a non-associated third party payer for a client of a law practice –
 - (a) nothing in this section prevents –
 - (i) the client from making one or more applications for assessment under this section in relation to costs for which the client is liable; and
 - (ii) the non-associated third party payer from making one or more applications for assessment under this section in relation to costs for which the non-associated third party payer is liable –
- and those applications may be made by them at the same time or at different times but must be dealt with separately; and
- (b) the client –
 - (i) may participate in the costs assessment process where the non-associated third party payer makes an application under this section in relation to the legal costs for which the non-associated third party payer is liable; and

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- (ii) is taken to be a party to the assessment and is bound by the assessment; and
 - (c) the law practice –
 - (i) is taken to be a party to the assessment; and
 - (ii) must participate in the costs assessment process; and
 - (d) despite any other provision of this Division, the assessment of the costs payable by the non-associated third party payer does not affect the amount of legal costs payable by the client to the law practice.
- (10) In this section –
- “client”** includes the following:
- (a) an executor or administrator of a client;
 - (b) a trustee of the estate of a client;
- “third party payer”** includes the following:
- (a) an executor or administrator of a third party payer;
 - (b) a trustee of the estate of a third party payer.

320. Application for costs assessment by law practice retaining another law practice

- (1) A law practice that retains another law practice to act on behalf of a client may apply to a costs assessor for an assessment of the whole or any part of the legal costs to which a bill given by the other law practice in accordance with Division 6 (Billing) relates.
- (2) If any legal costs have been paid without a bill, the law practice may nevertheless apply for a costs assessment.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) An application under this section must be made within 60 days after –
 - (a) the bill was given or the request for payment was made; or
 - (b) the costs were paid if neither a bill was given nor a request was made.
- (5) An application cannot be made under this section if there is a costs agreement between the client and the other law practice.

321. Application for costs assessment by law practice giving bill

- (1) A law practice that has given a bill in accordance with Division 6 (Billing) may apply to a costs

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assessor for an assessment 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 a costs assessment.
- (3) An application for a costs assessment may be made even if the legal costs have been wholly or partly paid.
- (4) An application may not be made under this section unless at least 30 days have passed since –
 - (a) the bill was given or the request for payment was made; or
 - (b) the costs were paid, if neither a bill was given nor a request was made; or
 - (c) an application has been made under this Division by another person in respect of the legal costs.

322. How to make an application for costs assessment

- (1) An application for a costs assessment –
 - (a) must be made in accordance with the regulations (if any); and
 - (b) must be accompanied by a copy of the itemised bill and the costs agreement (if any); and

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- (c) subject to subsection (4), must be accompanied by the prescribed fee.
- (2) The application must authorise a costs assessor to have access to, and to inspect, all documents of the applicant that are held by the applicant, or by any law practice, Australian legal practitioner or Australian-registered foreign lawyer concerned, in respect of the matter to which the application relates.
- (3) The application must contain a statement by the applicant that there is no reasonable prospect of settlement of the matter by mediation.
- (4) A costs assessor may waive or postpone payment of the application fee either wholly or in part if satisfied that the applicant is in such circumstances that payment of the fee would result in serious hardship to the applicant or his or her dependants.
- (5) A costs assessor may refund the application fee either wholly or in part if satisfied that it is appropriate because the application is not proceeded with.

323. Consequences of application

If an application for a costs assessment is made in accordance with this Division –

- (a) the costs assessment must take place without any money being paid into court

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on account of the legal costs the subject of the application; and

- (b) the law practice must not commence any proceedings to recover the legal costs until the costs assessment has been completed.

324. Persons to be notified of application

- (1) A costs assessor is to cause a copy of an application for a costs assessment to be given to any law practice or client concerned, a third party payer or any other person whom the costs assessor thinks it appropriate to notify.
- (2) A person who is notified by the costs assessor under subsection (1) –
 - (a) is taken to be a party to the assessment; and
 - (b) is entitled to participate in the costs assessment process; and
 - (c) if the costs assessor so determines, is bound by the assessment.

325. Procedure on assessment

- (1) If, after proper notice that a costs assessment will take place, a party to the assessment does not attend, the costs assessor may proceed with the assessment in the absence of that party.

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- (2) If before giving an itemised bill the law practice had previously given a lump sum bill, on a costs assessment the law practice is not bound by the amount and matters stated in the lump sum bill.

326. Powers of costs assessor

- (1) For the purpose of any costs assessment, the costs assessor may –
- (a) conduct such investigations as the costs assessor considers necessary; and
 - (b) summon any person to attend a costs assessment; and
 - (c) take evidence on oath or affirmation and, for that purpose, administer oaths and affirmations; and
 - (d) require any person to produce documents or records in the person's possession or subject to the person's control; and
 - (e) require any person to be represented by a legal practitioner.
- (2) A person who neglects or fails without reasonable cause –
- (a) to attend in obedience to a summons under subsection (1); or
 - (b) to be sworn or make an affirmation; or
 - (c) to answer relevant questions; or

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- (d) to produce any relevant documents or records when required to do so under that subsection –

is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

- (3) If a person fails, without reasonable excuse, to comply with a notice under this section, the costs assessor may decline to deal with the application or may continue to deal with the application on the basis of the information provided.
- (4) A failure by an Australian legal practitioner to comply with a notice under this section without reasonable excuse is capable of being unsatisfactory professional conduct or professional misconduct.

327. Criteria for assessment

- (1) In conducting an assessment of legal costs, a costs assessor must consider –
 - (a) whether or not it was reasonable to carry out the work to which the legal costs relate; and
 - (b) whether or not the work was carried out in a reasonable manner; and
 - (c) the fairness and reasonableness of the amount of legal costs in relation to the work, except to the extent that

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section 328 or 329 applies to any
disputed costs.

- (2) In considering what is a fair and reasonable amount of legal costs, a costs assessor may have regard to any or all of the following matters:
- (a) whether the law practice and any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf complied with this Act, any other relevant legislation, the regulations or the legal profession rules;
 - (b) any disclosures made by the law practice under Division 3 (Costs disclosure);
 - (c) any relevant advertisement as to –
 - (i) the law practice's costs; or
 - (ii) the skills of the law practice or of any Australian legal practitioner or Australian-registered foreign lawyer acting on its behalf;
 - (d) the skill, labour and responsibility displayed on the part of the Australian legal practitioner or Australian-registered foreign lawyer responsible for the matter;
 - (e) the retainer and whether the work done was within the scope of the retainer;
 - (f) the complexity, novelty or difficulty of the matter;
 - (g) the quality of the work done;

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- (h) the place where, and circumstances in which, the legal services were provided;
 - (i) the time within which the work was required to be done;
 - (j) any other relevant matter.
- (3) In conducting an assessment of legal costs payable by a non-associated third party payer, the costs assessor must also consider whether it is fair and reasonable in the circumstances for the non-associated third party payer to be charged the amount claimed.

328. Assessment of costs by reference to costs agreement

- (1) A costs assessor must assess the amount of any disputed costs that are subject to a costs agreement by reference to the provisions of the costs agreement if –
 - (a) a relevant provision of the costs agreement specifies the amount, or a rate or other means for calculating the amount, of the costs; and
 - (b) the agreement has not been set aside under section 312 (Setting aside costs agreements) –

unless the assessor is satisfied –

- (c) that the agreement does not comply in a material respect with any applicable

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disclosure requirements of Division 3
(Costs disclosure); or

(d) that Division 5 (Costs agreements)
precludes the law practice concerned
from recovering the amount of the costs;
or

(e) that the parties otherwise agree.

(2) The costs assessor is not required to initiate an
examination of the matters referred to in
subsection (1)(c) and (d).

329. Assessment of costs by reference to scale of costs

A costs assessor must assess the amount of any
disputed costs that are subject to a scale of costs
by reference to the scale.

330. Outcome of assessment

- (1) The costs assessor is to notify parties of the outcome of the costs assessment.
- (2) On the conclusion of an assessment, the costs assessor is to state the outcome of the assessment in the form of a certificate.
- (3) A certificate is not to be signed until after the expiration of 48 hours after the assessment is completed.
- (4) The costs assessor may make an interim certificate in respect of a portion of a bill of costs

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without waiting for the completion of the assessment.

331. Costs of assessment

- (1) A costs assessor must determine the costs of a costs assessment.
- (2) Unless the costs assessor otherwise orders and subject to subsection (5), the law practice to which the legal costs are payable or were paid must pay the costs of the assessment if –
 - (a) on the assessment the legal costs are reduced by 15% or more; or
 - (b) the costs assessor is satisfied that the law practice failed to comply with Division 3 (Costs disclosure).
- (3) Unless the costs assessor otherwise orders and subject to subsection (5), if the law practice is not, under subsection (2), liable to pay the costs of the assessment, the costs of the assessment must be paid by the party ordered by the costs assessor to pay those costs.
- (4) Where a party has delayed or put another party to unnecessary expense, the costs assessor may –
 - (a) direct the party that caused the delay or unnecessary expense to pay the costs arising from the delay or costs of the unnecessary expense; and
 - (b) adjust the costs by way of deduction.

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- (5) The costs assessor may refer to the Supreme Court any special circumstances relating to a costs assessment and the Court may make any order it thinks fit concerning the costs of the costs assessment.

332. Referral for disciplinary action

- (1) If, on a costs assessment, a costs assessor considers that the legal costs charged by a law practice are grossly excessive, the costs assessor must refer the matter to the Board to consider whether disciplinary action should be taken against any Australian legal practitioner or Australian-registered foreign lawyer involved.
- (2) If the costs assessor considers that a costs assessment raises any other matter that may be capable of constituting unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the costs assessor may refer the matter to the Board to consider whether disciplinary action should be taken against the Australian legal practitioner or Australian-registered foreign lawyer.

333. Objections to outcome of assessment

- (1) A party who is dissatisfied with the outcome of an assessment may object before the final certificate is signed.
- (2) An objection under subsection (1) is to be –

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- (a) in writing, specifying in a concise form the items or parts of items objected to and the grounds of each objection; and
 - (b) delivered to each party interested in the objection; and
 - (c) given to the costs assessor with a request to review the assessment in respect of the matters set out in the objection.
- (3) Pending the determination of an objection, the costs assessor may sign a certificate in respect of the items in the bill of costs that are not the subject of any objection.
- (4) After the determination of the objection, the costs assessor is to sign any further certificate as may be necessary.
- (5) On an objection being made in accordance with subsection (2), the costs assessor –
 - (a) is to reconsider and review the assessment of the items that are the subject of the objection; and
 - (b) may receive further evidence in respect of those items; and
 - (c) if so required by a party, is to state in the certificate –
 - (i) the grounds and reasons of the decision on the objection; and

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- (ii) any special facts or circumstances relating to those grounds and reasons; and
 - (d) may assess the costs of the objection and add them to or deduct them from any sum payable by or to any party to the assessment.
 - (6) The costs assessor may not review an assessment after the certificate is signed except to correct a clerical or obvious error.

334. Review of costs assessor's decision by Supreme Court

- (1) A party who objects under section 333 and who is dissatisfied with the certificate of the costs assessor as to any item or part of an item may apply to the Supreme Court to review the assessment as to that item or part of an item.
- (2) An application under subsection (1) is to be made within 14 days after the date of the certificate, or any other time that the costs assessor at the time of the signing of the certificate may allow, whichever is the later.
- (3) Unless the Supreme Court otherwise directs, the application is to be determined on the evidence which was before the costs assessor.
- (4) On an application under subsection (1), the Supreme Court may make any order as may be just but the certificate of the costs assessor is

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final as to all matters which are not the subject of the application.

335. Interim certificate

- (1) If, during the assessment of any bill of costs, it appears to the costs assessor that there is money due from the law practice to the client, the costs assessor may make an interim certificate as to the amount so payable by the law practice.
- (2) On the filing of a certificate under subsection (1), the Supreme Court may order that the money so certified be paid immediately to the client or brought into court.

336. Enforcement of certificate of assessment

A certificate of a costs assessor under section 330 or 335 is taken to be a judgment of the Supreme Court and is enforceable under the *Supreme Court Civil Procedure Act 1932*.

337. Interest on amount outstanding

- (1) A costs assessor may, in an assessment, determine whether interest is payable on the amount of costs assessed or on any part of that amount and may determine the rate of interest payable (not exceeding the rate referred to in section 305 (Interest on unpaid legal costs)).

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- (2) This section applies despite any costs agreement or section 305.
 - (3) This section does not authorise the giving of interest on interest.

338. Contracting out of Division by sophisticated clients

A sophisticated client of a law practice, or an associated third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned, may contract out of this Division.

339. Regulations

The regulations may make provision for or with respect to the making and processing of applications for costs assessments.

Division 8 – Miscellaneous

340. Application of Part to incorporated legal practices and multi-disciplinary partnerships

The regulations may provide that specified provisions of this Part do not apply to incorporated legal practices and multi-disciplinary partnerships, or both, or apply to them with specified modifications.

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341. Imputed acts, omission or knowledge

For the purposes of this Part –

(a) anything done or omitted by, to or in relation to –

(i) an Australian legal practitioner;
or

(ii) an Australian-registered foreign lawyer (except for the purposes of section 308(4) (Conditional costs agreements involving uplift fees) or for the purposes of any provisions of this Part prescribed for the purposes of this section) –

in the course of acting on behalf of a law practice is taken to have been done or omitted by, to or in relation to the law practice; and

(b) without limiting paragraph (a), the law practice is taken to become or be aware of, or to have a belief as to, any matter if –

(i) an Australian legal practitioner;
or

(ii) an Australian-registered foreign lawyer (except for the purposes of section 308(4) or for the purposes of any provisions of this Part prescribed for the purposes of this section) –

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becomes or is aware of, or has a belief as to, the matter in the course of acting on behalf of the law practice.

**PART 3.4 – PROFESSIONAL INDEMNITY
INSURANCE**

342. Purpose

The purpose of this Part is to ensure that law practices and other persons obtain and maintain professional indemnity insurance to protect clients of law practices from professional negligence.

343. Law practices required to insure

- (1) Before commencing to engage in legal practice in this jurisdiction, a law practice must obtain professional indemnity insurance as prescribed by the rules made under this Part.
- (2) At all times while a law practice is engaged in legal practice in this jurisdiction, the law practice must maintain professional indemnity insurance as prescribed by the rules made under this Part.
- (3) The insurance must cover civil liability of –
 - (a) the law practice; and
 - (b) each person who is or was a principal or an employee of the law practice during the period that the person is or was a principal or employee of the law practice –

in connection with the practice's legal practice.

344. Barristers required to insure

- (1) Before commencing to engage in legal practice in this jurisdiction, a barrister must obtain professional indemnity insurance as prescribed by the rules made under this Part.
- (2) At all times while a barrister is engaged in legal practice in this jurisdiction, the barrister must maintain professional indemnity insurance as prescribed by the rules made under this Part.

345. Australian-registered foreign lawyers required to insure

An Australian-registered foreign lawyer who practises foreign law in this jurisdiction must obtain and maintain professional indemnity insurance as prescribed by the rules made under this Part.

346. Exemption from insurance requirements

The Law Society may, with the Board's approval, exempt a law practice, barrister or Australian-registered foreign lawyer from the requirement to obtain or maintain or both obtain and maintain professional indemnity insurance in circumstances that the Law Society and Board consider reasonable.

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Part 3.4 – Professional Indemnity Insurance

347. Indemnity rules

- (1) The Law Society may, with the Board's approval, make rules with respect to the provision of indemnity against loss arising from claims in respect of any kind of civil liability incurred by –
 - (a) a law practice in connection with the practice of any of its members; or
 - (b) a person who was formerly a member of a law practice in connection with the practice of any of its members; or
 - (c) a barrister; or
 - (d) an Australian-registered foreign lawyer.
- (2) Without limiting subsection (1), the indemnity rules may –
 - (a) specify the liability required to be covered; and
 - (b) specify the amount of that liability; and
 - (c) specify the circumstances in which –
 - (i) a law practice; and
 - (ii) a class of law practices; and
 - (iii) a barrister; and
 - (iv) an Australian-registered foreign lawyer –

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are exempt from some or all of the indemnity rules; and

- (d) specify the circumstances in which –
 - (i) a law practice; and
 - (ii) a class of law practices; and
 - (iii) a barrister; and
 - (iv) an Australian-registered foreign lawyer –

are not required to obtain or maintain or both obtain and maintain professional indemnity insurance; and

- (e) specify any other matter that the Law Society and Board consider relevant to obtaining and maintaining professional indemnity insurance; and
- (f) contain incidental, procedural or supplementary provisions.

348. Rule-making procedure

Rules made under this Part are –

- (a) statutory rules within the meaning of the *Rules Publication Act 1953*; and
- (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

PART 3.5 – SOLICITORS’ GUARANTEE FUND

Division 1 – Preliminary

349. Purpose

The purpose of this Part is to establish and maintain a fund to provide a source of compensation for defaults by law practices.

350. Definitions

In this Part –

“allow” a claim includes compromise or settle the claim;

“capping and sufficiency provisions” of –

(a) this jurisdiction, means section 392 (Caps on payments) and section 393 (Sufficiency of Guarantee Fund); or

(b) another jurisdiction, means the provisions of the corresponding law of that jurisdiction that correspond to those sections;

“claim” means a claim under this Part;

“claimant” means a person who makes a claim under this Part;

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“concerted interstate default” means a default of a law practice arising from or constituted by an act or omission –

- (a) that was committed jointly by 2 or more associates of the practice; or
- (b) parts of which were committed by different associates of the practice or different combinations of associates of the practice –

where this jurisdiction is the relevant jurisdiction for at least one of the associates and another jurisdiction is the relevant jurisdiction for at least one of the associates;

“default”, in relation to a law practice, means –

- (a) a failure of the practice to pay or deliver trust money or trust property that was received by the practice in the course of legal practice by the practice, where the failure arises from an act or omission of an associate that involves dishonesty; or
- (b) a fraudulent dealing with trust property that was received by the practice in the course of legal practice by the practice, where the fraudulent dealing arises from or is constituted by an act or

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omission of an associate that involves dishonesty;

“default order” means an order made by the Supreme Court under section 369 (Default order);

“designated trust deposit account” means a trust deposit account designated by the Trust for the purposes of this Part;

“dishonesty” includes fraud;

“external intervener” means a person appointed as an external intervener under Chapter 5;

“lowest balance” means the lowest daily balance in any trust account held by a law practice;

“pecuniary loss”, in relation to a default, means –

- (a) the amount of trust money, or the value of trust property, that is not paid or delivered; or
- (b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing;

“relevant jurisdiction” – see section 364 (Meaning of “relevant jurisdiction”);

“specified deposit” means an amount calculated by adding together –

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-
- (a) the lowest balance in a trust account held by a law practice; and
 - (b) the amount in a trust deposit account on the final day of the specified period;

“specified period” means –

- (a) a period of 3 months ending on, and including, the last day of March, June, September and December in each year; or
- (b) where another period is prescribed, that other period;

“trust deposit account” means a trust deposit account established by the Trust under section 636.

351. Time of default

- (1) This section applies for the purpose of determining which jurisdiction’s law applies in relation to a default.
- (2) The default is taken to have occurred when the act or omission giving rise to or constituting the default occurred.
- (3) An omission is taken to have occurred on the day on or by which the act not performed ought reasonably to have been performed or on such

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other day as is determined in accordance with the regulations.

Division 2 – Solicitors’ Trust income

352. Deposit of trust money into designated trust deposit account

- (1) A law practice must, within 21 days after the end of a specified period, pay out of any of its trust accounts into a designated trust deposit account an amount that, taken together with an amount held by the law practice in any trust deposit account, is not less than two-thirds of the specified deposit for that period.
- (2) The prescribed authority, on application being made to it, may exempt a law practice from the provisions of subsection (1) for such period and subject to such conditions as it thinks fit.
- (3) If the prescribed authority exempts a law practice it may –
 - (a) revoke that exemption; or
 - (b) where it imposes a condition on that exemption, vary, revoke or amend that condition.
- (4) If, at the end of a specified period, the amount held by a law practice in a designated trust deposit account exceeds two-thirds of the specified deposit for that period, the law practice may apply to the Trust for repayment of that excess.

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- (5) A law practice is not liable to pay an amount under subsection (1) if –
 - (a) the amount payable is less than \$20 000, or such other amount as may be prescribed; and
 - (b) the law practice submits to the Trust at its request a complete copy of all financial statements relating to any trust account of the law practice in respect of the relevant period.
- (6) A law practice which fails to deposit the required amount into a designated trust deposit account is liable to pay the prescribed authority interest on the amount not deposited for the period of the default at a rate fixed by the prescribed authority.
- (7) The prescribed authority may remit part or all of any interest paid under subsection (6).
- (8) The prescribed authority must pay any interest received by it under subsection (6) into a trust deposit account established under section 636.

353. Withdrawals

- (1) If a law practice requires money which was paid from a trust account into a designated trust deposit account, it may draw a bill of exchange on the Trust up to the full amount that it has to its credit in the designated trust deposit account

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without regard to any withdrawal by the Trust from that designated trust deposit account.

- (2) The Trust is to conduct its affairs so as to enable it to meet any bill of exchange drawn pursuant to subsection (1).
- (3) A law practice must –
 - (a) not draw a bill of exchange under subsection (1) unnecessarily; and
 - (b) recoup the designated trust deposit account on which such a bill of exchange was drawn at the first reasonable opportunity; and
 - (c) give the Trust every reasonable assistance in the performance and exercise of its functions and powers under this Part; and
 - (d) not do any act which reduces the lowest balance in its trust account without reasonable cause.
- (4) If, in the opinion of the Trust, a law practice has failed to comply with the provisions of subsection (3), the Trust is to report the matter to the prescribed authority.
- (5) On receipt of a report, the prescribed authority may require the law practice to explain why it has contravened any provision of subsection (3).
- (6) A bill of exchange drawn by a law practice under this section is not to be drawn by a person

other than a legal practitioner except on such terms and conditions as the prescribed authority may determine in each case.

354. Claim on trust deposit account

A person who has a claim on a trust account is not entitled to –

- (a) a particular amount of money in a trust deposit account; or
- (b) a particular amount of money invested under section 637 (Application of funds in trust deposit accounts); or
- (c) any interest received on such amounts.

355. Interest on trust account

- (1) The prescribed authority may enter into an agreement with an ADI for the ADI to pay to the prescribed authority any payment calculated by reference to, or any interest accruing on, a trust account held by a law practice.
- (2) Subsection (1) does not apply to interest accruing on a separate trust account maintained by a law practice for the exclusive benefit of a particular client.

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356. Division does not apply to controlled money accounts

- (1) Nothing in this Division applies to –
 - (a) a controlled money account kept by a law practice on the instructions of a single client for the exclusive use of that client; or
 - (b) if the prescribed authority so approves, a controlled money account kept by a law practice on the instructions of 2 or more clients for the exclusive use of those clients.
- (2) The prescribed authority may give approval for the purposes of subsection (1)(b) only if satisfied that the clients are joint owners of the account.

357. Trust to invest interest

- (1) The prescribed authority must pay to the Trust any payment or interest paid to it by an ADI under section 355 within 7 days after the end of the month in which the payment or interest was received.
- (2) The Trust must pay any payment or interest received by it under subsection (1) into a trust deposit account.
- (3) The Trust must apply any payment or interest received by it under subsection (1) as provided in section 637 (Application of funds in trust deposit accounts).

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- (4) A person who has a claim on a trust account held by a law practice is not entitled to –
- (a) any payment or interest made by an ADI under section 355; or
 - (b) any interest accruing on any such payment or interest.

Division 3 – Solicitors’ Guarantee Fund

358. Solicitors’ Guarantee Fund

- (1) The Solicitors’ Guarantee Fund created and maintained under the *Legal Practitioners Act 1959* and continued under the *Legal Profession Act 1993* is continued.
- (2) Subject to this Part, the Guarantee Fund is to be applied by the Trust –
 - (a) for the purpose of compensating claimants in respect of claims allowed under this Part in respect of defaults to which this Part applies; and
 - (b) for the purpose of paying the costs of the Board and Tribunal in relation to the performance or exercise of the Board’s and Tribunal’s functions or powers as approved by the Minister under section 359; and
 - (c) for legal or other expenses incurred in dealing with claims against the fund; and

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- (d) for expenses incurred in the administration of the fund; and
 - (e) for any other purpose approved by the Minister under section 361 (Application to Minister for payment from Guarantee Fund).
- (3) The Guarantee Fund is to be built up to and be maintained at –
 - (a) the amount of \$3.5 million; or
 - (b) such greater amount as the Minister and the Trust determine.
- (4) The funds of the Guarantee Fund consist of –
 - (a) any money applied to the Guarantee Fund by the Trust under section 637(2)(b) (Application of funds in trust deposit accounts); and
 - (b) any costs awarded to the Board or Trust in respect of an application or appeal made under this Part; and
 - (c) any other money made available to the Guarantee Fund.

359. Minister to approve funding

- (1) The Board is to submit to the Minister an application for funding by 30 April in each year.

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- (2) The application referred to in subsection (1) is to include application for funding for –
- (a) the administration and enforcement of regulations and rules made under this Act; and
 - (b) the payment or discharge of the expenses, charges and obligations of the Board in the performance of its functions or the exercise of its powers; and
 - (c) the payment of the expenses of the Tribunal in the performance of its functions or the exercise of its powers; and
 - (d) payment of any remuneration to members and employees of the Board; and
 - (e) any other information as the Minister directs.
- (3) Within 30 days of receipt of an application under subsection (1), the Minister is to –
- (a) approve an amount to be paid from the Guarantee Fund to the Board; and
 - (b) direct the Trust to pay that amount from the Guarantee Fund to the Board.
- (4) The Trust must pay the amount referred to in subsection (3) to the Board within 14 days of being directed by the Minister under subsection (3)(b).

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360. Insurance

- (1) The Trust may arrange with an insurer for the insurance of the Guarantee Fund.
- (2) Without limiting subsection (1), the Trust may arrange for the insurance of the Guarantee Fund against particular claims or particular classes of claims.
- (3) The proceeds paid under a policy of insurance against particular claims or particular classes of claims are to be paid into the Guarantee Fund, and a claimant is not entitled to have direct recourse to the proceeds or any part of them.
- (4) No liability (including liability in defamation) is incurred by a protected person in respect of anything done or omitted to be done in good faith for the purpose of arranging for the insurance of the Guarantee Fund.
- (5) In this section –

“protected person” means –

 - (a) the Trust or a member of the Trust; or
 - (b) a person acting at the direction of any person or entity referred to in this definition.

361. Application to Minister for payment from Guarantee Fund

- (1) If the Guarantee Fund exceeds the amount of \$3.5 million or such amount as may be prescribed, taking into account ascertained and contingent liabilities, the Trust must advise the Minister that the Guarantee Fund has exceeded that amount.
- (2) On receipt of advice from the Trust under subsection (1), the Minister may invite –
 - (a) the Legal Aid Commission of Tasmania or such other legal assistance scheme as the Minister may approve; and
 - (b) the Law Foundation of Tasmania; and
 - (c) any other person –to make application for a grant of money from the Guarantee Fund.
- (3) The total amount that may be granted pursuant to applications made under subsection (2) must not exceed the total amount in the Guarantee Fund after deducting the amount of \$3.5 million or the amount prescribed under subsection (1).
- (4) An application is to contain such information as the Minister directs.
- (5) On receipt of an application, the Minister may approve a grant of money from the Guarantee Fund and may specify conditions under which the grant is made.

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- (6) If the Minister approves a grant of money under subsection (5), the Minister must direct the Trust to apply the Guarantee Fund in accordance with the approval.
- (7) The Trust must apply the Guarantee Fund in accordance with the Minister’s approval.

362. Borrowing

The Trust cannot borrow money for the purposes of the Guarantee Fund.

363. Investment of funds of Guarantee Fund

The Trust may invest the funds of the Guarantee Fund in any of the ways trustees are authorised to invest trust funds under the *Trustee Act 1898*.

Division 4 – Defaults to which this Part applies

364. Meaning of “relevant jurisdiction”

- (1) The relevant jurisdiction for an associate of a law practice whose act or omission (whether alone or with one or more other associates of the practice) gives rise to or constitutes a default of the practice is to be determined under this section.

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Note. The concept of an associate’s “relevant jurisdiction” is used to determine the jurisdiction whose Guarantee Fund or Fidelity Fund is liable for a default of a law practice arising from an act or omission committed by the associate. The relevant jurisdiction for an associate is in some cases the associate’s home jurisdiction.

- (2) In the case of a default involving trust money received in Australia (whether or not it was paid into an Australian trust account), the relevant jurisdiction for the associate is –
 - (a) if the trust money was paid into an Australian trust account and if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before the default, the jurisdiction under whose law that trust account was maintained; or
 - (b) in any other case, the associate’s home jurisdiction.
- (3) In the case of a default involving trust money received outside Australia and paid into an Australian trust account, the relevant jurisdiction for the associate is –
 - (a) if the associate (whether alone or with a co-signatory) was authorised to withdraw any or all of the trust money from the only or last Australian trust account in which the trust money was held before

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the default, the jurisdiction under whose law that trust account was maintained; or

(b) in any other case, the associate’s home jurisdiction.

- (4) In the case of a default involving trust property received in Australia, or received outside Australia and brought to Australia, the relevant jurisdiction for the associate is the associate’s home jurisdiction.

Note. Section 398 (Defaults involving interstate elements where committed by one associate only) provides that the Trust may treat the default as consisting of 2 or more defaults for the purpose of determining the liability of the Guarantee Fund or Fidelity Fund.

365. Defaults to which this Part applies

- (1) This Part applies to a default of a law practice arising from or constituted by an act or omission of one or more associates of the practice, where this jurisdiction is the relevant jurisdiction for the only associate or one or more of the associates involved.
- (2) It is immaterial where the default occurs.
- (3) It is immaterial that the act or omission giving rise to or constituting a default does not constitute a crime or other offence under the law of this or any other jurisdiction or of the Commonwealth or that proceedings have not

been commenced or concluded in relation to a crime or other offence of that kind.

366. Defaults relating to financial services or investments

- (1) This Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for or in connection with –
 - (a) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate is required to hold an Australian financial services licence covering the provision of the service (whether or not such a licence is held at any relevant time); or
 - (b) a financial service provided by the practice or an associate of the practice in circumstances where the practice or associate provides the service as a representative of another person who carries on a financial services business (whether or not the practice or associate is an authorised representative at any relevant time).
- (2) Without limiting subsection (1), this Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for or in connection with –

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- (a) a managed investment scheme; or
 - (b) mortgage financing; or
 - (c) a mortgage investment scheme –
- undertaken by the practice.
- (3) Without limiting subsections (1) and (2), this Part does not apply to a default of a law practice to the extent that the default occurs in relation to money or property that is entrusted to or held by the practice for investment purposes, whether on its own account or as agent, unless –
 - (a) the money or property was entrusted to or held by the practice –
 - (i) in the ordinary course of legal practice; and
 - (ii) primarily in connection with the provision of legal services to or at the direction of the client; and
 - (b) the investment is or is to be made –
 - (i) in the ordinary course of legal practice; and
 - (ii) for the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter or further stages of the matter or pending payment or delivery of the money or property to or at the direction of the client.

(4) In this section –

**“Australian financial services licence”,
“authorised representative”, “financial
service” and “financial services
business”** have the same meanings as in
Chapter 7 of the *Corporations Act 2001*
of the Commonwealth.

Division 5 – Prohibition on withdrawal of property

367. Prohibition on withdrawal of certain property

- (1) If the prescribed authority, Board or external intervener thinks it is necessary to do so to protect money or other property belonging to a person, it may cause a notice in writing to be served –
- (a) on a manager of an ADI in which a law practice keeps a trust account prohibiting the ADI from permitting a withdrawal from, or any other dealing with, that account (other than a deposit of money into that account) unless the Supreme Court otherwise orders under section 368; and
 - (b) on a person who holds on behalf of a law practice any property (not being money in that trust account) prohibiting any dealing with that property unless the Supreme Court otherwise orders under section 368.

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- (2) A notice takes effect immediately upon its service and remains in force until –
 - (a) it is revoked under subsection (3); or
 - (b) it is varied on appeal under section 368.
- (3) The prescribed authority, Board or external intervener may revoke a notice referred to in subsection (1) at any time.
- (4) A person who fails to comply with a notice under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 100 penalty units.

368. Appeal against prohibition on withdrawal of certain property

- (1) A law practice that is aggrieved by a notice referred to in section 367(1) may appeal to the Supreme Court.
- (2) The Supreme Court may –
 - (a) confirm the notice; or
 - (b) vary the notice; or
 - (c) revoke the notice.

Division 6 – Claims about defaults

369. Default order

- (1) Any person may apply to the Supreme Court for an order that there has been, or may have been, a default by a law practice.
- (2) If the Supreme Court makes an order under subsection (1), the Supreme Court may make any or all of the following orders:
 - (a) where a claim has been wholly or partly allowed by the Trust, an order that the Trust compensate any claimants from the Guarantee Fund;
 - (b) an order appointing an external intervener under Part 5.6;
 - (c) an order that money standing to the credit of any trust account or general trust account of a law practice be paid into the Guarantee Fund.
- (3) Any money paid into the Guarantee Fund is free from any equity which may affect a trust account or any property from which that money was derived.

370. Advertisements

- (1) If the Supreme Court makes a default order, the Trust may publish either or both of the following:

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- (a) a notice that seeks information about the default;
 - (b) a notice that invites claims about the default and fixes a final date after which claims relating to the default cannot be made.
- (2) The final date fixed by a notice must be a date that is –
 - (a) at least 3 months later than the date of the first or only publication of the notice; and
 - (b) not more than 12 months after the date of that first or only publication.
- (3) A notice must be published –
 - (a) in a newspaper circulating generally throughout Australia; and
 - (b) in a newspaper circulating generally in each jurisdiction where the law practice –
 - (i) has an office; or
 - (ii) at any relevant time had an office –if known to the Trust; and
 - (c) on the internet site (if any) of the Trust or prescribed authority.

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- (4) The Trust may provide information to persons making inquiries in response to a notice published under this section.
- (5) Apart from extending the period during which claims can be made under this Part (where relevant), publication of a notice under this section does not confer any entitlements in relation to any claim or the default to which it relates or provide any grounds affecting the determination of any claim.
- (6) Neither the publication in good faith of a notice under this section, nor the provision of information in good faith under this section, subjects a protected person to any liability (including liability in defamation).
- (7) In this section –
 - “**protected person**” means –
 - (a) the Trust or a member of the Trust; or
 - (b) the prescribed authority; or
 - (c) the proprietor, editor or publisher of a newspaper; or
 - (d) an internet service provider or internet content host; or
 - (e) a person acting at the direction of any person or entity referred to in this definition.

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371. Claims about defaults

- (1) A person who suffers pecuniary loss because of a default to which this Part applies, and in respect of which a default order has been made, may make a claim against the Guarantee Fund to the Trust about the default.
- (2) A claim is to be made in writing in a form approved by the Trust.
- (3) The Trust may require the person who makes a claim to do either or both of the following:
 - (a) to give further information about the claim or any dispute to which the claim relates;
 - (b) to verify the claim or any further information, by statutory declaration.

372. Time limit for making claims

- (1) Subject to section 373 (Time limit for making claims following advertisement), a claim does not lie against the Guarantee Fund unless the prospective claimant notifies the Trust of the default concerned –
 - (a) within the period of 6 months after the prospective claimant becomes aware of the default; or
 - (b) within a further period allowed by the Trust; or

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- (c) if the Supreme Court allows further time after the Trust refuses to do so, within a period allowed by the Supreme Court.
 - (2) The Supreme Court or Trust may allow a further period referred to in subsection (1) if satisfied that –
 - (a) it would be reasonable to do so after taking into account all ascertained and contingent liabilities of the Guarantee Fund; and
 - (b) it would be appropriate to do so in a particular case having regard to matters the Supreme Court or Trust considers relevant.

373. Time limit for making claims following advertisement

- (1) This section applies if the Trust publishes a notice under section 370 fixing a final date after which claims relating to a default cannot be made.
- (2) A claim may be made –
 - (a) up to and including the final date fixed under the notice; or
 - (b) within a further period allowed by the Trust; or

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- (c) if the Supreme Court allows further time after the Trust refuses to do so, within a period allowed by the Supreme Court –

even though it would have been barred under section 372 (Time limit for making claims) had the notice not been published.

374. Claims not affected by certain matters

- (1) A claim may be made about a law practice’s default despite a change in the status of the practice or the associate concerned after the occurrence of the act or omission giving rise to or constituting the default.
- (2) A claim that has been made is not affected by a later change in the status of the practice or associate.
- (3) For the purposes of this section, a change in status includes –
 - (a) a change in the membership or staffing or the dissolution of the practice (in the case of a partnership); and
 - (b) a change in the directorship or staffing or the winding-up or dissolution of the practice (in the case of an incorporated legal practice); and
 - (c) the fact that the associate has ceased to practise or to hold an Australian practising certificate (in the case of an

associate who was an Australian legal practitioner); and

- (d) the death of the associate (in the case of a natural person).

375. Vesting of rights in Trust

If a default order has been made in respect of a law practice, the rights and interests of any person arising from any loss incurred in respect of which the default order was made are assigned to the Trust when an amount is paid out of the Guarantee Fund to that person but only to the extent of that amount.

376. Investigation of claims

- (1) The Trust must investigate a claim made to it, including the default to which it relates, in any manner it considers appropriate.
- (2) Without limiting subsection (1), the Trust may require any person to produce documents or records in the person’s possession or subject to the person’s control.
- (3) A person who neglects or fails, without reasonable cause, to produce any relevant documents or records when required to do so under subsection (2) is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

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377. Advance payments

- (1) The Trust may, at its absolute discretion, make payments to a claimant in advance of the determination of a claim if satisfied that –
 - (a) the claim is likely to be allowed; and
 - (b) payment is warranted to alleviate hardship.
- (2) Any payments made in advance are to be taken into account when the claim is finally determined.
- (3) Payments under this section are to be made from the Guarantee Fund.
- (4) If the claim is disallowed, the amounts paid under this section are recoverable by the Trust as a debt due to the Guarantee Fund.
- (5) If the claim is allowed but the amount payable is less than the amount paid under this section, the excess paid under this section is recoverable by the Trust as a debt due to the Guarantee Fund.

Division 7 – Determination of claims

378. Determination of claims

- (1) The Trust must determine a claim by wholly or partly allowing or disallowing it.

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- (2) The Trust may disallow a claim to the extent that the claim does not relate to a default for which the Guarantee Fund is liable.
- (3) The Trust may wholly or partly disallow a claim, or reduce a claim, to the extent that –
- (a) the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
 - (b) the negligence of the claimant contributed to the loss; or
 - (c) the conduct of the transaction with the law practice in relation to which the claim is made was illegal, and the claimant knew or ought reasonably to have known of that illegality; or
 - (d) proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or
 - (e) the claimant has unreasonably refused to disclose information or documents to or co-operate with –
 - (i) the Trust; or

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- (ii) any other authority (including, for example, an investigative or prosecuting authority) –

in the investigation of the claim.
- (4) Subsections (2) and (3) do not limit the Trust’s power to disallow a claim on any other ground.
- (5) Without limiting subsection (2) or (3), the Trust may reduce the amount otherwise payable on a claim to the extent the Trust considers appropriate if satisfied that the claimant –
 - (a) assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
 - (b) unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or
 - (c) has unreasonably hindered the investigation of the claim.
- (6) If the amount of a claim does not exceed \$2 500 or such other amount as may be prescribed, the Trust may allow the claim after waiving compliance with such of the provisions of this Part as it thinks fit.
- (7) The Trust must, in allowing a claim, specify the amount payable, including if appropriate any amounts payable under sections 381 and 382.

379. Claimant required to pursue claims, &c.

- (1) The Trust may give a claimant not less than 21 days’ written notice requiring the claimant to do such of the following as are specified in the notice:
 - (a) take specified steps for the purpose of pursuing the claim;
 - (b) supply the Trust with specified particulars in relation to the claim;
 - (c) produce or deliver to the Trust any securities or documents necessary or available to support the claim or to enable the Trust to establish any rights of the Trust against the law practice;
 - (d) do specified things in connection with the claim.
- (2) If the claimant fails to comply with the notice, the Trust may –
 - (a) wholly or partly disallow the claim; or
 - (b) direct that the whole, or a specified part, of any interest otherwise payable under section 382 (Interest) not be paid.

380. Maximum amount allowable

- (1) The amount payable in respect of a default must not exceed the pecuniary loss resulting from the default.

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- (2) This section does not apply to costs payable under section 381 or to interest payable under section 382.

381. Costs

- (1) If the Trust wholly or partly allows a claim, the Trust must order payment of the claimant’s reasonable legal costs involved in making and proving the claim, unless the Trust considers that special circumstances exist warranting a reduction in the amount of costs or warranting a determination that no amount should be paid for costs.
- (2) If the Trust wholly disallows a claim, the Trust may order payment of the whole or part of the claimant’s reasonable legal costs involved in making and attempting to prove the claim, where the Trust considers it is appropriate to make the order.
- (3) The costs are payable from the Guarantee Fund.

382. Interest

- (1) In determining the amount of pecuniary loss resulting from a default, the Trust is to add interest on the amount payable (excluding interest), unless the Trust considers that special circumstances exist warranting a reduction in the amount of interest or warranting a determination that no amount should be paid by way of interest.

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- (2) The interest is to be calculated from the date on which the claim was made, to the date the Trust notifies the claimant that the claim has been allowed, at the rate specified in or determined under the regulations.
 - (3) To the extent that regulations are not in force for the purposes of subsection (2), interest is to be calculated at the rate of 5% per annum.
 - (4) The interest is payable from the Guarantee Fund.

383. Reduction of claim because of other benefits

- (1) A person is not entitled to recover from the Guarantee Fund any amount equal to amounts or to the value of other benefits –
 - (a) that have already been paid to or received by the person; or
 - (b) that have already been determined and are payable to or receivable by the person; or
 - (c) that (in the opinion of the Trust) are likely to be paid to or received by the person; or
 - (d) that (in the opinion of the Trust) might, but for neglect or failure on the person’s part, have been paid or payable to or received or receivable by the person –

from other sources in respect of the pecuniary loss to which a claim relates.

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- (2) The Trust may, at its absolute discretion, pay to a person the whole or part of an amount referred to in subsection (1)(c) if satisfied that payment is warranted to alleviate hardship, but nothing in this subsection affects section 385 (Repayment of certain amounts).

384. Subrogation

- (1) On payment of a claim from the Guarantee Fund, the Trust is subrogated to the rights and remedies of the claimant against any person in relation to the default to which the claim relates to the extent of the amount paid.
- (2) Without limiting subsection (1), that subsection extends to a right or remedy against –
 - (a) the associate in respect of whom the claim is made; or
 - (b) the person authorised to administer the estate of the associate in respect of whom the claim is made and who is deceased or an insolvent under administration.
- (3) Subsection (1) does not apply to a right or remedy against an associate if, had the associate been a claimant in respect of the default, the claim would not be disallowed on any of the grounds set out in section 378(3) (Determination of claims).

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- (4) The Trust may exercise its rights and remedies under this section in its own name or in the name of the claimant.
 - (5) If the Trust brings proceedings under this section in the name of the claimant, it must indemnify the claimant against any costs awarded against the claimant in the proceedings.
 - (6) The Trust may exercise its rights and remedies under this section even though any limitation periods under this Part have expired.
 - (7) The Trust must pay into the Guarantee Fund any money recovered in exercising its rights and remedies under this section.

385. Repayment of certain amounts

- (1) If –
 - (a) a claimant receives a payment from the Guarantee Fund in respect of the claim; and
 - (b) the claimant receives or recovers from another source or sources a payment on account of the pecuniary loss; and
 - (c) there is a surplus after deducting the amount of the pecuniary loss from the total amount received or recovered by the claimant from both or all sources –

the amount of the surplus is a debt payable by the claimant to the Fund.

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- (2) However, the amount payable by the claimant cannot exceed the amount the claimant received from the Guarantee Fund in respect of the claim.
- (3) A claimant must notify the Trust of the receipt or recovery of a payment referred to in subsection (1)(b) within 60 days after the receipt or recovery.

Penalty: Fine not exceeding 50 penalty units.

- (4) The claimant must pay to the Trust the amount payable under subsection (1) within such period as is determined by the Trust.

386. Notification of delay in making decision

- (1) If the Trust considers that a claim is not likely to be determined within 12 months after the claim was made, the Trust must notify the claimant in writing that the claim is not likely to be determined within that period.
- (2) The notification must contain a brief statement of reasons for the delay.

387. Notification of decision

- (1) The Trust must, as soon as practicable, notify the claimant in writing about any decision it makes about the claim.
- (2) The notification must include an information notice about –

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- (a) a decision of the Trust to wholly or partly disallow the claim; or
- (b) a decision of the Trust to reduce the amount allowed in respect of the claim.

388. Appeal against decision on claim

(1) A claimant may appeal to the Supreme Court against –

- (a) a decision of the Trust to wholly or partly disallow a claim; or
- (b) a decision of the Trust to reduce the amount allowed in respect of a claim –

but an appeal does not lie against a decision of the Trust to limit the amount payable, or to decline to pay an amount, under the capping and sufficiency provisions of this jurisdiction.

(2) An appeal against a decision must be lodged within 30 days of receiving the information notice about the decision.

(3) On an appeal under this section –

- (a) the appellant must establish that the whole or part of the amount sought to be recovered from the Guarantee Fund is not reasonably available from other sources, unless the Trust waives that requirement; and

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- (b) the Supreme Court may, on application by the Trust, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
 - (4) The Supreme Court may review the merits of the Trust’s decision.
 - (5) The Supreme Court may –
 - (a) affirm the decision; or
 - (b) if satisfied that the reasons for varying or setting aside the Trust’s decision are sufficiently cogent to warrant doing so –
 - (i) vary the decision; or
 - (ii) set aside the decision and make a decision in substitution for the decision set aside; or
 - (iii) set aside the decision and remit the matter for reconsideration by the Trust in accordance with any directions or recommendations of the Court –
- and may make other orders as it thinks fit.
- (6) No order for costs is to be made on an appeal under this section unless the Supreme Court is satisfied that an order for costs should be made in the interests of justice.

389. Appeal against failure to determine claim

- (1) A claimant may appeal to the Supreme Court against a failure of the Trust to determine a claim within the period of 12 months after the claim was made.
- (2) An appeal against a failure to determine a claim may be made at any time after the period of 12 months has elapsed after the claim was made and while the failure continues.
- (3) On an appeal under this section –
 - (a) the appellant must establish that the whole or part of the amount sought to be recovered from the Guarantee Fund is not reasonably available from other sources, unless the Trust waives that requirement; and
 - (b) the Supreme Court may, on application by the Trust, stay the appeal pending further action being taken to seek recovery of the whole or part of that amount from other sources.
- (4) The Supreme Court may determine the appeal –
 - (a) by –
 - (i) giving directions to the Trust for the expeditious determination of the matter; and
 - (ii) if the Court is satisfied that there has been unreasonable delay,

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ordering that interest be paid at a specified rate that is higher than the rate applicable under section 382 (Interest), until further order or the determination of the claim; and

(iii) if the Court is satisfied that there has not been unreasonable delay, ordering that, if delay continues in circumstances of a specified kind, interest be paid for a specified period at a specified rate that is higher than the rate applicable under section 382, until further order or the determination of the claim; or

(b) by deciding not to give directions or make orders under paragraph (a).

(5) No order for costs is to be made on an appeal under this section unless the Supreme Court is satisfied that an order for costs should be made in the interests of justice.

390. Court proceedings

In any proceedings brought in a court under section 384 (Subrogation) or section 388 (Appeal against decision on claim) –

(a) evidence of any admission or confession by, or other evidence that would be admissible against, an Australian legal

practitioner or other person with respect to an act or omission giving rise to a claim is admissible to prove the act or omission despite the fact that the practitioner or other person is not a defendant in, or a party to, the proceedings; and

- (b) any defence that would have been available to the practitioner or other person is available to the Trust.

Division 8 – Payments from Guarantee Fund for defaults

391. Payments for defaults

- (1) The Guarantee Fund is to be applied by the Trust for the purpose of compensating claimants in respect of claims allowed under this Part in respect of defaults to which this Part applies.
- (2) An amount payable from the Guarantee Fund in respect of a claim is payable to the claimant or to another person at the claimant’s direction.

392. Caps on payments

- (1) The regulations may fix either or both of the following:
- (a) the maximum amounts, or the method of calculating maximum amounts, that may be paid from the Guarantee Fund in

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respect of individual claims or classes of individual claims;

- (b) the maximum aggregate amount, or the method of calculating the maximum aggregate amount, that may be paid from the Guarantee Fund in respect of all claims made in relation to individual law practices or classes of law practices.
- (2) Amounts must not be paid from the Guarantee Fund that exceed the amounts fixed, or calculated by a method fixed, under subsection (1).
- (3) Payments from the Guarantee Fund in accordance with the requirements of subsection (2) are made in full and final settlement of the claims concerned.
- (4) Despite subsection (2), the Trust may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the Guarantee Fund and the circumstances of the particular case.
- (5) No proceedings can be brought, by way of appeal or otherwise, to require the payment of a larger amount or to require the Trust to consider payment of a larger amount.

393. Sufficiency of Guarantee Fund

- (1) If the Trust is of the opinion that the Guarantee Fund is likely to be insufficient to meet the

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Fund’s ascertained and contingent liabilities, the Trust may do any or all of the following:

- (a) postpone all payments relating to all or any class of claims out of the Fund;
 - (b) make partial payments of the amounts of one or more allowed claims out of the Fund with payment of the balance being a charge on the Fund;
 - (c) make partial payments of the amounts of 2 or more allowed claims out of the Fund on a pro rata basis, with payment of the balance ceasing to be a liability of the Fund.
- (2) In deciding whether to do any or all of the things mentioned in subsection (1), the Trust –
 - (a) must have regard to hardship where relevant information is known to the Trust; and
 - (b) must endeavour to treat outstanding claims equally and equitably, but may make special adjustments in cases of hardship.
- (3) If the Trust declares that a decision is made under subsection (1)(c) –
 - (a) the balance specified in the declaration ceases to be a liability of the Guarantee Fund; and

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- (b) the Trust may (but need not) at any time revoke the declaration in relation to either the whole or a specified part of the balance, and the balance or that part of the balance again becomes a liability of the Fund.
- (4) A decision of the Trust made under this section is final and not subject to appeal or review.

394. Law practice to reimburse Guarantee Fund

- (1) If the Trust compensates a claimant from the Guarantee Fund, the Trust may make an application to the Supreme Court for an order that the amount of the compensation or a lesser amount be paid to the Trust by a law practice.
- (2) In determining whether to make an order on an application under subsection (1), the Supreme Court may take into account –
 - (a) the management of the trust accounts of the law practice; and
 - (b) any matter relating to a default and any investigation into the default; and
 - (c) the membership of the law practice at any relevant time; and
 - (d) any other relevant matter.

Division 9 – Claims by law practices or associates

395. Claims by law practices or associates about defaults

- (1) This section applies to a default of a law practice arising from or constituted by an act or omission of an associate of the practice.
- (2) A claim may be made under section 371 (Claims about defaults) by another associate of the law practice, if the associate suffers pecuniary loss because of the default.
- (3) A claim may be made under section 371 by the law practice, if the practice is an incorporated legal practice and it suffers pecuniary loss because of the default.

396. Claims by law practices or associates about notional defaults

- (1) This section applies if a default of a law practice arising from or constituted by an act or omission of an associate of the practice was avoided, remedied or reduced by a financial contribution made by the practice or by one or more other associates.
- (2) The default, to the extent that it was avoided, remedied or reduced, is referred to in this section as a “**notional default**”.
- (3) This Part applies to a notional default in the same way as it applies to other defaults of law practices, but only the law practice or the other

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associate or associates concerned are eligible to
make claims about the notional default.

Division 10 – Defaults involving interstate elements

397. Concerted interstate defaults

- (1) The Trust may treat a concerted interstate default as if the default consisted of 2 or more separate defaults –
 - (a) one of which is a default to which this Part applies, where this jurisdiction is the relevant jurisdiction for one or more of the associates involved; and
 - (b) the other or others of which are defaults to which this Part does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions for one or more of the associates involved.
- (2) The Trust may treat a claim about a concerted interstate default as if the claim consisted of –
 - (a) one or more claims made under this Part; and
 - (b) one or more claims made under a corresponding law or laws.
- (3) A claim about a concerted interstate default is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute –

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- (a) in equal shares in respect of the default, regardless of the number of associates involved in each of those jurisdictions, and disregarding the capping and sufficiency provisions of those jurisdictions; or
 - (b) in other shares as agreed by the Trust and the corresponding authority or authorities involved.
- (4) Subsection (3) does not affect the application of the capping and sufficiency requirements of this jurisdiction in respect of the amount payable from the Guarantee Fund after the claim has been assessed.

398. Defaults involving interstate elements where committed by one associate only

- (1) This section applies to a default of a law practice arising from or constituted by an act or omission that was committed by only one associate of the practice, where the default involves more than one of the cases referred to in section 364(2), (3) and (4) (Meaning of “relevant jurisdiction”).
- (2) The Trust may treat the default to which this section applies as if the default consisted of 2 or more separate defaults –
 - (a) one of which is a default to which this Part applies, where this jurisdiction is the relevant jurisdiction; and

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- (b) the other or others of which are defaults to which this Part does not apply, where another jurisdiction or jurisdictions are the relevant jurisdictions.
- (3) The Trust may treat a claim about the default to which this section applies as if the claim consisted of –
 - (a) one or more claims made under this Part; and
 - (b) one or more claims made under a corresponding law or laws.
- (4) A claim about a default to which this section applies is to be assessed on the basis that the fidelity funds of the relevant jurisdictions involved are to contribute –
 - (a) in equal shares in respect of the default, and disregarding the capping and sufficiency provisions of those jurisdictions; or
 - (b) in other shares as agreed by the Trust and the corresponding authority or authorities involved.
- (5) Subsection (4) does not affect the application of the capping and sufficiency requirements of this jurisdiction in respect of the amount payable from the Guarantee Fund after the claim has been assessed.

Division 11 – Inter-jurisdictional provisions

399. Protocols

- (1) The Trust may enter into arrangements (referred to in this Part as “**protocols**”) with corresponding authorities for or with respect to matters to which this Part relates.
- (2) Without limiting subsection (1), the Trust may –
 - (a) request a corresponding authority to act as agent of the Trust in specified classes of cases; or
 - (b) agree to act as agent of a corresponding authority in specified classes of cases.
- (3) Protocols or specified classes of protocols do not have effect in this jurisdiction unless adopted by the regulations.

400. Forwarding of claims

- (1) If a claim is made to the Trust about a default that appears to be a default to which a corresponding law applies, the Trust must forward the claim or a copy of it to a corresponding authority of the jurisdiction concerned.
- (2) If a claim is made to a corresponding authority about a default that appears to be a default to which this Part applies and the claim or a copy of it is forwarded under a corresponding law to

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the Trust by the corresponding authority, the claim is taken –

- (a) to have been made under this Part; and
- (b) to have been so made when the claim was received by the corresponding authority.

401. Investigation of defaults to which this Part applies

- (1) This section applies if a default appears to be a default to which this Part applies and to have –
 - (a) occurred solely in another jurisdiction; or
 - (b) occurred in more than one jurisdiction; or
 - (c) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.
- (2) The Trust may request a corresponding authority or corresponding authorities to act as agent or agents for the Trust, for the purpose of processing or investigating a claim about the default or aspects of the claim.

402. Investigation of defaults to which a corresponding law applies

- (1) This section applies if a default appears to be a default to which a corresponding law applies and to have –

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-
- (a) occurred solely in this jurisdiction; or
 - (b) occurred in more than one jurisdiction (including this jurisdiction); or
 - (c) occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.
- (2) The Trust may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (3) If the Trust agrees to act as agent of a corresponding authority under subsection (2), the Trust may perform or exercise any of its functions or powers in relation to processing or investigating the claim or aspects of the claim as if the claim had been made under this Part.

403. Investigation of concerted interstate defaults and other defaults involving interstate elements

- (1) This section applies if any of the following appears to have occurred:
- (a) a concerted interstate default;
 - (b) a default to which section 398 (Defaults involving interstate elements where committed by one associate only) applies.

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- (2) The Trust may request a corresponding authority or corresponding authorities to act as agent or agents for the Trust, for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (3) The Trust may act as agent of a corresponding authority, if requested to do so by the corresponding authority, for the purpose of processing or investigating a claim about the default or aspects of the claim.
- (4) If the Trust agrees to act as agent of a corresponding authority under subsection (3), the Trust may perform or exercise any of its functions or powers in relation to processing or investigating the claim or aspects of the claim as if the claim had been made entirely under this Part.

404. Recommendations by Trust to corresponding authorities

If the Trust is acting as agent of a corresponding authority in relation to a claim made under a corresponding law, the Trust may make recommendations about the decision the corresponding authority might make about the claim.

405. Recommendations to and decisions by Trust after receiving recommendations from corresponding authorities

- (1) If a corresponding authority makes recommendations about the decision the Trust might make about a claim in relation to which the corresponding authority was acting as agent of the Trust, the Trust may –
 - (a) make its decision about the claim in conformity with the recommendations, whether with or without further consideration, investigation or inquiry; or
 - (b) disregard the recommendations.
- (2) A corresponding authority cannot, as agent of the Trust, make a decision about the claim under Division 7 (Determination of claims).

406. Request to another jurisdiction to investigate aspects of claim

- (1) The Trust may request a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with by the Trust and to provide a report on the result of the investigation.
- (2) A report on the result of the investigation received from –
 - (a) the corresponding authority; or

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- (b) a person or entity authorised by the corresponding authority to conduct the investigation –

may be used and taken into consideration by the Trust in the course of dealing with the claim under this Part.

407. Request from another jurisdiction to investigate aspects of claim

- (1) This section applies in relation to a request received by the Trust from a corresponding authority to arrange for the investigation of any aspect of a claim being dealt with under a corresponding law.
- (2) The Trust may conduct the investigation.
- (3) The provisions of this Part relating to the investigation of a claim apply, with any necessary adaptations, in relation to the investigation of the relevant aspect of the claim that is the subject of the request.
- (4) The Trust must provide a report on the result of the investigation to the corresponding authority.

408. Co-operation with other authorities

- (1) When dealing with a claim under this Part involving a law practice or an Australian legal practitioner, the Trust may consult and co-operate with another person or body who or

which has powers under the corresponding law of another jurisdiction in relation to the practice or practitioner.

- (2) For the purposes of subsection (1), the Trust and the other person or body may exchange information concerning the claim.

Division 12 – Miscellaneous

409. Interstate legal practitioner becoming authorised to withdraw from local trust account

- (1) This section applies to an interstate legal practitioner who (whether alone or with a co-signatory) becomes authorised to withdraw money from a local trust account.
- (2) The regulations may do either or both of the following:
- (a) require the practitioner to notify the prescribed authority of the authorisation in accordance with the regulations;
 - (b) require the practitioner to make prescribed contributions to the Guarantee Fund in accordance with the regulations.
- (3) Without limiting subsection (2), the regulations may determine or provide for the determination of any or all of the following:
- (a) the manner in which the notification is to be made and the information or material

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that is to be included in or to accompany
the notification;

- (b) the amount of the contributions, their
frequency and the manner in which they
are to be made.

410. Application of Part to incorporated legal practices

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Guarantee Fund, do not apply to incorporated legal practices or apply to them with specified modifications.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Guarantee Fund, to an incorporated legal practice, a reference in those provisions to a default of a law practice extends to a default of an incorporated legal practice, but only if it occurs in connection with the provision of legal services.
- (3) Nothing in this section affects any obligation of an Australian legal practitioner who is an officer or employee of an incorporated legal practice to comply with the provisions of this Act or any legal profession rule relating to the Guarantee Fund.

411. Application of Part to multi-disciplinary partnerships

- (1) The regulations may provide that specified provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Guarantee Fund, do not apply to multi-disciplinary partnerships or apply to them with specified modifications.
- (2) For the purposes of the application of the provisions of this Part, and any other provisions of this Act or any legal profession rule relating to the Guarantee Fund, to a multi-disciplinary partnership, a reference in those provisions to a default of a law practice extends to a default of a multi-disciplinary partnership or a partner or employee of a multi-disciplinary partnership, whether or not any person involved is an Australian legal practitioner, but only if it occurs in connection with the provision of legal services.
- (3) Nothing in this section affects any obligation of an Australian legal practitioner who is a partner or employee of a multi-disciplinary partnership to comply with the provisions of this Act or any legal profession rule relating to the Guarantee Fund.

412. Application of Part to sole practitioner whose practising certificate lapses

- (1) This Part applies if an Australian lawyer is not an Australian legal practitioner because his or

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her Australian practising certificate has lapsed and the lawyer was a sole practitioner immediately before the certificate lapsed, but does not apply where –

- (a) the certificate has been suspended or cancelled under this Act or a corresponding law; or
 - (b) the lawyer’s application for the grant or renewal of an Australian practising certificate has been refused under this Act or a corresponding law and the lawyer would be an Australian legal practitioner had it been granted or renewed.
- (2) For the purposes of other provisions of this Part, the practising certificate is taken not to have lapsed, and accordingly the lawyer is taken to continue to be an Australian legal practitioner.
- (3) Subsection (2) ceases to apply –
- (a) if a manager or receiver is appointed under this Act for the law practice; or
 - (b) upon expiry of the period of 6 months after the practising certificate actually lapsed; or
 - (c) if the lawyer’s application for the grant or renewal of an Australian practising certificate is refused under this Act or a corresponding law –

whichever first occurs.

PART 3.6 – MORTGAGE INVESTMENT SCHEMES

413. Prohibition regarding mortgage schemes

- (1) A law practice must not engage in, administer or facilitate a mortgage investment scheme unless the mortgage investment scheme is conducted by a separate legal entity which does not form part of the law practice.

Penalty: Fine not exceeding 100 penalty units.

- (2) A contravention by a law practice of subsection (1) is capable of constituting professional misconduct on the part of a principal or legal practitioner associate of the law practice involved in the contravention.
- (3) An Australian legal practitioner who knows that an associate has contravened this section must notify the Board in writing of that fact within 21 days after becoming aware of the contravention.

Penalty: Fine not exceeding 50 penalty units.

414. Mortgage investment schemes do not form part of law practice

- (1) A mortgage investment scheme does not form part of a law practice or an Australian legal practitioner's practice.
- (2) A claim may not be made against the Guarantee Fund under Part 3.5 for pecuniary loss arising

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from an investment in a mortgage investment scheme.

- (3) A claim may not be made against the professional indemnity insurance held by the law practice for any loss arising from an investment in a mortgage investment scheme.

415. Involvement of Australian legal practitioners in mortgage investment schemes

- (1) This Part does not prevent an Australian legal practitioner from carrying out any legal services in connection with a mortgage investment scheme that is conducted by a separate legal entity, or from having an interest in a mortgage investment scheme or in the separate legal entity that conducts the mortgage investment scheme.
- (2) If a client of the law practice or other person entrusts, or proposes to entrust, money to an Australian legal practitioner to be invested in a mortgage investment scheme conducted by a separate legal entity, and the Australian legal practitioner has an interest in the mortgage investment scheme, the Australian legal practitioner must give the client or other person a notice in writing that advises the client or other person that –
 - (a) the Australian legal practitioner has an interest in the mortgage investment scheme; and

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-
- (b) the mortgage investment scheme does not form part of the Australian legal practitioner's practice; and
 - (c) there is no claim against the Guarantee Fund for any pecuniary loss arising from an investment in the mortgage investment scheme; and
 - (d) there is no right to claim against the professional indemnity insurance held by the law practice for any loss arising from an investment in the mortgage investment scheme.
- (3) The notice is to include such other matters as may be required by the regulations or the legal profession rules.
 - (4) The Australian legal practitioner must not advance the money entrusted to the Australian legal practitioner to the separate legal entity for the mortgage investment scheme or to any other person unless the client or the person who entrusted the money has been given the notice.
 - (5) An Australian legal practitioner who knows that an associate has contravened a requirement referred to in this section must notify the Board in writing of that fact within 21 days after becoming aware of the contravention.
 - (6) A contravention of this section is capable of constituting professional misconduct.

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Note. Section 232 provides that money involved in financial services or investments is not trust money. Section 279 provides that a law practice must notify the person entrusting the money to the law practice that the money involved in financial services or investments is not trust money. Section 366 provides that claims cannot be made against the Guarantee Fund in relation to defaults relating to money involved in financial services or investments.

416. Regulations and rules

The regulations and legal profession rules may make provision in relation to the involvement of Australian legal practitioners in mortgage investment schemes, including but not limited to any of the following:

- (a) ensuring that the conduct of a mortgage investment scheme by a separate legal entity is kept separate from an Australian legal practitioner's practice;
- (b) ensuring that clients of an Australian legal practitioner are aware that the conduct of the mortgage investment scheme does not form part of the Australian legal practitioner's practice;
- (c) ensuring that clients of an Australian legal practitioner are aware that they do not have any right to claim against the Guarantee Fund or professional indemnity insurance held by the Australian legal practitioner in respect of an investment in a mortgage investment

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scheme conducted by the Australian legal practitioner.

CHAPTER 4 – COMPLAINTS AND DISCIPLINE

PART 4.1 – COMPLAINTS AND DISCIPLINE – INTRODUCTION AND APPLICATION

Division 1 – Preliminary

417. Purposes

The purposes of this Chapter are as follows:

- (a) to provide a nationally consistent scheme for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally;
- (b) to promote and enforce the professional standards, competence and honesty of the legal profession;
- (c) to provide a means of redress for complaints about lawyers.

418. Definitions

In this Chapter –

“compensation order” means an order referred to in section 491;

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“complaint” means a complaint under this Chapter;

“conduct” means conduct whether consisting of an act or an omission;

“party to a complaint” means –

- (a) the practitioner to whom the complaint relates; and
- (b) the person who makes the complaint.

419. Application of Chapter to lawyers, former lawyers and former practitioners

- (1) This Chapter applies to Australian lawyers and former Australian lawyers in relation to conduct occurring while they were Australian lawyers, but not Australian legal practitioners, in the same way as it applies to Australian legal practitioners and former Australian legal practitioners, and so applies with any necessary modifications.
- (2) This Chapter applies to former Australian legal practitioners in relation to conduct occurring while they were Australian legal practitioners in the same way as it applies to persons who are Australian legal practitioners, and so applies with any necessary modifications.

420. Unsatisfactory professional conduct

For the purposes of this Act –

“unsatisfactory professional conduct”
includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

421. Professional misconduct

(1) For the purposes of this Act –

“professional misconduct” includes –

- (a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper

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person to engage in legal
practice.

- (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

422. Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

- (1) Without limiting section 420 or 421, 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;

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- (d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;
 - (e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the *Corporations Act 2001* of the Commonwealth;
 - (f) conduct consisting of a failure to comply with the requirements of a notice under this Act or the regulations (other than an information notice);
 - (g) conduct of an Australian legal practitioner in failing to comply with an order of the Tribunal made under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Act or a corresponding law);
 - (h) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.
- (2) Conduct of a person consisting of a contravention referred to in subsection (1)(a) is capable of constituting unsatisfactory professional conduct or professional misconduct

whether or not the person is convicted of an offence in relation to the contravention.

Division 2 – Application of Chapter

423. Practitioners to whom this Chapter applies

This Chapter applies to an Australian legal practitioner in respect of conduct to which this Chapter applies, and so applies –

- (a) whether or not the practitioner is a local lawyer; and
- (b) whether or not the practitioner holds a local practising certificate; and
- (c) whether or not the practitioner holds an interstate practising certificate; and
- (d) whether or not the practitioner resides or has an office in this jurisdiction; and
- (e) whether or not the person making a complaint about the conduct resides, works or has an office in this jurisdiction.

424. Conduct to which this Chapter applies – generally

- (1) Subject to subsection (3), this Chapter applies to conduct of an Australian legal practitioner occurring in this jurisdiction.

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- (2) This Chapter also applies to an Australian legal practitioner's conduct occurring outside this jurisdiction, but only –
- (a) if it is part of a course of conduct that has occurred partly in this jurisdiction and partly in another jurisdiction, and either –
 - (i) the corresponding authority of each other jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or
 - (ii) the complainant and the practitioner consent to its being dealt with under this Act; or
 - (b) if it occurs in Australia but wholly outside this jurisdiction and the practitioner is a local lawyer or a local legal practitioner, and either –
 - (i) the corresponding authority of each jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or
 - (ii) the complainant and the practitioner consent to its being dealt with under this Act; or
 - (c) if –
 - (i) it occurs wholly or partly outside Australia; and

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- (ii) the practitioner is a local lawyer or a local legal practitioner.

Note. If consent is not given, the matter will be dealt with in each jurisdiction under subsection (1) or its equivalent.

- (3) This Chapter does not apply to conduct occurring in this jurisdiction if –
 - (a) the Board consents to its being dealt with under a corresponding law; or
 - (b) the complainant and the Australian legal practitioner consent to its being dealt with under a corresponding law.
- (4) Subsection (3) does not apply if the conduct is not capable of being dealt with under the corresponding law.
- (5) The Board may give consent for the purposes of subsection (3)(a), and may do so conditionally or unconditionally.

425. Conduct to which this Chapter applies – insolvency, serious offences and tax offences

- (1) This Chapter applies to the following conduct of a local legal practitioner whether occurring in Australia or elsewhere:
 - (a) conduct of the practitioner in respect of which there is a conviction for –

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- (i) a serious offence; or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty;
 - (b) conduct of the practitioner as or in becoming an insolvent under administration;
 - (c) conduct of the practitioner in becoming disqualified from managing or being involved in the management of any corporation under the *Corporations Act 2001* of the Commonwealth.
- (2) This section has effect despite anything in section 424 (Conduct to which this Chapter applies – generally).

**PART 4.2 – COMPLAINTS ABOUT AUSTRALIAN
LEGAL PRACTITIONERS**

426. Complaints

- (1) A complaint may be made under this Chapter about an Australian legal practitioner's conduct to which this Chapter applies.
- (2) A complaint may be made under this Chapter about the conduct of an Australian legal practitioner occurring outside this jurisdiction, but the complaint must not be dealt with under this Chapter unless this Chapter is or becomes applicable to it.
- (3) A complaint that is duly made is to be dealt with in accordance with this Chapter.

427. Making of complaints

- (1) A complaint may be made about the conduct of an Australian legal practitioner by any person.
- (2) A complaint is to be made to the Board, unless it is made by the Board.
- (3) A complaint is to be in writing.
- (4) A complaint is to –
 - (a) identify the complainant; and
 - (b) if possible, identify the Australian legal practitioner about whom the complaint is

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made or identify the law practice concerned; and

(c) describe the alleged conduct the subject of the complaint.

(5) The Board is to take all reasonable steps to ensure that a person who wishes to make a complaint is given such assistance as is necessary to enable that person to make the complaint in accordance with this Chapter.

(6) On receipt of a complaint, the Board is to –

(a) notify the complainant in writing of receipt of the complaint (unless the complainant is the Board); and

(b) record the date on which the complaint was received.

428. Complaints made more than 3 years after conduct concerned

(1) A complaint may be made about conduct of an Australian legal practitioner irrespective of when the conduct is alleged to have occurred.

(2) However, a complaint cannot be dealt with (otherwise than to dismiss it) if the complaint is made more than 3 years after the conduct is alleged to have occurred, unless the Board determines that –

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- (a) it is just and fair to deal with the complaint having regard to the delay and the reasons for the delay; and
 - (b) the complaint involves an allegation of professional misconduct and it is in the public interest to deal with the complaint.
- (3) A determination made under subsection (2) is final and cannot be challenged in any proceedings by the complainant or the Australian legal practitioner concerned.

429. Further information and verification

The Board may require a complainant to do either or both of the following:

- (a) to give further information about the complaint;
- (b) to verify the complaint, or any further information, by statutory declaration.

430. Practitioner to be notified of complaint

- (1) The Board is to ensure that, as soon as practicable after a complaint is made, written notice of the making of the complaint, the nature of the complaint and the identity of the complainant is given to the Australian legal practitioner about whom the complaint is made.

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- (2) Subsection (1) does not apply if the Board is of the opinion that the giving of the notice will or is likely to –
- (a) prejudice the investigation of the complaint; or
 - (b) prejudice an investigation by the police or other investigatory or law enforcement body of any matter with which the complaint is concerned; or
 - (c) place the complainant or another person at risk of intimidation or harassment; or
 - (d) prejudice pending court proceedings.
- (3) In a case in which subsection (2) applies, the Board –
- (a) may postpone giving the practitioner a copy of the complaint and notice about making submissions, until of the opinion that it is appropriate to do so; or
 - (b) may at its discretion –
 - (i) notify the practitioner of the general nature of the complaint; and
 - (ii) inform the practitioner of the practitioner's right to make submissions specifying the period within which submissions must be made, if of the opinion that the

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practitioner has sufficient
information to make submissions.

- (4) The notice must also inform the practitioner of any action already taken by the Board in relation to the complaint.
- (5) The notice must also inform the practitioner of the practitioner's right to make submissions to the Board, unless the Board advises the practitioner that it has dismissed or intends to dismiss the complaint.
- (6) Nothing in this section requires the Board to give written notice under this section to the practitioner until the Board has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint, and properly prepare the notice.

431. Submissions by practitioner

- (1) The Australian legal practitioner about whom a complaint is made may, within a period specified by the Board, make submissions to the Board about the complaint or its subject matter or both.
- (2) The Board may at its discretion extend the period in which submissions may be made.
- (3) The Board must consider the submissions made within the permitted period before deciding what action is to be taken in relation to the complaint.

432. Board to advise prescribed authority of complaint

The Board must advise the prescribed authority responsible for the issuing of practising certificates of a complaint made against an Australian legal practitioner and the details of the complaint.

433. Summary dismissal of complaints

- (1) The Board must dismiss a complaint if –
 - (a) the complaint is in the opinion of the Board vexatious, misconceived, frivolous or lacking in substance; or
 - (b) the complaint was made more than 6 years after the conduct complained of is alleged to have occurred, unless a determination is made under section 428 (Complaints made more than 3 years after conduct concerned) in relation to the complaint; or
 - (c) the conduct complained about has been the subject of a previous complaint that has been dismissed; or
 - (d) the conduct complained about is the subject of another complaint; or
 - (e) the complaint is not one that the Board has power to deal with.
- (2) The Board may dismiss a complaint if –

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- (a) further information is not given, or the complaint or further information is not verified, as required by the Board under section 429 (Further information and verification); or
 - (b) it is not in the public interest to deal with the complaint, having regard to the fact that the name of the Australian legal practitioner to whom the complaint relates has already been removed from any Australian roll in which he or she was enrolled.
 - (3) The Board may dismiss a complaint under this section without completing an investigation if, having considered the complaint, the Board forms the view that the complaint requires no further investigation.
 - (4) During or after the investigation of a complaint against an Australian legal practitioner, the Board may dismiss the complaint and discontinue any investigation, if satisfied that it is in the public interest to do so.
 - (5) If proceedings have been instituted in the Tribunal by the Board, the Tribunal may, on the application of the Board pursuant to subsection (4), dismiss the proceedings.

434. Withdrawal of complaints

- (1) A complaint may, subject to this section, be withdrawn by the complainant.

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- (2) Withdrawal of a complaint may be effected by oral or written communication to the Board.
- (3) If a complaint is withdrawn orally and the complaint was made by a person other than the Board, the Board must –
 - (a) make a written record of the withdrawal; and
 - (b) give the complainant a copy of the record, or send a copy of it addressed to the complainant at the complainant's address last known to the Board –

unless the complainant has previously provided the Board with written confirmation of the withdrawal.

- (4) A complaint may be withdrawn even though the Board has commenced or completed an investigation of the complaint, but cannot be withdrawn if proceedings with respect to the complaint have been instituted in the Tribunal.
- (5) If a complaint is made by a person other than the Board, a further complaint about the matter that is the subject of the withdrawn complaint cannot be made unless the Board is satisfied that it is appropriate to do so in the circumstances.
- (6) If a complaint is duly withdrawn, no further action is to be taken under this Chapter with respect to the complaint, unless the Board is satisfied that investigation or further investigation of the complaint is justified in the particular circumstances.

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- (7) Withdrawal of a complaint does not prevent –
- (a) the Board making a complaint or further complaint about the matter that is the subject of the withdrawn complaint (whether or not after investigation or further investigation referred to in subsection (6)); or
 - (b) action being taken on any other complaint duly made with respect to that matter.
- (8) This section extends to the withdrawal of a complaint so far as it relates to some of or part of the matters that form the subject of the complaint.

435. Board to advise prescribed authority of dismissal or withdrawal

The Board must advise the prescribed authority of –

- (a) the dismissal of a complaint under section 433 or the withdrawal of a complaint under section 434; and
- (b) the reasons for the dismissal or withdrawal.

PART 4.3 – MEDIATION

436. Mediation of complaints

- (1) If the Board considers that a complaint is capable of resolution by mediation, the Board may suggest to the complainant and the Australian legal practitioner to whom the complaint relates that they enter into a process of mediation.

Note. The complaint may be withdrawn under section 434 (Withdrawal of complaints) if the matter is resolved by mediation.

- (2) Subsection (1) does not apply to a complaint if the Board considers that the practitioner would be likely to be found guilty of professional misconduct if proceedings were instituted in the Tribunal with respect to the complaint.
- (3) This section extends to a complaint so far as it relates to some of or part of the matters that form the subject of the complaint.

437. Facilitation of mediation

If the complainant and the Australian legal practitioner concerned agree to enter into a process of mediation under this Part in connection with a complaint, the Board may facilitate the mediation to the extent it considers appropriate.

438. Admissibility of evidence and documents

- (1) The following are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence:
 - (a) evidence of anything said or admitted during a mediation or attempted mediation under this Part of the whole or a part of the matter that is the subject of a complaint; and
 - (b) a document prepared for the purposes of the mediation or attempted mediation.
- (2) Subsection (1) does not apply to an agreement reached during mediation.

439. Protection from liability

- (1) A mediator has, in the performance of his or her duties under this Part, the same protection and immunity as a judge of the Supreme Court has in the performance of his or her duties as a judge.
- (2) No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of mediation under this Part.

PART 4.4 – INVESTIGATION OF COMPLAINTS

440. Complaints to be investigated

- (1) The Board is required to investigate each complaint for which it is responsible.
- (2) This section does not apply to –
 - (a) a complaint taken over or referred to another regulatory authority; or
 - (b) a complaint that is dismissed or withdrawn under this Chapter.

441. Timeframe for investigation of complaints

In the investigation of a complaint, the Board is to ensure that the investigation is conducted as efficiently and expeditiously as possible.

442. Appointment of investigator

- (1) The Board may, in writing, appoint a suitably qualified person to investigate a complaint.
- (2) Such an appointment may be made generally (to apply to all complaints or to all complaints of a specified class) or to a specified complaint.

443. Application of Chapter 6 (Investigatory powers)

Chapter 6 (Investigatory powers) applies to an investigation under this Part.

444. Report to complainant

- (1) The Board, at the request of a complainant, must provide the complainant with –
 - (a) full details of –
 - (i) the person or persons conducting the investigation; and
 - (ii) the progress of the investigation into the matter; and
 - (iii) the documents being examined; and
 - (b) copies of any documents relating to the investigation.
- (2) The Board is not required to provide the details or copies of documents referred to in subsection (1) –
 - (a) if the provision of the details or documents will or is likely to –
 - (i) prejudice the investigation of the complaint; or
 - (ii) prejudice an investigation by the police or other investigatory or law enforcement body of any

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matter with which the complaint is concerned; or

- (iii) place the safety of the Australian legal practitioner or another person at risk of intimidation or harassment; or
- (iv) prejudice pending court proceedings; or
- (b) if the Board has previously provided the details or documents to the complainant and there has been no material change to the details of the complaint; or
- (c) if the Board considers that the details or documents should not be provided in order to protect the Board's legal professional privilege.

445. Referral of matters relating to professional misconduct

If, during an investigation under this Part, the Board considers that any matter which is the subject of the investigation may amount to professional misconduct, it is to make an application –

- (a) under section 464 for the Tribunal to hear and determine the matter; or
- (b) under section 486 for the Supreme Court to hear and determine the matter.

446. Interim order for suspension or non-issue of practising certificate

- (1) During the investigation of a complaint about an Australian legal practitioner, the Board may order –
 - (a) the prescribed authority to suspend a practising certificate held by the Australian legal practitioner for a specified period; or
 - (b) the prescribed authority to not grant or renew a practising certificate to the Australian legal practitioner for a specified period.
- (2) If a period of time specified in an order made under subsection (1) expires, the Board may make another order for a further specified period of time.
- (3) The Board may revoke an order made under subsection (1) or (2).
- (4) The Board must not make an order under subsection (1) or (2) unless it is satisfied –
 - (a) that the Australian legal practitioner is likely to be found guilty of professional misconduct; and
 - (b) that it is necessary in the public interest that the order be made.

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- (5) The Australian legal practitioner may appeal to the Supreme Court against an order under this section.
- (6) The Supreme Court may –
 - (a) affirm the order; or
 - (b) amend the order (whether by extending or reducing any period specified in the order or otherwise); or
 - (c) set aside the order.

447. Board to advise prescribed authority of outcome of investigation

The Board must advise the prescribed authority of the outcome of an investigation of a complaint made against an Australian legal practitioner.

448. Other investigations

An investigation into the affairs of an Australian legal practitioner under any other Chapter or under any other Act may be conducted despite any provisions of this Chapter.

449. Referral of matters for costs assessment

- (1) If any part of a complaint relates to a bill of costs, the Board may –

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- (a) refer the bill to a costs assessor to be assessed; or
 - (b) deal with that part of the complaint under this Chapter.
 - (2) The referral of a bill of costs under subsection (1) does not affect the power of the Board to investigate any other part of a complaint which does not relate to the dispute about the bill of costs.
 - (3) Any such referral may be made outside the 60-day period referred to in section 319 (Application by clients or third party payers for costs assessment).
 - (4) In exercising its discretion under subsection (1), the Board must consider whether the client was aware of his or her right to apply for a review of the costs within that 60-day period and, if the client was aware, whether the application may cause unfair prejudice to the Australian legal practitioner who is the subject of the complaint.
 - (5) Subject to this section, Division 7 of Part 3.3 applies to an assessment referred under subsection (1)(a) as if the Board were a client of the Australian legal practitioner.

PART 4.5 – COMPLAINTS

450. Powers of Board after investigation

After an investigation of a complaint against an Australian legal practitioner is completed, the Board may do any one of the following:

- (a) hold a hearing if it considers that any matter which is the subject of an investigation amounts to unsatisfactory professional conduct;
- (b) deal with the complaint in accordance with section 456 (Procedure for less serious complaint), if it considers that the subject matter of the complaint amounts to unsatisfactory professional conduct that is not sufficiently serious to warrant a hearing;
- (c) make an application under section 464 (Applications to Tribunal) for the Tribunal to hear and determine any matter that the Board considers amounts to both unsatisfactory professional conduct and professional misconduct;
- (d) make an application under section 464 for the Tribunal to hear and determine the matter, if it considers that the conduct amounts to professional misconduct;
- (e) make an application to the Supreme Court under section 486 (Applications to

Supreme Court) to hear and determine the matter, if it considers that the matter amounts to professional misconduct.

451. Dismissal of complaint

After an investigation of a complaint against an Australian legal practitioner has been completed, the Board may dismiss the complaint if satisfied that –

- (a) there is no reasonable likelihood that the practitioner will be found guilty of either unsatisfactory professional conduct or professional misconduct; or
- (b) it is in the public interest to do so.

452. Board to advise prescribed authority of decision

The Board must advise the prescribed authority of any decision under –

- (a) section 433 (Summary dismissal of complaints), section 450 (Powers of Board after investigation) or section 451 (Dismissal of complaint); and
- (b) the reasons for the decision.

453. Hearings of Board under this Chapter

Schedule 1 has effect with respect to hearings of the Board under this Chapter.

454. Determination of Board

- (1) If, after it has completed a hearing under this Part, the Board is not satisfied that an Australian legal practitioner is guilty of unsatisfactory professional conduct, the Board is to dismiss the complaint and advise the prescribed authority of the dismissal.
- (2) If, after it has completed a hearing under this Part, the Board is satisfied that an Australian legal practitioner is guilty of unsatisfactory professional conduct, the Board may make one or more of the following determinations:
 - (a) a determination that the Australian legal practitioner be admonished or reprimanded;
 - (b) a determination that the Australian legal practitioner pay a fine not exceeding 50 penalty units as it may specify;
 - (c) a determination that the complaint be referred to the Tribunal with a recommendation that the Tribunal make a compensation order;
 - (d) a determination that the Australian legal practitioner waive the whole or part of

any fees charged to a specified person in respect of specified work;

- (e) a determination that the Australian legal practitioner repay the whole or part of any fees paid by a specified person in respect of specified work;
- (f) a determination that the Australian legal practitioner carry out for a specified person such professional legal work, either free of charge or for such fee, as the Board may specify;
- (g) a determination that the Australian legal practitioner waive any lien in respect of a specified document or class of document;
- (h) a determination that the Australian legal practitioner, within a specified period, complete a specified course of further legal education or receive counselling as specified by the Board;
- (i) a determination that the Australian legal practitioner subject his or her practice to periodic supervision or inspection by a specified person and for a specified period;
- (j) a determination that the Australian legal practitioner seek appropriate advice from a specified person in relation to the management of the practice of the Australian legal practitioner;

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- (k) a determination that the Australian legal practitioner cease to accept instructions in relation to a specified class of work for a specified period;
 - (l) a determination prohibiting the Australian legal practitioner from acting as an Australian legal practitioner otherwise than in the course of employment by or under the supervision of an Australian legal practitioner holding an unrestricted practising certificate;
 - (m) a determination that the Australian legal practitioner pay to the Board any costs incurred by the Board in investigating and hearing a complaint.
- (3) If the Board makes a determination under subsection (2), the Board must advise the prescribed authority of the determination and the prescribed authority may impose a condition on the Australian legal practitioner's practising certificate to give effect to that determination as it sees fit.
- (4) The Board and the prescribed authority have the power to do all things necessary to give effect to any determination made under this section.
- (5) If –
- (a) the Board makes a determination under subsection (2)(b), (e) or (m); and

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- (b) an application for appeal is not made under section 458 (Application against determinations) –

the Board may, after the expiration of 21 days after the making of the determination, cause that determination to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932*.

- (6) A determination filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.
- (7) If an Australian legal practitioner fails to comply with a determination made under subsection (2)(d), (f), (g), (h), (i), (j), (k) or (l), the Board may, after the expiration of 21 days after the making of the determination, apply to the Supreme Court for an appropriate order.
- (8) Any fine imposed under this section is to be paid to the Board.

455. Application to Tribunal relating to compensation orders

- (1) If the Board makes a determination under section 454(2)(c), the Board is to make an application under section 464 for the Tribunal to determine the matter.
- (2) An application is to contain the recommendation of the Board for the making of the compensation order.

456. Procedure for less serious complaint

- (1) If the Board considers that a complaint may not be sufficiently serious to warrant a hearing, it may serve on the Australian legal practitioner –
 - (a) notice to appear before it to give an explanation of the matter; or
 - (b) notice to provide it with a written explanation.
- (2) A notice under subsection (1)(a) is to –
 - (a) set out particulars of the matter; and
 - (b) state that the Australian legal practitioner is entitled to make submissions and give and adduce evidence when appearing before the Board but is not entitled to be represented; and
 - (c) state that the appearance before the Board is not open to the public; and
 - (d) inform the Australian legal practitioner that he or she may request that the matter be referred directly to the Tribunal; and
 - (e) inform the Australian legal practitioner of the other circumstances in which the matter may be referred to the Tribunal; and
 - (f) specify the date, time and place at which the Australian legal practitioner is required to appear.

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- (3) A notice under subsection (1)(b) is to –
- (a) contain the same information as is specified in subsection (2)(a), (d) and (e) in relation to a notice requiring a personal appearance; and
 - (b) specify a date by which the Australian legal practitioner is required to provide the Board with the written explanation.
- (4) A notice may contain such other information as the Board considers necessary or expedient.
- (5) The date specified under subsection (2)(f) or subsection (3)(b) is to be not less than 14 days after the date of service of the notice.
- (6) The Board is to dismiss the complaint if, after considering the explanation of the Australian legal practitioner concerned, it is not satisfied that the matter has been substantiated.
- (7) If the Board is satisfied, after considering the explanation, that the matter has been substantiated but that it is not sufficiently serious to warrant a hearing, the Board may make any one or more of the following determinations:
- (a) that the Australian legal practitioner be cautioned or reprimanded;
 - (b) that the Australian legal practitioner make an apology;

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- (c) that the Australian legal practitioner make an undertaking to take, or refrain from taking, any specified action;
 - (d) that the Australian legal practitioner make reparation on terms specified by the Board;
 - (e) that the Australian legal practitioner, within a specified timeframe, complete a specified course of further legal education or receive counselling, as specified by the Board.
- (8) Failure to comply with a determination made under subsection (7), other than a determination under subsection (7)(a), is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (9) The Board is to refer a matter to the Tribunal if –
- (a) the Australian legal practitioner concerned fails to appear before the Board as required by a notice under subsection (1)(a) or, before the date of appearance specified in the notice, requests in writing that the matter be so referred; or
 - (b) the Australian legal practitioner concerned fails to provide the Board with a written explanation as required by a notice under subsection (1)(b) or, before the date on which the explanation is required to be provided, requests in writing that the matter be so referred; or

- (c) in the course of giving an explanation of the matter the Australian legal practitioner concerned requests, orally or in writing, that the matter be so referred; or
 - (d) after or in the course of considering an explanation of the matter, the Board determines that the matter is sufficiently serious to warrant a hearing by the Tribunal.
- (10) A meeting of the Board convened for the purposes of this section is not open to the public.

457. Notice of determination

The Board must serve notice of a determination under section 454 or 456 –

- (a) on the complainant; and
- (b) on the Australian legal practitioner who is the subject of the complaint; and
- (c) on the prescribed authority.

458. Application against determinations

- (1) The complainant, or the Australian legal practitioner who is the subject of the complaint, who is served with a notice of the determination of the Board in relation to a complaint may,

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within 21 days after the date of that determination –

- (a) apply to the Tribunal or Supreme Court to have the matter to which the determination relates heard by the Tribunal or Supreme Court; and
 - (b) make an application to the Tribunal or Supreme Court to stay the determination pending the finalisation of the application.
- (2) For the purposes of this section, a decision of the Board to dismiss a complaint under section 433 (Summary dismissal of complaints) is a determination of the Board.

459. Record of decision

- (1) The Board must cause a record of its decision with respect to a complaint, together with reasons for the decision, to be kept in respect of each complaint dealt with under this Part.
- (2) The Board must make the records referred to in subsection (1) available to the prescribed authority.

PART 4.6 – GENERAL PROCEDURAL MATTERS

460. Rules of procedural fairness

The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act or the regulations, apply in relation to the investigation of complaints and the Board's procedures under this Chapter.

461. Duty to deal with complaints efficiently and expeditiously

It is the duty of the Board to deal with complaints as efficiently and expeditiously as is practicable.

462. Complainant and practitioner to be informed of action taken

- (1) If a complaint has been made about an Australian legal practitioner –
 - (a) the Board is to ensure that the complainant and the practitioner are notified in writing of receipt of the complaint by the Board; and
 - (b) the Board is to ensure that the complainant and the practitioner receive a statement of reasons from the Board in respect of any action taken in relation to the complaint.

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- (2) Without limiting subsection (1), the complainant and the practitioner are entitled to receive written notice of –
 - (a) a decision to dismiss the complaint; or
 - (b) a decision to omit, from the allegations particularised in a complaint before the Board or Tribunal, a matter that was originally part of the complaint.
- (3) In the case of a decision by the Board to dismiss a complaint, the right of the complainant to apply to the Tribunal or Supreme Court under section 458 (Application against determinations) for the matter to be heard must be included in the notice to the complainant.

**PART 4.7 – PROCEEDINGS IN DISCIPLINARY
TRIBUNAL**

Division 1 – Preliminary

463. Definitions

In this Part –

“lay member” means a person referred to in section 610(2)(b);

“practitioner member” means a person referred to in section 610(2)(a).

Division 2 – Applications and procedure

464. Applications to Tribunal

- (1) Any person, including the Board, may apply to the Tribunal for the hearing and determination of a complaint.
- (2) The Board may apply to the Tribunal for the making of a compensation order.
- (3) An application –
 - (a) is to be made in writing; and
 - (b) is to specify the particulars upon which the application is based; and
 - (c) is to be lodged with the secretary to the Tribunal.

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- (4) The secretary to the Tribunal is to serve a copy of an application on all the other parties to the complaint and is to provide a copy of the application to the Board, if the Board is not the applicant.

465. Further information and verification

The Tribunal may require a person to do either or both of the following:

- (a) to give further information about the complaint;
- (b) to verify the complaint, or any further information, by statutory declaration.

466. Powers of Tribunal

- (1) In respect of an application under this Division, the Tribunal may do any or all of the following:
 - (a) summon any person whose evidence appears to be material to the application;
 - (b) proceed to hear and determine the application in the absence of any party who has been summoned to appear before it and who has failed to appear in response to the summons;
 - (c) take evidence by affidavit;

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- (d) take evidence on oath or affirmation and, for that purpose, administer oaths and affirmations;
 - (e) require any person to produce or authorise another person to produce any documents or records, or class of documents or records, in that person's possession or subject to that person's control that in the opinion of the Tribunal appear to be material to the application;
 - (f) require a person who appears before it to answer any question that, in the opinion of the Tribunal, appears to be material to the application;
 - (g) require the Board to conduct any investigation that the Tribunal considers necessary in order to hear and determine a complaint;
 - (h) require any person to assist the Board in such an investigation;
 - (i) adjourn the hearing of an application or any part of an application from place to place and from time to time;
 - (j) regulate its own procedure in relation to the hearing of an application;
 - (k) subject to its rules, order the joinder of more than one application against the same or different Australian legal practitioners.

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- (2) The Tribunal may direct or authorise the amendment of an application at any time.
- (3) The Tribunal may make an order imposing a fine not exceeding 50 penalty units on any person who, if required to do so under subsection (1), neglects or fails, without reasonable excuse –
 - (a) to comply with a summons; or
 - (b) to make an oath or affirmation; or
 - (c) to produce or authorise another person to produce any documents or records when required to do so; or
 - (d) to answer any question when lawfully required to do so; or
 - (e) to assist the Board in an investigation.
- (4) Any fine imposed under subsection (3) is to be paid to the Board.
- (5) The Tribunal may cause an order made under subsection (3) to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932* after the expiration of 21 days after the date of the order.
- (6) An order filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.
- (7) The Tribunal may –
 - (a) conduct a hearing into the application; or

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- (b) refer the application to be heard and determined by the Board under this Part if, after taking into account any report made by the Board, it considers that the matter –
- (i) relates to unsatisfactory professional conduct; or
 - (ii) is not sufficiently serious to warrant a hearing under this Part; or
 - (iii) is an alleged contravention of a regulation, rule or by-law made under this Act which is of such a nature that it ought to be heard and determined by the Board; or
- (c) dismiss a complaint if –
- (i) further information is not given under section 465; or
 - (ii) the application is vexatious, misconceived, frivolous or lacking in substance; or
 - (iii) the application was made more than 3 years after the conduct complained of is alleged to have occurred; or
 - (iv) the subject matter of the complaint is not one the Tribunal has power to deal with.

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467. Procedure at hearing of application

- (1) The Tribunal is to serve on the parties to the complaint and the Board, if the Board is not a party to the complaint, a notice in writing specifying the date, time and place for the hearing of the application.
- (2) The date specified in the notice for the hearing of an application is to be a date that is not less than 14 days after the date of service of the notice.
- (3) The hearing of an application under this Division is to be open to the public unless the Tribunal otherwise orders.
- (4) If the Tribunal orders that a hearing of an application under this Division is not open to the public, the Tribunal may determine who, other than the parties or their representatives, may be present before it at any stage of the proceedings.
- (5) At the hearing of an application under this Division, a party to the application may –
 - (a) be represented by an Australian legal practitioner; and
 - (b) give and adduce evidence and examine any other person who gives evidence at the hearing; and
 - (c) give the Tribunal a written submission in respect of the matter to which the hearing relates.

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- (6) The Tribunal may grant leave to any other person to appear at the hearing of an application if satisfied that it is appropriate for that person to appear.
 - (7) The Tribunal may make an order imposing a fine not exceeding 50 penalty units on any person who –
 - (a) obstructs, hinders or interrupts the proceedings of the Tribunal; or
 - (b) threatens or insults a member of the Tribunal; or
 - (c) gives an answer or makes a statement which, to that person's knowledge, is false or misleading.
 - (8) Any fine imposed under this section is to be paid to the Board.
 - (9) The Tribunal may cause an order made under subsection (7) to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932* after the expiration of 21 days after the date of the order.
 - (10) An order filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.

468. Evidence of conviction and sentence

At a hearing held under this Division, a certificate purporting to be signed by a proper

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officer of a court of this or another jurisdiction including the Commonwealth, relating to the conviction and sentencing of a person by that court, is admissible.

469. Early termination of proceedings before Tribunal

- (1) Proceedings before the Tribunal with respect to a complaint cannot be terminated, whether by withdrawal of the disciplinary application or otherwise, before the Tribunal makes its final decision about the complaint, without the leave of the Tribunal.
- (2) The Tribunal may give leave for the purposes of this section if it is satisfied that continuation of the proceedings is not warranted in the public interest.

Division 3 – Orders of Tribunal

470. Orders of Tribunal generally

- (1) If, after it has completed a hearing under this Part in relation to a complaint against an Australian legal practitioner, the Tribunal is satisfied that the practitioner has engaged in unsatisfactory professional conduct or professional misconduct, the Tribunal may make such orders as it thinks fit, including any one or more of the orders specified in section 471, 472 or 473.

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- (2) The Tribunal may order that the name of any party to an application not be published, or communicated to a person in any other manner.
- (3) A person who contravenes an order made under subsection (2) is guilty of an offence and is liable on summary conviction to a penalty not exceeding 50 penalty units.

471. Orders of Tribunal requiring official implementation in this jurisdiction

The Tribunal may make the following orders under this section:

- (a) an order recommending that the Supreme Court remove the name of the Australian legal practitioner from the local roll;
- (b) an order that the practitioner's local practising certificate be suspended for a specified period or cancelled;
- (c) an order that a local practising certificate not be granted to the practitioner or renewed before the end of a specified period;
- (d) an order that –
 - (i) specified conditions be imposed on the practitioner's practising certificate; and
 - (ii) conditions be imposed for a specified period; and

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- (iii) specifies the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;
- (e) an order reprimanding the practitioner.

472. Orders of Tribunal requiring official implementation in another jurisdiction

The Tribunal may make the following orders under this section:

- (a) an order recommending that the name of the Australian legal practitioner be removed from an interstate roll;
- (b) an order recommending that the practitioner's interstate practising certificate be suspended for a specified period or cancelled;
- (c) an order recommending that an interstate practising certificate not be granted or renewed to the practitioner before the end of a specified period;
- (d) an order recommending that –
 - (i) specified conditions be imposed on the practitioner's interstate practising certificate; and
 - (ii) conditions be imposed for a specified period; and

- (iii) conditions be imposed that specify the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed.

473. Orders of Tribunal requiring compliance by practitioner

The Tribunal may make the following orders under this section:

- (a) an order that the Australian legal practitioner pay a fine of a specified amount;
- (b) a compensation order under Part 4.9;
- (c) an order that the practitioner waive the whole or part of any fees charged to a specified person in respect of specified work;
- (d) an order that the practitioner repay the whole or part of any fees paid by a specified person in respect of specified work;
- (e) an order that the practitioner waive any lien in respect of a specified document or documents;
- (f) an order that the practitioner undertake and complete a specified course of further legal education;

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- (g) an order that the practitioner undertake a specified period of practice under specified supervision;
- (h) an order that the practitioner do or refrain from doing something in connection with the practice of law;
- (i) an order that the practitioner's practice, or the financial affairs of the practitioner's practice, be conducted for a specified period in a specified way or subject to specified conditions;
- (j) an order that the practitioner's practice be subject to periodic inspection by a specified person for a specified period;
- (k) an order that the practitioner undergo counselling or medical treatment or act in accordance with medical advice given to the practitioner;
- (l) an order that the practitioner seek advice in relation to the management of the practitioner's practice from a specified person;
- (m) an order that the practitioner cease to employ or engage a specified person or class of person;
- (n) an order that the practitioner not apply for a local practising certificate before the end of a specified period;

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- (o) an order that the practitioner employ in the practice of the practitioner a person belonging to a specified class of persons;
- (p) an order that the practitioner cease to accept instructions in relation to a specified class of work for a specified period;
- (q) an order prohibiting the practitioner from acting as a practitioner, otherwise than in the course of employment by a practitioner holding an unrestricted practising certificate;
- (r) an order that the practitioner carry out for a specified person such work, either free of charge or for such fee, as the Tribunal may so specify.

474. Ancillary or other orders of Tribunal

The Tribunal may make ancillary or other orders, including an order for payment by the practitioner of expenses associated with orders under section 473, as assessed in accordance with the order or as agreed.

475. Alternative finding of Tribunal

The Tribunal may find that a person is guilty of unsatisfactory professional conduct, even though the complaint or application to the Tribunal alleged professional misconduct, or may find

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that a person has engaged in professional misconduct, even though the complaint or application to the Tribunal alleged unsatisfactory professional conduct.

476. Fines ordered by Tribunal

- (1) An amount ordered by the Tribunal under section 473 (Orders of Tribunal requiring compliance by practitioner) to be paid by way of a fine by any one Australian legal practitioner in connection with the Tribunal's findings about a complaint must not exceed in total –
 - (a) 100 penalty units in the case of unsatisfactory professional conduct not amounting to professional misconduct; or
 - (b) 750 penalty units in the case of professional misconduct.
- (2) If the Tribunal finds that the practitioner has engaged in both professional misconduct and unsatisfactory professional conduct not amounting to professional misconduct, the amount must not exceed 750 penalty units in total.
- (3) The Tribunal may order the suspension of payment of a fine, in whole or in part, or make payment of a fine conditional.

477. Reprimands

- (1) If the Tribunal makes an order reprimanding the practitioner, the Tribunal is to publish the order and a statement of its reasons for making the order.
- (2) It is sufficient compliance with the requirement to publish an order under subsection (1) if the Tribunal provides to the Board sufficient information to enable the Board to perform or exercise the Board's functions or powers in respect of the Register of Disciplinary Action required to be kept under Part 4.10 (Publicising disciplinary action).

478. Interlocutory and interim orders of Tribunal

- (1) The Tribunal may make interlocutory or interim orders as it thinks fit before making its final decision about a complaint against an Australian legal practitioner.
- (2) Without limiting subsection (1), orders of the kinds referred to in this Division may be made as interlocutory or interim orders.

479. Consent orders

- (1) The Tribunal may, with the consent of the Australian legal practitioner concerned contained in a written instrument, make orders under this Part without conducting or completing a hearing in relation to the complaint.

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- (2) Consent may be given before or after the proceedings are commenced in the Tribunal with respect to the complaint.
- (3) If consent is given before the proceedings are commenced, the requirement to conduct an investigation of the complaint (whether commenced or not) may be dispensed with, and any investigation of the complaint already being conducted may be suspended or terminated.
- (4) This section does not apply to consent given by the practitioner unless the practitioner and the Tribunal have agreed on the terms of an instrument of consent.
- (5) Without limiting what may be included in the instrument of consent, the instrument is to contain an agreed statement of facts (including the grounds of complaint) and may contain undertakings on the part of the practitioner.
- (6) The instrument of consent must be filed with the Tribunal.
- (7) Nothing in this section affects the procedures regarding the commencement of proceedings in the Tribunal where consent is given before the proceedings are commenced.
- (8) If consent is given before the proceedings are commenced, the proceedings are nevertheless to be commenced with respect to the complaint in the same way as if consent had not yet been given.

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- (9) The Tribunal is to be constituted in the same way as for the conduct of a hearing into the complaint.
 - (10) In deciding whether to make orders under this Part pursuant to an instrument of consent, the Tribunal may make such inquiries of the parties as it thinks fit and may, despite any such consent, conduct or complete a hearing in relation to the complaint if it considers it to be in the public interest to do so.

480. Compliance with determinations and orders of Tribunal

- (1) Persons and bodies having relevant functions or powers under this Act must –
 - (a) give effect to the following orders:
 - (i) any order of the Tribunal made under section 471 (Orders of Tribunal requiring official implementation in this jurisdiction);
 - (ii) any interlocutory or interim order of the Tribunal made under section 478 (Interlocutory and interim orders of Tribunal) so far as it is an order of the kind referred to in section 471 or otherwise needs to be, or is capable of being, given effect to in this jurisdiction;

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- (iii) a consent order made under section 479; and
- (b) enforce the following orders (to the extent that they relate to the practitioner's practice of law in this jurisdiction):
 - (i) any order of the Tribunal made under section 473 (Orders of Tribunal requiring compliance by practitioner);
 - (ii) any interlocutory or interim order of the Tribunal made under section 478 so far as it is an order of the kind referred to in section 473 or otherwise needs to be, or is capable of being, enforced in this jurisdiction;
 - (iii) a consent order made under section 479.

Note. Section 508 (Compliance with recommendations or orders made under corresponding laws) contains provisions relating to compliance in this jurisdiction with orders made under corresponding laws.

- (2) The Tribunal must ensure that persons and bodies having relevant functions or powers under a corresponding law of another jurisdiction are notified of the making and contents of –
 - (a) the following orders:

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- (i) an order of the Tribunal made under section 472 (Orders of Tribunal requiring official implementation in another jurisdiction) in relation to that corresponding law;
 - (ii) any interlocutory or interim order of the Tribunal made under section 478 (Interlocutory and interim orders of Tribunal) so far as it is an order of the kind referred to in section 472 or otherwise needs to be, or is capable of being, given effect to in the other jurisdiction;
 - (iii) a consent order made under section 479; and
 - (b) the following orders (to the extent that they relate to the practitioner's practice of law in the other jurisdiction):
 - (i) an order of the Tribunal made under section 473 (Orders of Tribunal requiring compliance by practitioner);
 - (ii) any interlocutory or interim order of the Tribunal made under section 478 so far as it is an order of the kind referred to in section 473 or otherwise needs to be, or is capable of being, enforced in the other jurisdiction;

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- (iii) a consent order made under section 479.
- (3) If the Tribunal makes an order that the name of an Australian legal practitioner who is a local lawyer be removed from the local roll, the Supreme Court is to order the removal of that name from the roll.
- (4) An order under section 473(c) preventing recovery of an amount is effective even if proceedings to recover the amount (or any part of it) have been commenced by or on behalf of the Australian legal practitioner.
- (5) An order under section 473(d) requiring repayment of an amount is effective even if a court has ordered payment of the amount (or an amount of which it is part) in proceedings brought by or on behalf of the Australian legal practitioner.
- (6) If the Tribunal has made an order requiring an Australian legal practitioner to pay a fine, compensation or other amount of money, the Tribunal may cause that order to be filed in the Supreme Court as a judgment under the *Supreme Court Civil Procedure Act 1932* after the expiration of a period of 21 days after the date of that order.
- (7) An order filed in the Supreme Court is enforceable under the provisions of the *Supreme Court Civil Procedure Act 1932*.
- (8) If an Australian legal practitioner fails to comply with an order (other than an order referred to in

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subsection (6)) the Tribunal may, after the expiration of a period of 21 days after the date of the order, apply to the Supreme Court for an appropriate order.

- (9) An order or determination of the Tribunal made under this Part, except an order under section 471(a) or (b) or section 472(a) or (b), takes effect after the expiration of the period within which an appeal under section 484 (Appeals against orders of Tribunal) may be instituted.
- (10) The Tribunal is to record an order made by it under this Part together with the reasons for the order.
- (11) The Tribunal is to provide the Board and the prescribed authority with a copy of any order made by it under this Part together with the reasons for the order.
- (12) Any fine imposed under this Part is to be paid to the Board.

481. Cost orders of Tribunal

- (1) The Tribunal must make orders requiring an Australian legal practitioner whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Board and the complainant), unless the Tribunal is satisfied that exceptional circumstances exist.

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- (2) The Tribunal may make orders requiring an Australian legal practitioner whom it has not found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including costs of the Board and the complainant), if the Tribunal is satisfied that –
 - (a) the sole or principal reason why the proceedings were instituted in the Tribunal was a failure of the Australian legal practitioner to cooperate with the Board or prescribed authority; or
 - (b) there is some other reason warranting the making of an order in the particular circumstances.
- (3) The Tribunal may make orders requiring the Board to pay costs, but may do so only if satisfied that the Australian legal practitioner concerned is not guilty of unsatisfactory professional conduct or professional misconduct and the Tribunal considers that special circumstances warrant the making of the orders.
- (4) The Tribunal may make an order requiring the complainant to pay costs if the Tribunal is satisfied that the complaint is vexatious, misconceived, frivolous or lacking in substance.
- (5) An order for costs –
 - (a) may be for a specified amount; or
 - (b) may be for an unspecified amount but must specify the basis on which the amount is to be determined.

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- (6) An order for costs may specify the terms on which costs must be paid.
 - (7) The Tribunal may make an order directing that costs be taxed in accordance with the *Supreme Court Rules 2000*.

Division 4 – Miscellaneous

482. Notification of result of proceedings, &c., before Tribunal

The Tribunal must notify –

- (a) the complainant; and
- (b) the practitioner; and
- (c) the Board; and
- (d) the prescribed authority –

in writing of any determination, decision or order of the Tribunal and reasons for the determination, decision or order.

483. Other remedies not affected

This Part does not affect any other remedy available to a complainant.

Division 5 – Appeals

484. Appeals against orders of Tribunal

The Board and any party to a complaint who is aggrieved by an order made by the Tribunal under this Part may –

- (a) appeal against that order to the Supreme Court; and
- (b) make an application to the Supreme Court to stay that order pending the determination of the appeal.

485. Hearing and determination of appeal

- (1) An appeal under this Part is to be made in accordance with the *Supreme Court Rules 2000* and dealt with by way of rehearing.
- (2) The Supreme Court, in deciding an appeal against an order made by the Tribunal under this Part, may –
 - (a) confirm that order; or
 - (b) vary that order; or
 - (c) quash that order; or
 - (d) substitute for that order any order that the Tribunal had jurisdiction to make; or
 - (e) refer the matter of the appeal to the Tribunal for rehearing; or

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- (f) make any other order, including an order in respect of costs, it thinks appropriate.
- (3) An order varied or substituted under subsection (2) takes effect on and from the date of the decision to vary or substitute the order.

PART 4.8 – DISCIPLINARY PROCEEDINGS BEFORE SUPREME COURT

486. Applications to Supreme Court

- (1) Any person may make an application to the Supreme Court to hear and determine a complaint.
- (2) An application under this section, unless the Supreme Court otherwise orders, is to be heard in open court and in accordance with the *Supreme Court Rules 2000*.
- (3) Notice of an application made under this section is to be given to the parties to the complaint to which the application relates and to the Board if the Board is not a party to the complaint.
- (4) If the Supreme Court considers that an application relating to a complaint should be heard and determined by the Board or Tribunal, it may refer that complaint to be heard and determined by the Board or Tribunal.

487. Determination of application

The Supreme Court, in deciding an application made under this Part, may make any order, including an order in respect of costs or compensation, it thinks appropriate.

488. Orders pending determination of complaint

- (1) If a complaint is made against an Australian legal practitioner under this Chapter, the Supreme Court may, on application made to it and pending the determination of the complaint –
 - (a) make an order suspending the Australian legal practitioner from practice; or
 - (b) make an order imposing such conditions on the right of the Australian legal practitioner to practise as it thinks necessary; or
 - (c) make any other order it thinks fit.
- (2) An application under subsection (1) may be made in the absence of one or more of the parties.

489. Supreme Court to notify Board

The Supreme Court must notify the Board and prescribed authority of any order made by it under this Part.

PART 4.9 – COMPENSATION

490. Request by complainant for compensation order

- (1) A complainant who has suffered pecuniary loss because of conduct that is the subject of a complaint may request a compensation order.
- (2) A complainant who makes such a request must describe the loss suffered by the complainant and the relevant circumstances.
- (3) Such a request may be made in the complaint or by notice in writing to the Board, at any time after the making and before the finalisation of the complaint.
- (4) However, such a request may not be made after proceedings have been commenced in the Tribunal with respect to the complaint unless the Tribunal grants the complainant leave to make the request.
- (5) Such a request may only be made within 3 years after the conduct that caused the loss is alleged to have occurred.

491. Compensation orders

- (1) A compensation order is an order, made in respect of a complaint against an Australian legal practitioner, to compensate the complainant for loss suffered because of conduct that is the subject of the complaint.

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- (2) A compensation order consists of one or more of the following:
- (a) an order that the practitioner cannot recover or must repay the whole or a specified part of the amount charged to the complainant by the practitioner in respect of specified legal services;
 - (b) an order discharging a lien possessed by the practitioner in respect of a specified document or class of documents;
 - (c) an order that the practitioner pay to the complainant, by way of monetary compensation for the loss, a specified amount.
- (3) A compensation order under subsection (2)(a) preventing recovery of an amount is effective even if proceedings to recover the amount (or any part of it) have been commenced by or on behalf of the practitioner.
- (4) A compensation order under subsection (2)(a) requiring repayment of an amount is effective even if a court has ordered payment of the amount (or an amount of which it is part) in proceedings brought by or on behalf of the practitioner.
- (5) A compensation order under subsection (2)(c) requiring payment of an amount exceeding \$10 000 by way of monetary compensation is not to be made unless the complainant and the practitioner both consent to the order.

492. Prerequisites to making of compensation orders

- (1) Unless the complainant and the Australian legal practitioner concerned agree, a compensation order is not to be made unless the person or body making it is satisfied –
 - (a) that the complainant has suffered loss because of the conduct concerned; and
 - (b) that it is in the interests of justice that the order be made.
- (2) A compensation order is not to be made in respect of any loss for which the complainant has received or is entitled to receive –
 - (a) compensation received or receivable under an order that has been made by a court; or
 - (b) compensation paid or payable from the Guarantee Fund, or a corresponding fund of any other jurisdiction, where a relevant claim for payment from the fund has been made or determined; or
 - (c) compensation paid or payable from a professional indemnity insurance policy.

493. Making of compensation orders

- (1) The Tribunal or the Supreme Court may make a compensation order if it has found an Australian legal practitioner guilty of unsatisfactory

professional conduct or professional misconduct in relation to the complaint.

- (2) The Tribunal or Supreme Court must notify the Board and prescribed authority of any compensation order made under subsection (1).

494. Enforcement of compensation orders

A copy of a compensation order may be filed in the Supreme Court and the order (so far as it relates to any amount payable under the order) may be enforced as if it were an order of the court.

495. Other remedies not affected

The recovery of compensation awarded under this Chapter does not affect any other remedy available to a complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

PART 4.10 – PUBLICISING DISCIPLINARY ACTION

496. Definitions

In this Part –

“disciplinary action” means –

- (a) the making of an order by a court or tribunal for or following a finding of unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner under this Act or under a corresponding law; or
- (b) the making of a determination by the Board under section 454 (Determination of Board) or section 456 (Procedure for less serious complaint) for or following a finding of unsatisfactory professional conduct by an Australian legal practitioner under this Act or under a corresponding law; 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

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misconduct by an Australian
legal practitioner:

- (i) the removal of the name
of the practitioner from an
Australian roll;
- (ii) the suspension or
cancellation of the
Australian practising
certificate of the
practitioner;
- (iii) the refusal to grant or
renew an Australian
practising certificate to
the practitioner;
- (iv) the appointment of a
receiver of all or any of
the practitioner's property
or the appointment of a
manager of the
practitioner's practice.

497. Register of Disciplinary Action

- (1) There is to be a register (to be known as the
“Register of Disciplinary Action”) of –
 - (a) disciplinary action taken under this Act
against Australian legal practitioners; and
 - (b) disciplinary action taken under a
corresponding law against Australian
legal practitioners who are or were

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enrolled or practising in this jurisdiction
when the conduct that is the subject of
the disciplinary action occurred.

- (2) The Register is to include –
 - (a) the full name of the person against whom the disciplinary action was taken; and
 - (b) the person’s business address or former business address; and
 - (c) the person’s home jurisdiction or most recent home jurisdiction; and
 - (d) particulars of the disciplinary action taken; and
 - (e) other particulars prescribed by the regulations.
- (3) The Register may be kept in a form determined or identified by the Board and may form part of other registers.
- (4) Subject to an order made by the Tribunal, Supreme Court or corresponding disciplinary body or a determination by the Board made under section 454 or 456, the Register is to be made available for inspection on –
 - (a) the internet site of the Board; or
 - (b) an internet site identified on the internet site of the Board.
- (5) Subject to an order made by the Tribunal, Supreme Court or corresponding disciplinary

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body or a determination by the Board made under section 454 or 456, information recorded in the Register may be provided to members of the public in any other manner approved by the Board.

- (6) The Board may cause any error in or omission from the Register to be corrected.
- (7) 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.
- (8) The Tribunal and Supreme Court must provide to the Board sufficient information to enable the Board to perform or exercise the Board's functions or powers in respect of the Register.
- (9) The Board must make the Register available to the prescribed authority.

498. Other means of publicising disciplinary action

- (1) Subject to an order made by the Tribunal, Supreme Court or other corresponding disciplinary body or a determination by the Board made under section 454 or 456, the Board may publicise disciplinary action taken against an Australian legal practitioner in any manner the Board thinks fit.
- (2) Nothing in this section affects the provisions of this Part relating to the Register.

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499. 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 Board under section 498, the result of the appeal or review must be publicised with equal prominence by the Board.

500. 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 an Australian legal practitioner; or
 - (b) performing or exercising the functions or powers of the Board under this Part; 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

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(ii) otherwise publicised by the Board under this Part –

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 that information.

(3) In this section –

“protected person” means –

(a) the State; or

(b) the Board; or

(c) the prescribed authority; or

(d) a person responsible for keeping the whole or any part of the Register; or

(e) an internet service provider or internet content host; or

(f) a person acting at the direction of the State or any person or body referred to in this definition.

501. Disciplinary action taken where infirmity, injury or illness is involved

(1) Disciplinary action taken against a person because of infirmity, injury or mental or physical

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illness is not to be recorded in the Register or otherwise publicised under this Part.

- (2) Subsection (1) does not apply where the disciplinary action involves –
- (a) the suspension or cancellation of the person's Australian practising certificate; or
 - (b) a refusal to grant or renew an Australian practising certificate applied for by the person; or
 - (c) a restriction or prohibition on the person's right to engage in legal practice –

but in that case the reason for the disciplinary action, and any other information relating to the infirmity, injury or mental or physical illness, is not to be recorded in the Register or otherwise publicised under this Part without the person's consent.

502. General

- (1) The provisions of this Part are subject to –
- (a) any order made by the Tribunal in relation to disciplinary action taken under this Chapter; or
 - (b) any order made by a corresponding disciplinary body in relation to disciplinary action taken under

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provisions of a corresponding law that correspond to this Chapter; or

- (c) any order made by a court or tribunal of this or another jurisdiction; or
- (d) any determination made by the Board under section 454 or 456 –

so far as the order or determination 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 Part and may be otherwise publicised under this Part.

PART 4.11 – INTER-JURISDICTIONAL PROVISIONS

503. Protocols

- (1) The Board may enter into arrangements (referred to in this Part as “**protocols**”) with corresponding authorities for or with respect to investigating and dealing with conduct that appears to have occurred in more than one jurisdiction.
- (2) In particular, the protocols may make provision for or with respect to –
 - (a) providing principles to assist in determining where conduct occurs, either generally or in specified classes of cases; and
 - (b) giving and receiving consent for conduct occurring in a jurisdiction to be dealt with under a law of another jurisdiction; and
 - (c) the procedures to be adopted for requesting and conducting the investigation of any aspect of complaints under this Part.
- (3) A protocol does not have effect in this jurisdiction unless it is adopted in the regulations.

504. Request to another jurisdiction to investigate complaint

- (1) The Board may request a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with by the Board and to provide a report on the result of the investigation.
- (2) A report on the result of the investigation received from –
 - (a) the corresponding authority; or
 - (b) a person or body authorised by the corresponding authority to conduct the investigation –

may be used and taken into consideration by the Board, Tribunal and Supreme Court in the course of dealing with the complaint under this Chapter.

505. Request from another jurisdiction to investigate complaint

- (1) This section applies in relation to a request received by the Board from a corresponding authority to arrange for the investigation of any aspect of a complaint being dealt with under a corresponding law.
- (2) The Board may conduct the investigation or authorise another person to conduct it.

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- (3) The provisions of this Chapter relating to the investigation of a complaint apply, with any necessary adaptations, in relation to the investigation of the relevant aspect of the complaint that is the subject of the request.
- (4) The Board must provide a report on the result of the investigation to the corresponding authority.

506. Sharing of information with corresponding authorities

The Board may enter into arrangements with a corresponding authority for providing information to the corresponding authority about –

- (a) complaints and investigations under this Chapter; and
- (b) any action taken with respect to any complaints made or investigations conducted under this Chapter, including determinations of the Board or orders of the Tribunal or Supreme Court under this Chapter.

507. Co-operation with other authorities

- (1) When dealing with a complaint or conducting an investigation, the Board may consult and co-operate with another person or body (whether in Australia or a foreign country) who or which has or may have relevant information or powers in

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relation to the person against whom the complaint was made or the person under investigation.

- (2) For the purposes of subsection (1), the Board and the other person or body may exchange information concerning the complaint or investigation.

508. Compliance with recommendations or orders made under corresponding laws

- (1) Persons and bodies having relevant functions or powers under this Act must –
- (a) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law in relation to powers exercisable under this Act; and
 - (b) give effect to or enforce any recommendation or order of a corresponding disciplinary body or other corresponding authority made under a corresponding law so far as the recommendation or order relates to the practice of law by the Australian legal practitioner concerned in this jurisdiction.
- (2) If a corresponding disciplinary body makes a recommendation or order that a person's name be removed from the roll of lawyers under this

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Act, the Supreme Court must order the removal of the name from the local roll.

- (3) If a corresponding disciplinary body makes an order that an Australian legal practitioner pay a fine, a copy of the order may be filed in the Supreme Court and the order may be enforced as if it were an order of that court.

509. Other functions or powers not affected

Nothing in this Part affects any functions or powers that a person or body has apart from this Part.

**PART 4.12 – COMPLAINTS AND DISCIPLINE –
MISCELLANEOUS**

510. Jurisdiction of Supreme Court

The inherent jurisdiction and powers of the Supreme Court with respect to the control and discipline of local lawyers are not affected by anything in this Chapter, and extend to –

- (a) local legal practitioners; and
- (b) interstate legal practitioners engaged in or who have been engaged in legal practice in this jurisdiction.

511. Information about complaints procedure

The Board must –

- (a) produce information about the making of complaints and the procedure for dealing with complaints; and
- (b) ensure that that information is available to members of the public on request; and
- (c) provide assistance to members of the public in making complaints.

512. Referral of matter involving crimes

- (1) If, during the course of any investigation or hearing, the Board or Tribunal suspects on reasonable grounds that a crime has been committed, it must refer the subject matter of the investigation or hearing to the Commissioner of Police.
- (2) If the subject matter of the investigation or hearing has been referred to the Commissioner of Police under subsection (1), the Board or Tribunal may –
 - (a) suspend that part of the hearing that relates to the crime with effect from the date of the referral until –
 - (i) after criminal proceedings relating to that matter are concluded; or
 - (ii) the Commissioner of Police advises the Board or Tribunal that no criminal proceedings are to be taken; or
 - (b) suspend the hearing with effect from the date of the referral until –
 - (i) after criminal proceedings relating to that matter are concluded; or
 - (ii) the Commissioner of Police advises the Board or Tribunal that

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no criminal proceedings are to be taken.

- (3) If a hearing is suspended, the Board or Tribunal may, if it thinks it appropriate to do so, suspend the practising certificate of the Australian legal practitioner who is the subject of the hearing for such period as the Board or Tribunal considers appropriate.
- (4) If the Board or Tribunal suspends the practising certificate of an Australian legal practitioner under subsection (3), the Board or Tribunal must advise the prescribed authority.
- (5) If the Board or Tribunal suspends the practising certificate of an Australian legal practitioner under subsection (3), the Australian legal practitioner may appeal to the Supreme Court.

513. Failure to comply with orders

A person who fails to comply with a determination of the Board or an order of the Tribunal or Supreme Court under this Act, or an order of a corresponding disciplinary body under a corresponding law, is not entitled to apply for the grant or renewal of a local practising certificate while the failure continues.

514. Complainant does not incur personal liability

A person who makes a complaint under this Chapter in good faith does not incur any

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personal liability in respect of any loss, damage or injury suffered by another person as a result of the making of the complaint.

515. Protection from liability

The following persons do not incur any personal liability for any act done or purported or omitted to be done by the person in good faith for the purpose of the administration of this Chapter:

- (a) the Board or a corresponding authority or any member of the Board or corresponding authority;
- (b) a committee or subcommittee of the Board or a corresponding authority or any member of such a committee, subcommittee or corresponding authority;
- (c) any person involved in the conduct of an investigation under this Chapter;
- (d) the Tribunal or a corresponding authority or any member of the Tribunal or corresponding authority;
- (e) the secretary of the Tribunal or relevant officer of a corresponding authority;
- (f) the prescribed authority;
- (g) any member of the staff or person acting at the direction of any of the above.

516. Confidentiality of client communications

Subject to section 517, an Australian legal practitioner must comply with a requirement under this Chapter to answer a question or to produce information or a document, despite any duty of confidentiality in respect of a communication between the practitioner and a client.

517. Claims of privilege

If, in any investigation or proceeding under this Chapter, a person properly claims privilege in respect of any information –

- (a) the Supreme Court, Tribunal or Board may require that person to disclose the information; and
- (b) if any information adverse to the interests of that person is then disclosed, no question or answer relating to that information may be used in or in connection with any procedures or proceedings other than –
 - (i) those relating to the complaint concerned; or
 - (ii) those resulting from a report or disclosure under section 649 (Duty to report suspected offences).

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518. Waiver of privilege or duty of confidentiality

- (1) If a client of an Australian legal practitioner makes a complaint about the practitioner, the complainant is taken to have waived legal professional privilege, or the benefit of any duty of confidentiality, to enable the practitioner to disclose to the appropriate authorities any information necessary for investigating and dealing with the complaint.
- (2) Without limiting subsection (1), any information so disclosed may be used in or in connection with any procedures or proceedings relating to the complaint.

CHAPTER 5 – EXTERNAL INTERVENTION

PART 5.1 – EXTERNAL INTERVENTION – PRELIMINARY

519. Purpose

- (1) The purpose of this Chapter is to ensure that an appropriate range of options is available for intervention in the business and professional affairs of law practices and Australian-registered foreign lawyers for the purpose of protecting the interests of –
 - (a) the general public; and
 - (b) clients; and
 - (c) lawyers, including the owners and employees of law practices, so far as their interests are not inconsistent with those of the general public and clients.
- (2) It is intended that interventions occur consistently with –
 - (a) similar interventions in other jurisdictions, especially where a law practice operates in this jurisdiction and one or more other jurisdictions; and
 - (b) other provisions of this Act.

Note. This Chapter –

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- (a) applies to all law practices, regardless of whether they are incorporated under the *Corporations Act 2001* of the Commonwealth; and
- (b) is intended to apply so that this Chapter, rather than the *Corporations Act 2001* of the Commonwealth or the *Bankruptcy Act 1966* of the Commonwealth, applies in respect of the winding-up of trust property and in respect of the carrying on of a law practice by external intervention.

520. Interpretation

(1) In this Chapter –

“external intervener” means a supervisor, manager or receiver under this Chapter;

“external intervention” means the appointment of, and the performance and exercise of the functions and powers of, a supervisor, manager or receiver under this Chapter;

“regulated property”, in relation to a law practice, means the following:

- (a) trust money or trust property received, receivable or held by the practice;
- (b) interest, dividends or other income or anything else derived from or acquired with money or

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property referred to in
paragraph (a);

(c) documents or records of any
description relating to anything
referred to in paragraph (a) or (b);

(d) any computer hardware or
software, or other device, in the
custody or control of the practice
or an associate of the practice by
which any records referred to in
paragraph (c) may be produced or
reproduced in visible form.

(2) Other expressions used in this Chapter have the
same meaning as in Part 3.2 (Trust money and
trust accounts).

**521. Application of Chapter to Australian-registered
foreign lawyers**

This Chapter applies, with any necessary
adaptations, to Australian-registered foreign
lawyers and former Australian-registered foreign
lawyers in the same way as it applies to law
practices.

522. Application of Chapter to other persons

This Chapter applies, with any necessary
adaptations, to –

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- (a) a former law practice or former Australian legal practitioner; and
- (b) the executor (original or by representation) or administrator for the time being of a deceased Australian legal practitioner or of his or her estate; and
- (c) the administrator or receiver, or receiver and manager, of the property of an incorporated legal practice; and
- (d) the liquidator of an incorporated legal practice that is being or has been wound up –

in the same way as it applies to law practices.

**PART 5.2 – INITIATION OF EXTERNAL
INTERVENTION**

523. Circumstances warranting external intervention

External intervention may take place in relation to a law practice in any of the following circumstances:

- (a) where a legal practitioner associate involved in the practice –
 - (i) has died; or
 - (ii) ceases to be an Australian legal practitioner; or
 - (iii) has become an insolvent under administration; or
 - (iv) is in prison;
- (b) in the case of a firm, where the partnership has been wound up or dissolved;
- (c) in the case of an incorporated legal practice, where the corporation concerned –
 - (i) ceases to be an incorporated legal practice; or
 - (ii) is being or has been wound up; or
 - (iii) has been deregistered or dissolved;

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- (d) in any case, where the Board or the prescribed authority forms a belief on reasonable grounds that the practice or an associate of the practice –
 - (i) is not dealing adequately with trust money or trust property or is not properly attending to the affairs of the practice; or
 - (ii) has committed a serious irregularity, or a serious irregularity has occurred, in relation to trust money or trust property or the affairs of the practice; or
 - (iii) has failed properly to account in a timely manner to any person for trust money or trust property received by the practice for or on behalf of that person; or
 - (iv) has failed properly to make a payment of trust money or a transfer of trust property when required to do so by a person entitled to that money or property or entitled to give a direction for payment or transfer; or
 - (v) is in breach of the regulations or legal profession rules with the result that the record-keeping for the practice's trust account is inadequate; or

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- (vi) has been or is likely to be convicted of an offence relating to trust money or trust property; or
 - (vii) is the subject of a complaint relating to trust money or trust property received by the practice; or
 - (viii) has failed to comply with any requirement of an investigator or external examiner appointed under this Act; or
 - (ix) has ceased to be engaged in legal practice without making provision for properly dealing with trust money or trust property received by the practice or for properly winding up the affairs of the practice;
- (e) where any other proper cause exists in relation to the practice.

524. Determination regarding external intervention

- (1) This section applies when the Board or prescribed authority becomes aware that one or more of the circumstances referred to in section 523 exist in relation to a law practice and decides that, having regard to the interests of the clients of the practice and to other matters that it

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considers appropriate, external intervention is warranted.

- (2) The prescribed authority may determine to appoint a supervisor of trust money of the law practice, if the authority is of the opinion –
 - (a) that external intervention is required because of issues relating to the practice's trust accounts; and
 - (b) that it is not appropriate that the provision of legal services by the practice be wound up and terminated because of those issues.
- (3) The Board may determine –
 - (a) to appoint a manager for the law practice, if the Board is of the opinion –
 - (i) that external intervention is required because of issues relating to the practice's trust records; or
 - (ii) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
 - (iii) that there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice; or

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- (b) to apply to the Supreme Court to appoint a receiver for the law practice.
 - (4) On the hearing of an application under subsection (3)(b), the Supreme Court may determine to appoint a receiver for a law practice if the Supreme Court is of the opinion –
 - (a) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
 - (b) that it may be appropriate that the provision of legal services by the practice be wound up and terminated.
 - (5) The prescribed authority, Board or Supreme Court may, from time to time, make further determinations in relation to the law practice and for that purpose may revoke a previous determination with effect from a date or event specified by the prescribed authority, Board or Supreme Court.
 - (6) A further determination may be made under subsection (5) whether or not there has been any change in the circumstances in consequence of which the original determination was made and whether or not any further circumstances have come into existence in relation to the law practice after the original determination was made.
 - (7) An appointment of an external intervener for a law practice may be made in respect of the practice generally or may be limited in any way the prescribed authority, Board or Supreme

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Court considers appropriate, including, for example, to matters connected with a particular legal practitioner associate or to matters connected with a particular office or a particular subject matter.

PART 5.3 – SUPERVISORS OF TRUST MONEY

525. Appointment of supervisor of trust money

- (1) This section applies if the prescribed authority determines to appoint a supervisor of trust money of a law practice.
- (2) The prescribed authority may, by instrument in writing, appoint a person as supervisor of trust money.
- (3) The appointee must be either –
 - (a) an Australian legal practitioner who holds an unrestricted practising certificate; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts –

and may (but need not) be an employee of the prescribed authority.

- (4) The instrument of appointment must –
 - (a) identify the practice and the supervisor; and
 - (b) indicate that the external intervention is by way of appointment of a supervisor of trust money; and
 - (c) specify the term of the appointment; and

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- (d) specify any conditions imposed by the prescribed authority when the appointment is made; and
- (e) specify any fees payable by way of remuneration to the supervisor specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (e) is intended to exclude remuneration payable generally, eg. as an employee of the prescribed authority.

- (f) provide for the legal costs and the expenses that may be incurred by the supervisor in relation to the external intervention.
- (5) The instrument of appointment may specify any reporting requirements to be observed by the supervisor.

526. Notice of appointment

- (1) As soon as possible after an appointment of a supervisor of trust money of a law practice is made, the prescribed authority must serve a notice of the appointment on –
- (a) the practice; and
 - (b) any other person authorised to operate any trust account of the practice; and

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- (c) any external examiner appointed to examine the practice's trust records; and
- (d) the ADI with which any trust account of the practice is maintained; and
- (e) the Board; and
- (f) any other person who the prescribed authority reasonably believes should be served with the notice.

(2) The notice must –

- (a) identify the law practice and the supervisor; and
- (b) indicate that the external intervention is by way of appointment of a supervisor; and
- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the supervisor; and
- (e) specify any conditions imposed by the prescribed authority when the appointment is made; and
- (f) include a statement that the law practice may appeal against the appointment of the supervisor under section 557 (Appeal against appointment); and
- (g) contain or be accompanied by other information or material prescribed by the regulations.

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527. Effect of service of notice of appointment

- (1) After service on an ADI of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless –
 - (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by the supervisor or a nominee of the supervisor; or
 - (b) the withdrawal or transfer is made by the supervisor or a nominee of the supervisor by means of electronic or internet banking facilities; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by the supervisor or a nominee of the supervisor.
- (2) After service on a person (other than the supervisor, an ADI or the Board) of a notice of the appointment of a supervisor of trust money of a law practice and until the appointment is terminated, the person must not –
 - (a) deal with any of the practice's trust money; or
 - (b) sign any cheque or other instrument drawn on a trust account of the practice; or

- (c) authorise the withdrawal or transfer of funds from a trust account of the practice.

Penalty: Fine not exceeding 100 penalty units.

- (3) A supervisor of trust money may, for the purposes of subsection (1)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (4) Any money that is withdrawn or transferred in contravention of subsection (1) may be recovered from the ADI concerned by the supervisor as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice.

528. Role of supervisor of trust money

- (1) A supervisor of trust money of a law practice has the powers and duties of the practice in relation to the trust money, including powers –
 - (a) to receive trust money entrusted to the practice; and
 - (b) to open and close trust accounts.
- (2) For the purpose of exercising or performing his or her powers or duties under subsection (1), the supervisor may exercise any or all of the following powers:

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- (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
- (b) to require the practice or an associate or former associate of the practice or any other person who has or had control of documents relating to trust money received by the practice to give the supervisor either or both of the following:
 - (i) access to the files and documents the supervisor reasonably requires;
 - (ii) information relating to the trust money the supervisor reasonably requires;
- (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
- (d) to take possession of any relevant material and retain it for as long as may be necessary;
- (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
- (f) to take possession of any computer equipment or computer program

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reasonably required for a purpose
relevant to his or her appointment.

- (3) If the supervisor takes anything from the premises, the supervisor must issue a receipt in a form approved by the prescribed authority and –
 - (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
 - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.
- (4) If the supervisor is refused access to the premises or the premises are unoccupied, the supervisor may use whatever appropriate force is necessary to enter the premises and may be accompanied by a police officer to assist entry.
- (5) This section applies to trust money held by the practice before the supervisor is appointed, as well as to trust money received afterwards.
- (6) The supervisor does not have a role in the management of the affairs of the law practice except in so far as the affairs relate to a trust account of the practice.

529. Records of and dealing with trust money of law practice under supervision

- (1) A supervisor of trust money of a law practice must maintain the records of his or her dealing with the trust money –

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- (a) separately from records relating to dealings with trust money before his or her appointment as supervisor of trust money; and
 - (b) separately from the affairs of any other law practice for which he or she is supervisor of trust money; and
 - (c) in the manner prescribed by the regulations.
- (2) Subject to subsection (1), a supervisor of trust money of a law practice must deal with the trust money in the same way as a law practice must deal with trust money.

530. Termination of supervisor's appointment

- (1) The appointment of a supervisor of trust money of a law practice terminates in the following circumstances:
- (a) the term of appointment comes to an end;
 - (b) the appointment is set aside under section 557 (Appeal against appointment);
 - (c) the appointment of a manager for the practice takes effect;
 - (d) the appointment of a receiver for the practice takes effect;

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- (e) the supervisor has distributed all trust money received by the practice and wound up all trust accounts;
 - (f) a determination of the prescribed authority that the appointment be terminated has taken effect.
- (2) The prescribed authority may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) The prescribed authority must serve a written notice of the termination on all persons originally served with notice of the appointment.

PART 5.4 – MANAGERS

531. Appointment of manager

- (1) This section applies if the Board determines to appoint a manager for a law practice.
- (2) The Board may, by instrument in writing, appoint a person as manager.
- (3) The appointee must be an Australian legal practitioner who holds an unrestricted practising certificate, and may (but need not) be an employee of the Board.
- (4) The instrument of appointment must –
 - (a) identify the law practice and the manager; and
 - (b) indicate that the external intervention is by way of appointment of a manager; and
 - (c) specify the term of the appointment; and
 - (d) specify any conditions imposed by the Board when the appointment is made; and
 - (e) specify any fees payable by way of remuneration to the manager specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (e) is intended to exclude remuneration payable generally, eg. as an employee of the Board.

- (f) provide for the legal costs and the expenses that may be incurred by the manager in relation to the external intervention.
- (5) The instrument of appointment may specify any reporting requirements to be observed by the manager.

532. Notice of appointment

- (1) As soon as possible after an appointment of a manager for a law practice is made, the Board must serve a notice of the appointment on –
 - (a) the practice; and
 - (b) any other person authorised to operate any trust account of the practice; and
 - (c) any external examiner appointed to examine the practice's trust records; and
 - (d) the ADI with which any trust account of the practice is maintained; and
 - (e) the prescribed authority; and
 - (f) any other person who the Board reasonably believes should be served with the notice.
- (2) The notice must –

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- (a) identify the law practice and the manager; and
- (b) indicate that the external intervention is by way of appointment of a manager; and
- (c) specify the term of the appointment; and
- (d) specify any reporting requirements to be observed by the manager; and
- (e) specify any conditions imposed by the Board when the appointment is made; and
- (f) include a statement that the law practice may appeal against the appointment of the manager under section 557 (Appeal against appointment); and
- (g) contain or be accompanied by other information or material prescribed by the regulations.

533. Effect of service of notice of appointment

- (1) After service on a law practice of a notice of the appointment of a manager for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice except under the direct supervision of the manager.

Penalty: Fine not exceeding 100 penalty units.

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- (2) After service on an ADI of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless –
- (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by –
 - (i) the manager; or
 - (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver; or
 - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by –
 - (i) the manager; or
 - (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by –
 - (i) the manager; or

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- (ii) a receiver appointed for the practice; or
 - (iii) a nominee of the manager or receiver.
- (3) After service on a person of a notice of the appointment of a manager for a law practice and until the appointment is terminated, the person must not –
 - (a) deal with any of the practice's trust money; or
 - (b) sign any cheque or other instrument drawn on a trust account of the practice; or
 - (c) authorise the withdrawal or transfer of funds from a trust account of the practice –

but this subsection does not apply to a legal practitioner associate referred to in subsection (1), an ADI or the manager or receiver for the practice.

Penalty: Fine not exceeding 100 penalty units.

- (4) A manager may, for the purposes of subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be

recovered from the ADI concerned by the manager, or a receiver for the law practice, as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the practice or another trust account nominated by the manager or receiver.

534. Role of manager

- (1) A manager for a law practice may carry on the practice and may do all things that the practice or a legal practitioner associate of the practice might lawfully have done, including but not limited to the following:
 - (a) transacting any urgent business of the practice;
 - (b) transacting, with the approval of any or all of the existing clients of the practice, any business on their behalf, including –
 - (i) commencing, continuing, defending or settling any proceedings; and
 - (ii) receiving, retaining and disposing of property;
 - (c) accepting instructions from new clients and transacting any business on their behalf, including –
 - (i) commencing, continuing, defending or settling any proceedings; and

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- (ii) receiving, retaining and disposing of regulated property;
 - (d) charging and recovering legal costs, including legal costs for work in progress at the time of the appointment of the manager;
 - (e) entering into, executing or performing any agreement;
 - (f) dealing with trust money in accordance with this Act and the regulations;
 - (g) winding up the affairs of the practice.
- (2) For the purpose of exercising his or her powers under subsection (1), the manager may exercise any or all of the following powers:
- (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
 - (b) to require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the manager either or both of the following:
 - (i) access to the files and documents the manager reasonably requires;

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- (ii) information relating to client matters the manager reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
 - (d) to take possession of any relevant material and retain it for as long as may be necessary;
 - (e) to secure any relevant material found on the premises against interference, if the material cannot be conveniently removed;
 - (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.
- (3) If the manager takes anything from the premises, the manager must issue a receipt in a form approved by the Board and –
- (a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or
 - (b) otherwise, leave it at the premises in an envelope addressed to the occupier.

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- (4) If the manager is refused access to the premises or the premises are unoccupied, the manager may use whatever appropriate force is necessary to enter the premises and may be accompanied by a police officer to assist entry.

535. Records and accounts of law practice under management and dealings with trust money

- (1) The manager for a law practice must maintain the records and accounts of the practice that he or she manages –
 - (a) separately from the management of the affairs of the practice before his or her appointment as manager; and
 - (b) separately from the affairs of any other law practice for which he or she is manager; and
 - (c) in the manner prescribed by the regulations.
- (2) Subject to subsection (1), the manager for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

536. Deceased estates

- (1) It is the duty of the manager for a law practice to co-operate with the legal personal representative

of a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.

- (2) The manager is not, in the performance or exercise of functions or powers as manager, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the manager from performing or exercising functions or powers as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the legal practitioner associate, the manager's appointment, functions and powers are not affected by the death.

537. Termination of manager's appointment

- (1) The appointment of a manager for a law practice terminates in the following circumstances:
 - (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside under section 557 (Appeal against appointment);
 - (c) the appointment of a receiver for the practice takes effect, where the terms of the appointment indicate that the receiver

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- is authorised to perform and exercise the functions and powers of a manager;
- (d) the manager has wound up the affairs of the practice;
 - (e) a determination of the Board that the appointment be terminated has taken effect.
- (2) The Board may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) If the appointment terminates in the circumstances referred to in subsection (1)(a), (c) or (e), the former manager must, as soon as practicable after the termination, transfer and deliver the regulated property and client files of the law practice to –
- (a) another external intervener appointed for the practice; or
 - (b) the practice, if another external intervener is not appointed for the practice.
- (4) The former manager need not transfer regulated property and files to the law practice in compliance with subsection (3) unless the manager's expenses have been paid to the Board.
- (5) The Board must serve a written notice of the termination on all persons originally served with notice of the appointment.

PART 5.5 – RECEIVERS

538. Appointment of receiver by Supreme Court

- (1) This section applies if the Board determines to apply to the Supreme Court for the appointment of a receiver for a law practice.
- (2) The Supreme Court may, on the application of the Board, appoint a person as receiver for the law practice.
- (3) The Supreme Court may make the appointment whether or not the law practice or a principal of the practice concerned has been notified of the application and whether or not the practice or principal is a party to the proceedings.
- (4) The appointee must be –
 - (a) an Australian legal practitioner who holds an unrestricted practising certificate; or
 - (b) a person holding accounting qualifications with experience in law practices' trust accounts –and may (but need not) be an employee of the Board.
- (5) The instrument of appointment must –
 - (a) identify the law practice and the receiver; and

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- (b) indicate that the external intervention is by way of appointment of a receiver; and
- (c) specify any conditions imposed by the Supreme Court when the appointment is made; and
- (d) specify any fees payable by way of remuneration to the receiver specifically for carrying out his or her duties in relation to the external intervention; and

Note. Paragraph (d) is intended to exclude remuneration payable generally, eg. as an employee of the Board.

- (e) provide for the legal costs and the expenses that may be incurred by the receiver in relation to the external intervention.
- (6) The instrument of appointment may –
- (a) specify the term (if any) of the appointment; and
 - (b) specify any reporting requirements to be observed by the receiver.

539. Notice of appointment

- (1) As soon as possible after an appointment of a receiver for a law practice is made, the Board must serve a notice of the appointment on –

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-
- (a) the practice; and
 - (b) any person authorised to operate any trust account of the practice; and
 - (c) any external examiner appointed to examine the practice's trust records; and
 - (d) the ADI with which any trust account of the practice is maintained; and
 - (e) any person who the Supreme Court directs should be served with the notice; and
 - (f) any other person who the Board reasonably believes should be served with the notice.
- (2) The notice must –
- (a) identify the law practice and the receiver; and
 - (b) indicate that the external intervention is by way of appointment of a receiver; and
 - (c) specify the term (if any) of the appointment; and
 - (d) indicate the extent to which the receiver has the powers of a manager for the practice; and
 - (e) specify any reporting requirements to be observed by the receiver; and

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- (f) specify any conditions imposed by the Supreme Court when the appointment is made; and
- (g) contain or be accompanied by other information or material prescribed by the regulations.

540. Effect of service of notice of appointment

- (1) After service on a law practice of a notice of the appointment of a receiver for the practice and until the appointment is terminated, a legal practitioner associate of the practice who is specified or referred to in the notice must not participate in the affairs of the practice.

Penalty: Fine not exceeding 100 penalty units.

- (2) After service on an ADI of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the ADI must ensure that no funds are withdrawn or transferred from a trust account of the practice unless –
 - (a) the withdrawal or transfer is made by cheque or other instrument drawn on that account signed by –
 - (i) the receiver; or
 - (ii) a manager appointed for the practice; or

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- (iii) a nominee of the receiver or manager; or
 - (b) the withdrawal or transfer is made by means of electronic or internet banking facilities, by –
 - (i) the receiver; or
 - (ii) a manager appointed for the practice; or
 - (iii) a nominee of the receiver or manager; or
 - (c) the withdrawal or transfer is made in accordance with an authority to withdraw or transfer funds from the account signed by –
 - (i) the receiver; or
 - (ii) a manager appointed for the practice; or
 - (iii) a nominee of the receiver or manager.
- (3) After service on a person of a notice of the appointment of a receiver for a law practice and until the appointment is terminated, the person must not –
- (a) deal with any of the practice's trust money; or

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- (b) sign any cheque or other instrument drawn on a trust account of the practice;
or
- (c) authorise the withdrawal or transfer of funds from a trust account of the practice –

but this subsection does not apply to an ADI or the receiver or manager for the practice.

Penalty: Fine not exceeding 100 penalty units.

- (4) A receiver may, for the purposes of subsection (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the law practice concerned by means of electronic or internet banking facilities.
- (5) Any money that is withdrawn or transferred in contravention of subsection (2) may be recovered from the ADI concerned by the receiver or a manager for the practice, as a debt in any court of competent jurisdiction, and any amount recovered is to be paid into a trust account of the law practice or another account nominated by the receiver or manager.

541. Role of receiver

- (1) The role of a receiver for a law practice is –
 - (a) to be the receiver of regulated property of the practice; and

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-
- (b) to wind up and terminate the affairs of the practice.
- (2) For the purpose of winding up the affairs of the law practice and in the interests of the practice's clients, the Supreme Court may, by order, authorise –
- (a) the receiver to carry on the legal practice engaged in by the law practice, if the receiver is an Australian legal practitioner who holds an unrestricted practising certificate; or
 - (b) an Australian legal practitioner who holds an unrestricted practising certificate, or a law practice whose principals are or include one or more Australian legal practitioners who hold unrestricted practising certificates, specified in the instrument to carry on the legal practice on behalf of the receiver.
- (3) Subject to any directions given by the Supreme Court, the person authorised to carry on the legal practice engaged in by a law practice has all the powers of a manager under this Chapter and is taken to have been appointed as manager for the law practice.
- (4) The Supreme Court may, by order, terminate an authorisation to carry on a legal practice granted under this section.

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- (5) For the purpose of exercising his or her powers under this section, the receiver may exercise any or all of the following powers:
- (a) to enter and remain on premises used by the law practice for or in connection with its engaging in legal practice;
 - (b) to require the practice, an associate or former associate of the practice or any other person who has or had control of client files and associated documents (including documents relating to trust money received by the practice) to give the receiver –
 - (i) access to the files and documents the receiver reasonably requires; and
 - (ii) information relating to client matters the receiver reasonably requires;
 - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate equipment or facilities on the premises, for a purpose relevant to his or her appointment;
 - (d) to take possession of any relevant material and retain it for as long as may be necessary;
 - (e) to secure any relevant material found on the premises against interference, if the

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material cannot be conveniently removed;

(f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to his or her appointment.

(6) If the receiver takes anything from the premises, the receiver must issue a receipt in a form approved by the Board and –

(a) if the occupier or a person apparently responsible to the occupier is present at or near the premises, give it to him or her; or

(b) otherwise, leave it at the premises in an envelope addressed to the occupier.

(7) If the receiver is refused access to the premises or the premises are unoccupied, the receiver may use whatever appropriate force is necessary to enter the premises and may be accompanied by a police officer to assist entry.

542. Records and accounts of law practice under receivership and dealings with trust money

(1) The receiver for a law practice must maintain the records and accounts of the practice that he or she manages –

(a) separately from the management of the affairs of the practice before his or her appointment as receiver; and

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- (b) separately from the affairs of any other law practice that the receiver is managing; and
 - (c) in the manner prescribed by the regulations.
- (2) Subject to subsection (1), the receiver for a law practice must deal with trust money of the practice in the same way as a law practice must deal with trust money.

543. Power of receiver to take possession of regulated property

- (1) A receiver for a law practice may take possession of regulated property of the practice.
- (2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.
- (3) If a person contravenes subsection (2), the Supreme Court may, on application by the receiver, order the person to deliver the regulated property to the receiver.
- (4) If, on application made by the receiver, the Supreme Court is satisfied that an order made under subsection (3) has not been complied with, the Court may order the seizure of any regulated property of the law practice that is located on the

premises specified in the order and make any further orders it thinks fit.

- (5) An order under subsection (4) operates to authorise –
- (a) any police officer; or
 - (b) the receiver or a person authorised by the receiver, together with any police officer –

to enter the premises specified in the order and search for, seize and remove anything that appears to be regulated property of the law practice.

- (6) The receiver must, as soon as possible, return anything seized under this section if it transpires that it is not regulated property of the law practice.

544. Power of receiver to take delivery of regulated property

- (1) If a receiver for a law practice believes on reasonable grounds that another person is under an obligation, or will later be under an obligation, to deliver regulated property to the practice, the receiver may, by notice in writing, require that other person to deliver the property to the receiver.
- (2) If a person has notice that a receiver has been appointed for a law practice and the person is under an obligation to deliver regulated property

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to the practice, the person must deliver the property to the receiver.

Penalty: Fine not exceeding 50 penalty units.

- (3) A document signed by a receiver acknowledging the receipt of regulated property delivered to the receiver is as valid and effectual as if it had been given by the law practice.

545. Power of receiver to deal with regulated property

- (1) This section applies if a receiver for a law practice acquires or takes possession of regulated property of the practice.
- (2) The receiver may deal with the regulated property in any manner in which the law practice might lawfully have dealt with the property.

546. Power of receiver to require documents or information

- (1) A receiver for a law practice may require –
 - (a) a person who is an associate or former associate of the practice; or
 - (b) a person who has or has had control of documents relating to the affairs of the practice; or
 - (c) a person who has information relating to regulated property of the practice or property that the receiver believes on

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reasonable grounds to be regulated
property of the practice –

to give the receiver either or both of the
following:

- (d) access to the documents relating to the
affairs of the practice the receiver
reasonably requires;
- (e) information relating to the affairs of the
practice the receiver reasonably requires
(verified by statutory declaration if the
requirement so states).

- (2) A person who is subject to a requirement under
subsection (1) must comply with the
requirement.

Penalty: Fine not exceeding 100 penalty units.

- (3) The validity of the requirement is not affected,
and a person is not excused from complying with
the requirement, on the ground that compliance
with the requirement may tend to incriminate the
person.
- (4) If, before complying with the requirement, the
person objects to the receiver on the ground that
compliance may tend to incriminate the person,
the information given or the information in the
documents to which access is given is
inadmissible in evidence against the person in
any proceedings for an offence, other than –
 - (a) an offence against this Act; or

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- (b) any other offence relating to the keeping of trust accounts or the receipt of trust money; or
- (c) an offence relating to the falsity of the answer; or
- (d) proceedings taken by the receiver for the recovery of regulated property.

547. Examinations

- (1) The Supreme Court may, on the application of a receiver for a law practice, make an order directing that an associate or former associate of the practice or any other person appear before the Court for examination on oath or affirmation in relation to the regulated property of the practice.
- (2) On an examination of a person under this section, the person must answer all questions that the Court allows to be put to the person.

Penalty: Fine not exceeding 50 penalty units.

- (3) The person is not excused from answering a question on the ground that the answer might tend to incriminate the person.
- (4) If, before answering the question, the person objects on the ground that it may tend to incriminate the person, the answer is not admissible in evidence against the person in any proceedings for an offence, other than –

- (a) an offence against this Act; or
- (b) an offence relating to the falsity of the answer.

548. Lien for costs on regulated property

- (1) This section applies if –
 - (a) a receiver has been appointed for a law practice; and
 - (b) the practice or a legal practitioner associate of the practice claims a lien for legal costs on regulated property of the practice.
- (2) The receiver may serve on the law practice or legal practitioner associate a written notice requiring the practice or associate to give the receiver within a specified period of not less than one month –
 - (a) particulars sufficient to identify the regulated property; and
 - (b) a detailed bill of costs.
- (3) If the law practice or legal practitioner associate requests the receiver in writing to give access to the regulated property that is reasonably necessary to enable the practice or associate to prepare a bill of costs in compliance with subsection (2), the time allowed does not begin to run until the access is provided.

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- (4) If a requirement of a notice under this section is not complied with, the receiver may, in dealing with the regulated property claimed to be subject to the lien, disregard the claim.

549. Regulated property not to be attached

Regulated property of a law practice for which a receiver has been appointed (including regulated property held by the receiver) is not liable to be taken, levied on or attached under any judgment, order or process of any court or any other process.

550. Recovery of regulated property where there has been a breach of trust, &c.

- (1) This section applies if regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been taken by, paid to, or transferred to, a person (the “**transferee**”) in breach of trust, improperly or unlawfully and the transferee –
- (a) knew or believed at the time of the taking, payment or transfer that it was done in breach of trust, improperly or unlawfully; or
 - (b) did not provide to the practice or any other person any or any adequate consideration for the taking, payment or transfer; or

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- (c) because of the taking, payment or transfer, became indebted or otherwise liable to the practice or to a client of the practice in the amount of the payment or in another amount.
- (2) The receiver is entitled to recover from the transferee –
 - (a) if subsection (1)(a) applies, the amount of the payment or the value of the regulated property taken or transferred; or
 - (b) if subsection (1)(b) applies, the amount of the inadequacy of the consideration or, if there was no consideration, the amount of the payment or the value of the regulated property taken or transferred; or
 - (c) if subsection (1)(c) applies, the amount of the debt or liability –

and, on the recovery of that amount from the transferee, the transferee ceases to be liable for it to any other person.

- (3) If any money of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been paid in breach of trust, improperly or unlawfully, to a person (the “**prospective plaintiff**”) in respect of a cause of action that the prospective plaintiff had, or claimed to have, against a third party –

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- (a) the receiver may prosecute the cause of action against the third party in the name of the prospective plaintiff; or
 - (b) if the prospective plaintiff did not have at the time the payment was made a cause of action against the third party, the receiver may recover the money from the prospective plaintiff.
- (4) If any regulated property of or under the control of a law practice has, before or after the appointment of a receiver for the practice, been used in breach of trust, improperly or unlawfully, so as to discharge a debt or liability of a person (the “**debtor**”), the receiver may recover from the debtor the amount of the debt or liability so discharged less the consideration (if any) provided by the debtor for the discharge.
- (5) A person authorised by the Board to do so may give a certificate with respect to all or any of the following facts:
 - (a) the receipt of regulated property by the law practice concerned from any person, the nature and value of the property, the date of receipt, and the identity of the person from whom it was received;
 - (b) the taking, payment or transfer of regulated property, the nature and value of the property, the date of the taking, payment or transfer, and the identity of the person by whom it was taken or to whom it was paid or transferred;

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-
- (c) the entries made in the trust account and in any other ledgers, books of account, vouchers or records of the practice and the truth or falsity of those entries;
 - (d) the money and securities held by the practice at the specified time.
- (6) If the receiver brings a proceeding under subsection (2), (3) or (4), a certificate given under subsection (5) is evidence and, in the absence of evidence to the contrary, is proof of the facts specified in it.

551. Improperly destroying property, &c.

- (1) A person must not, with intent to defeat the operation of this Part, and whether before or after appointment of a receiver, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any regulated property of a law practice for which a receiver has been or is likely to be appointed.

Penalty: Imprisonment for a term not exceeding 5 years.

- (2) An offence under subsection (1) is an indictable offence.

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552. Deceased estates

- (1) It is the duty of the receiver for a law practice to co-operate with the legal personal representative of a deceased legal practitioner associate of the practice for the orderly winding-up of the estate.
- (2) The receiver is not, in the performance or exercise of functions or powers as receiver, a legal personal representative of the deceased legal practitioner associate, but nothing in this subsection prevents the receiver from performing or exercising functions or powers as a legal personal representative if otherwise appointed as representative.
- (3) Subject to subsections (1) and (2) and to the terms of the receiver's appointment, if the receiver was appointed before the death of the legal practitioner associate, the receiver's appointment, functions and powers are not affected by the death.

553. Termination of receiver's appointment

- (1) The appointment by the Supreme Court of a receiver for a law practice terminates in the following circumstances:
 - (a) the term (if any) of the appointment comes to an end;
 - (b) the appointment is set aside under section 557 (Appeal against appointment);

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-
- (c) a determination of the Supreme Court that the appointment be terminated has taken effect.
- (2) The Supreme Court may, on application by the Board or receiver made at any time, determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) A receiver for a law practice must apply to the Supreme Court for termination of the appointment when the affairs of the practice have been wound up and terminated, unless the term (if any) of the appointment has already come to an end.
- (4) The Supreme Court may make any order it considers appropriate in relation to an application under this section.
- (5) The appointment of a receiver is not stayed by the making of an application for termination of the receiver's appointment, and the receiver may accordingly continue to perform or exercise his or her functions or powers as receiver pending the Supreme Court's decision on the application except to the extent (if any) that the Court otherwise directs.
- (6) The former receiver must, as soon as practicable, transfer and deliver the regulated property of the law practice to –
- (a) another external intervener appointed for the practice within the period of 14 days beginning with the day after the date of the termination; or

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- (b) the practice, if another external intervener is not appointed for the practice within that period and if paragraph (c) does not apply; or
 - (c) another person in accordance with arrangements approved by the Supreme Court, if it is not practicable to transfer and deliver the regulated property to the practice.
- (7) The former receiver need not transfer and deliver regulated property to the law practice in compliance with subsection (6) unless the expenses of receivership have been paid.
- (8) The Supreme Court must notify all persons originally served with notice of the appointment of the termination of the appointment.

PART 5.6 – EXTERNAL INTERVENTION – GENERAL

554. Conditions on appointment of external intervener

- (1) An appointment of an external intervener is subject to –
 - (a) any conditions imposed by the appropriate authority; and
 - (b) any conditions imposed by or under the regulations.
- (2) The appropriate authority may impose conditions –
 - (a) when the appointment is made; or
 - (b) during the term of the appointment.
- (3) The appropriate authority may revoke or vary conditions imposed under subsection (2).
- (4) In this section –

“appropriate authority” means –

- (a) the prescribed authority, for appointments made by the prescribed authority; or
- (b) the Board, for appointments made by the Board; or
- (c) the Supreme Court, for appointments made by the Court.

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Part 5.6 – External Intervention – General

555. Status of acts of external intervener

- (1) An act done or omitted to be done by an external intervener for a law practice is, for the purposes of –
 - (a) any proceeding; or
 - (b) any transaction that relies on that act or omission –taken to have been done or omitted to be done by the practice.
- (2) Nothing in this section subjects the law practice or an associate of the law practice to any personal liability.

556. Eligibility for reappointment or authorisation

A person who has been appointed as an external intervener for a law practice is eligible for re-appointment as an external intervener for the practice, whether the later appointment is made in respect of the same type of external intervention or is of a different type.

557. Appeal against appointment

- (1) The following persons may appeal to the Supreme Court against the appointment of an external intervener for a law practice:
 - (a) the practice;

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-
- (b) an associate of the practice;
 - (c) any person authorised to operate a trust account of the practice;
 - (d) any other person whose interests may be adversely affected by the appointment.
 - (2) The appeal is to be lodged within 7 days after notice of the appointment is served on –
 - (a) the person who proposes to appeal; or
 - (b) the law practice, if a notice is not required to be served on the person who proposes to appeal.
 - (3) The Supreme Court may make any order it considers appropriate on the appeal.
 - (4) The appointment of an external intervener is not stayed by the making of an appeal, and the external intervener may accordingly continue to perform and exercise his or her functions and powers as external intervener during the currency of the appeal except to the extent (if any) that the Supreme Court otherwise directs.

558. Directions of Supreme Court

The Supreme Court may, on application by –

- (a) an external intervener for a law practice;
or
- (b) a principal of the practice; or

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- (c) any other person affected by the external intervention –

give directions in relation to any matter affecting the intervention or the intervener's functions, duties or powers under this Act.

559. Manager and receiver appointed for law practice

If a manager and a receiver are appointed for a law practice, any decision of the receiver prevails over any decision of the manager in the exercise of their respective powers, to the extent of any inconsistency.

560. ADI disclosure requirements

- (1) An ADI must, at the request of an external intervener for a law practice, disclose to the intervener without charge –
 - (a) whether or not the practice, or an associate of the practice specified by the intervener, maintains or has maintained an account at the ADI during a period specified by the intervener; and
 - (b) details identifying every account so maintained.

Penalty: Fine not exceeding 50 penalty units.

- (2) An ADI at which an account of a law practice or associate of a law practice is or has been

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maintained must, at the request of an external intervener for the law practice and without charge –

- (a) produce for inspection or copying by the intervener, or a nominee of the intervener, any records relating to any such account or money deposited in any such account; and
- (b) provide the intervener with full details of any transactions relating to any such account or money.

Penalty: Fine not exceeding 50 penalty units.

- (3) If an external intervener believes, on reasonable grounds, that trust money has, without the authorisation of the person who entrusted the trust money to the law practice, been deposited into the account of a third party who is not an associate of the law practice, the ADI at which the account is maintained must disclose to the intervener without charge –

- (a) whether or not a person specified by the intervener maintains or has maintained an account at the ADI during a period specified by the intervener; and
- (b) the details of any such account.

Penalty: Fine not exceeding 50 penalty units.

- (4) An obligation imposed by this section on an ADI does not apply unless the external intervener produces to the ADI evidence of the

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appointment of the intervener in relation to the law practice concerned.

- (5) A request under this section may be general or limited to a particular kind of account.
- (6) This section applies despite any legislation or duty of confidence to the contrary.
- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of producing records or providing details in accordance with this section.

561. Fees, legal costs and expenses

- (1) An external intervener is entitled to be paid –
 - (a) fees by way of remuneration; and
 - (b) the legal costs and the expenses incurred in relation to the external intervention –

in accordance with the instrument of appointment or order made by the Supreme Court appointing the external intervener.
- (2) The fees, costs and expenses are payable by and recoverable from the law practice.
- (3) Fees, costs and expenses not paid to the external intervener by the law practice are payable from the Guarantee Fund.

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- (4) An account of the external intervener for fees, costs and expenses may, on the application of the Trust, be assessed under Part 3.3 (Costs disclosure and assessment).
 - (5) The Trust may recover any unpaid fees, costs and expenses from the law practice.
 - (6) Fees, costs and expenses paid by or recovered from the law practice after they have been paid from the Guarantee Fund are to be paid to the Fund.

562. Reports by external intervener

- (1) An external intervener must provide written reports in accordance with any reporting requirements to be observed by the intervener as specified in the instrument of appointment or order of the Supreme Court.
- (2) If the instrument of appointment or order of the Supreme Court does not specify any reporting requirements, an external intervener must provide –
 - (a) written reports as required from time to time by the appropriate authority; and
 - (b) a written report to the appropriate authority at the termination of the appointment.
- (3) An external intervener must also keep the appropriate authority informed of the progress of the external intervention, including reports to the

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authority about any significant events occurring or state of affairs existing in connection with the intervention or with any of the matters to which the intervention relates.

- (4) Nothing in this section affects any other reporting obligations that may exist in respect of the law practice concerned.
- (5) In this section –

“appropriate authority” means –

- (a) the prescribed authority, for appointments made by the prescribed authority; or
- (b) the Board, for appointments made by the Board or the Supreme Court.

563. Confidentiality

- (1) An external intervener must not disclose information obtained as a result of his or her appointment except –
 - (a) so far as is necessary for performing or exercising his or her functions or powers; or
 - (b) as provided in subsection (2).
- (2) An external intervener may disclose information to any of the following:

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-
- (a) any court, tribunal or other person acting judicially;
 - (b) a regulatory authority of any jurisdiction;
 - (c) any officer of or Australian legal practitioner instructed by –
 - (i) a regulatory authority of any jurisdiction; or
 - (ii) the Commonwealth or a State or Territory of the Commonwealth; or
 - (iii) an authority of the Commonwealth or of a State or Territory of the Commonwealth –in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation or examination;
 - (d) a member of the police force of any jurisdiction if the external intervener believes on reasonable grounds that the information relates to an offence that may have been committed by the law practice concerned or by an associate of the law practice;
 - (e) the law practice concerned or a principal of the law practice or, if the practice is an incorporated legal practice, a shareholder in the practice;

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- (f) a client or former client of the law practice concerned if the information relates to the client or former client;
- (g) another external intervener appointed in relation to the law practice or any Australian legal practitioner or accountant employed by that other external intervener;
- (h) any other external examiner carrying out an external examination of the trust records of the law practice concerned.

564. Provisions relating to requirements under this Part

- (1) This section applies to a requirement imposed on a person under this Part to give an external intervener access to documents or information.
- (2) The validity of the requirement is not affected, and the person is not excused from compliance with the requirement, on the ground that a law practice or Australian legal practitioner has a lien over a particular document or class of documents.
- (3) The external intervener imposing the requirement may –
 - (a) inspect any document provided pursuant to the requirement; and
 - (b) make copies of the document or any part of the document; and

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- (c) retain the document for a period the intervener thinks necessary for the purposes of the external intervention in relation to which it was produced.
 - (4) The person is not subject to any liability, claim or demand merely because of compliance with the requirement.
 - (5) A failure of an Australian lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
 - (6) The prescribed authority –
 - (a) may on its own initiative; or
 - (b) must if directed to do so by the Board or Supreme Court –

suspend a local legal practitioner's practising certificate while a failure by the practitioner to comply with the requirement continues.

565. Obstruction of external intervener

- (1) A person must not, without reasonable excuse, obstruct an external intervener exercising a power under this Act.

Penalty: Fine not exceeding 50 penalty units.

- (2) In this section –

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“obstruct” includes hinder, delay, resist and attempt to obstruct.

566. Protection from liability

No liability attaches to the prescribed authority, the Board or a person appointed as an external intervener for a law practice for any act or omission by the intervener done in good faith and in the performance or purported performance, or in the exercise or purported exercise, of the external intervener’s functions or powers under this Act.

567. Report to Board of disciplinary matters

If an external intervener becomes aware of any matter in the course of an external intervention that the external intervener thinks may be unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the external intervener must (unless the matter is or has already been the subject of a complaint under Chapter 4) refer the matter to the Board to consider whether disciplinary action should be taken against the Australian legal practitioner or Australian-registered foreign lawyer.

CHAPTER 6 – INVESTIGATORY POWERS

PART 6.1 – PRELIMINARY

568. Purpose

The purpose of this Chapter is to provide powers that are exercisable in connection with –

- (a) trust account investigations, the investigation of the affairs of law practices under Division 4 of Part 3.2 (Trust money and trust accounts); and
- (b) trust account examinations, the external examination of the trust records of law practices under Division 5 of Part 3.2 (Trust money and trust accounts); and
- (c) complaint investigations, the investigation of complaints under Chapter 4 (Complaints and discipline); and
- (d) ILP compliance audits, the conduct of audits under Division 2 of Part 2.5 (Incorporated legal practices and multi-disciplinary partnerships) in relation to incorporated legal practices.

569. Interpretation

- (1) In this Chapter –

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“complaint investigation” means an investigation of a complaint under Chapter 4;

“ILP compliance audit” means the conduct of an audit under Division 2 of Part 2.5 of an incorporated legal practice;

“investigator” means –

- (a) an investigator under Division 4 of Part 3.2; or
- (b) an external examiner under Division 5 of Part 3.2; or
- (c) an investigator under Chapter 4; or
- (d) in relation to an audit under Division 2 of Part 2.5, the Board or a person authorised by the Board in connection with the audit;

“trust account examination” means an external examination of the trust records of a law practice under Division 5 of Part 3.2;

“trust account investigation” means an investigation of the affairs of a law practice under Division 4 of Part 3.2.

- (2) A reference in this Chapter to **“trust records”** includes a reference to the affairs of a law practice that may be examined under this section

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for the purposes of, and in connection with, an
examination of the practice's trust records.

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**PART 6.2 – REQUIREMENTS RELATING TO
DOCUMENTS, INFORMATION AND OTHER
ASSISTANCE**

570. 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.

571. Requirements that may be imposed for investigations, examinations and audits under Parts 2.5 and 3.2

- (1) For the purpose of carrying out a trust account investigation, trust account examination or ILP compliance audit 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:

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-
- (a) access to the documents relating to the affairs of the practice that the investigator reasonably requires;
 - (b) information relating to the affairs of the practice that the investigator reasonably requires (verified by statutory declaration if the requirement so states).
- (2) A person who is subject to a requirement under subsection (1) must comply with the requirement.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person who is subject to a requirement under subsection (1) is not entitled to charge the investigator for giving any such access or information.

572. Requirements that may be imposed for investigations under Chapter 4

- (1) For the purpose of carrying out a complaint investigation in relation to an Australian lawyer, an investigator may, by notice served on the lawyer, require the lawyer to do any one 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

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statutory declaration if the requirement
so states);

- (c) to otherwise assist in, or co-operate with,
the investigation of the complaint in a
specified manner.
- (2) For the purpose of carrying out a complaint
investigation in relation to an Australian lawyer,
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
lawyer is or was an associate, or any other
person (including, for example, an ADI, auditor
or liquidator but not including the lawyer) who
has or has had control of documents relating to
the affairs of the lawyer in relation to the
lawyer's practice, to give the investigator either
or both of the following:
 - (a) access to the documents relating to the
law practice affairs of the lawyer the
investigator reasonably requires;
 - (b) information relating to the law practice
affairs of the lawyer the investigator
reasonably requires (verified by statutory
declaration if the requirement so states).
- (3) A person who is subject to a requirement under
subsection (1) or (2) must comply with the
requirement.

Penalty: Fine not exceeding 50 penalty units.

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- (4) A requirement imposed on a person under this section is to be notified in writing to the person and is to specify a reasonable time for compliance.
 - (5) A person who is subject to a requirement under subsection (1) or (2) is not entitled to charge the investigator for doing anything in compliance with the requirement.

573. Provisions relating to requirements under this Part

- (1) This section 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 Australian legal practitioner has a lien over a particular document or class of documents.
- (3) If, before complying with the requirement, the person objects to the investigator on the ground that compliance may tend to incriminate the person, the information is inadmissible in evidence in any proceeding against the person for an offence, other than –

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- (a) an offence against this Act; or
 - (b) any other offence relating to the keeping of trust accounts or the receipt of trust money; or
 - (c) an offence relating to the falsity of the answer.
- (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 of an Australian lawyer to comply with the requirement is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (7) The prescribed authority –
 - (a) may on its own initiative; or
 - (b) must if directed to do so by the Board –

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suspend a local legal practitioner's practising
certificate while a failure by the practitioner to
comply with the requirement continues.

PART 6.3 – ENTRY AND SEARCH OF PREMISES

574. 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.

575. Investigator’s power to enter premises

- (1) For the purpose of carrying out an investigation, an investigator may enter and remain on any premises to exercise the powers in section 577.
- (2) In the case of a trust account investigation, the investigator –
 - (a) may enter any premises, other than residential premises, without the need for consent or a search warrant; and
 - (b) may enter residential premises –
 - (i) at any time with the consent of the occupier; or

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-
- (ii) under the authority of a search warrant issued under this Part.
 - (3) In the case of a complaint investigation, the investigator may only enter any premises –
 - (a) at any time with the consent of the occupier; or
 - (b) under the authority of a search warrant issued under this Part.
 - (4) 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.

Penalty: Fine not exceeding 50 penalty units.

576. Search warrants

- (1) For the purpose of carrying out an investigation, an investigator may apply to a magistrate for a warrant to enter premises.
- (2) The magistrate may, on application made under this section, issue a search warrant to an investigator if –
 - (a) the investigator satisfies the magistrate that there are reasonable grounds to suspect that relevant material is located at the premises; and

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- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) A search warrant authorises an investigator –
 - (a) to enter the premises specified in the warrant at the time or within the period specified in the warrant; and
 - (b) to exercise the powers in section 577.
- (4) The warrant must state –
 - (a) that an investigator may, with any necessary assistance and force, enter the premises and exercise the investigator's powers under this Part; and
 - (b) the reason for which the warrant is issued; and
 - (c) the kinds of relevant material that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 28 days after the day of the warrant's issue, the warrant ends.
- (5) A search warrant may be executed by the investigator to whom it is issued or by another investigator.
- (6) An investigator executing a warrant must, at the reasonable request of a person apparently in

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charge of the premises or any other person on the premises, produce the warrant.

Penalty: Fine not exceeding 20 penalty units.

577. 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;

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- (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 the computer or equipment; and
 - (ii) download or otherwise obtain any documents or information; and
 - (iii) make copies of any documents or information held in it; and
 - (iv) seize and take away the 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;

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- (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 in a form approved by the Board 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

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assist in finding and gaining access to electronically stored information.

- (5) A person requested to do anything under subsection (1)(j) must not, without reasonable excuse, fail to comply with the request.

Penalty: Fine not exceeding 50 penalty units.

**PART 6.4 – ADDITIONAL INVESTIGATORY POWERS
IN RELATION TO INCORPORATED LEGAL
PRACTICES**

578. Application of Part

- (1) This Part applies to –
 - (a) a trust account investigation; and
 - (b) a complaint investigation; and
 - (c) an ILP compliance audit –
conducted in relation to an incorporated legal practice.
- (2) The provisions of this Part are additional to the other provisions of this Chapter.

579. 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.

580. Examination of persons

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on the Australian Securities and Investments

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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 an Australian 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 Board;
 - (e) any modifications prescribed by the regulations.
- (3) Sections 22(2) and (3), 25(2) and (2A), 26 and 27 of the *Australian Securities and Investments*

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Commission Act 2001 of the Commonwealth do not apply in respect of the exercise of the powers conferred by this section.

581. Inspection of books

- (1) The investigator, by force of this section, has and may exercise the same powers as those conferred on the Australian Securities and Investments Commission by sections 30(1), 34, 37, 38 and 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;

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- (d) a reference to a member or staff member is taken to be a reference to the Board or prescribed authority or a person authorised by the Board or prescribed authority who is an officer or employee of the Board or prescribed 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;
- (f) any modifications prescribed by the regulations.

582. Power to hold hearings

- (1) The Board or investigator may hold hearings for the purposes of an investigation 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;

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- (b) a reference to a member or staff member is taken to be a reference to the Board or prescribed authority or a person authorised by the Board or prescribed authority who is an officer or employee of the Board or prescribed authority;
 - (c) a reference to a prescribed form is taken to be a reference to a form approved by the Board;
 - (d) any modifications prescribed by the regulations.

583. Failure to comply with investigation

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

- (a) a failure by an Australian legal practitioner to comply with any requirement made by the Board, prescribed authority or investigator, or a person authorised by the Board, prescribed authority or investigator, in the exercise of powers conferred by this Part;
- (b) a contravention by an Australian legal practitioner of any condition imposed by the Board, prescribed authority or investigator in the exercise of powers conferred by this Part;

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- (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 Board, prescribed authority or investigator, or a person authorised by the Board, prescribed authority or investigator, in the exercise of powers conferred by this Part;
 - (ii) any condition imposed by the Board, prescribed authority or investigator in the exercise of powers conferred by this Part.

PART 6.5 – INVESTIGATIONS – MISCELLANEOUS

584. Obstruction of investigator

- (1) A person must not, without reasonable excuse, obstruct an investigator exercising a power under this Act.

Penalty: Fine not exceeding 100 penalty units.

- (2) In this section –

“**obstruct**” includes hinder, delay, resist and attempt to obstruct.

585. Destruction of evidence

- (1) A person must not, with intent to prevent, hinder or otherwise interfere with the carrying out of a trust account investigation, trust account examination, complaint investigation or ILP compliance audit, and whether before or after the appointment of an investigator, destroy, conceal, remove from one place to another or deliver into the possession, or place under the control, of another person any information or document that may provide evidence of a contravention of this Act, the regulations or the legal profession rules.

Penalty: Imprisonment for a term not exceeding 5 years.

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- (2) An offence under subsection (1) is an indictable offence.

586. Obligation of Australian lawyers

- (1) The duties imposed on an Australian lawyer by this section are additional to obligations imposed under other provisions of this Chapter, whether or not the lawyer is the subject of the investigation, examination or audit concerned.
- (2) An Australian lawyer must not intentionally mislead an investigator, the Board or the prescribed authority in the exercise of –
- (a) any power or function under this Chapter; or
 - (b) any power or function under a provision of a corresponding law that corresponds to this Chapter.
- (3) An Australian lawyer who is subject to –
- (a) a requirement under section 572 (Requirements that may be imposed for investigations under Chapter 4); or
 - (b) a requirement under provisions of a corresponding law that correspond to that section –
- must not, without reasonable excuse, fail to comply with the requirement.

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- (4) An Australian lawyer who contravenes subsection (2) or (3) is guilty of professional misconduct.

587. Permitted disclosure of confidential information

- (1) The Board, prescribed authority or an investigator 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) the Board, prescribed authority or any other authority regulating legal practitioners in any jurisdiction;
 - (c) any officer of or Australian legal practitioner instructed by –
 - (i) the Board, prescribed authority 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 –

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in relation to any proceedings, inquiry or other matter pending or contemplated arising out of the investigation, examination or audit;

- (d) an investigative or prosecuting authority established by or under legislation (for example, the Australian Securities and Investments Commission);
- (e) a police officer, if the Board, prescribed authority or investigator suspects on reasonable grounds that the information relates to an offence that may have been committed by –
 - (i) if a law practice is the subject of the investigation, examination or audit, the law practice or an associate or former associate of the law practice; or
 - (ii) if an Australian lawyer is the subject of the investigation, examination or audit, the lawyer or an associate or former associate of the law practice of which the lawyer is or was an associate;
- (f) if the subject of the investigation, examination or audit is or was –
 - (i) a law practice, a principal of the law practice; or

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- (ii) an incorporated legal practice, a director or shareholder in the practice; or
 - (iii) an Australian lawyer, the lawyer or a principal of the law practice of which the lawyer is or was an associate;
 - (g) 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) an Australian lawyer, a client or former client of the law practice of which the lawyer is or was an associate –
 - but only if the information relates to the client or former client;
 - (h) 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) an Australian lawyer, a supervisor, manager or receiver appointed in relation to the law practice of which the lawyer is or was an associate –

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or an Australian legal practitioner or accountant employed by the supervisor, manager or receiver;

- (i) an investigator carrying out another investigation, examination or audit in relation to the law practice or Australian lawyer who is or was the subject of the investigation, examination or audit;
 - (j) any other person to the extent that it is necessary for the purposes of properly conducting the investigation, examination or audit and making a report on the matter.
- (2) 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 section.
- (3) For the purposes of subsection (2) –

“protected person” means –

- (a) the Board or prescribed authority or a member of the Board or prescribed authority; or
- (b) an investigator; or
- (c) a person acting at the direction of any person or entity referred to in this definition.

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588. Report to Board of disciplinary matters

If an investigator becomes aware of any matter in the course of a trust account investigation, trust account examination, complaint investigation or ILP compliance audit that the investigator thinks may constitute unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the investigator must, unless the matter is or has already been the subject of a complaint under Chapter 4, refer the matter to the Board to consider whether disciplinary action should be taken against the Australian legal practitioner or Australian-registered foreign lawyer.

CHAPTER 7 – REGULATORY AUTHORITIES

PART 7.1 – LEGAL PROFESSION BOARD OF TASMANIA

Division 1 – The Board

589. Establishment of Legal Profession Board of Tasmania

- (1) The Legal Profession Board of Tasmania is established.
- (2) The Board –
 - (a) is a body corporate with perpetual succession; and
 - (b) may sue and be sued in its corporate name.

590. Membership of Board

- (1) The Board consists of –
 - (a) two persons who are local legal practitioners and who are nominated by the Law Society; and
 - (b) one person who is a local legal practitioner and who is nominated jointly by the Tasmanian Independent Bar and the Tasmanian Bar Association; and

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- (c) one person who is a local legal practitioner and who is nominated by the Minister; and
 - (d) two persons, nominated by the Minister, who –
 - (i) are lay persons; and
 - (ii) have not completed the degree of Bachelor of Laws or equivalent, either in this State or in another jurisdiction, whether or not combined with any other degree.
- (2) The members are appointed by the Governor.
 - (3) The Board is to elect one of its members referred to in subsection (1) to be chairperson of the Board and that person holds office as chairperson for such term and on such conditions as are determined by the Board.
 - (4) Schedule 2 has effect with respect to membership of the Board.
 - (5) Schedule 3 has effect with respect to meetings of the Board.

Division 2 – Functions and powers of Board

591. Functions of Board

The Board has the following functions:

- (a) to maintain the Register;

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- (b) to monitor the standard and provision of legal professional services;
- (c) to receive, investigate and determine complaints made under Chapter 4 and, as necessary, refer complaints to the Tribunal or Supreme Court for hearing and determination;
- (d) to approve terms and conditions of professional indemnity insurance policies provided to law practices;
- (e) to advise the profession on appropriate standards of conduct;
- (f) to monitor and identify trends and issues that emerge within the legal profession;
- (g) to approve courses of continuing legal education;
- (h) to advise the Minister on any matters relating to this Act;
- (i) such other functions as may be imposed by this or any other Act;
- (j) to conduct education programs relating to client-lawyer relationships for members of the public;
- (k) such other functions as may be prescribed.

592. Powers of Board

- (1) The Board has the power to do all things necessary or convenient to be done in connection with the performance of its functions.
- (2) Without limiting subsection (1), the Board may impose levies on local legal practitioners.
- (3) If a local legal practitioner fails to pay a levy in accordance with this Part, the Board may suspend the local legal practitioner's practising certificate while the failure continues.

593. Delegation by Board

The Board may delegate any of its functions or powers under this or any other Act other than this power of delegation and the making of a determination under Chapter 4.

594. Contracts

The Board may enter into a contract with any person for the performance or exercise by that person of any of the Board's functions or powers under this Act or any other Act except the making of a determination under Chapter 4.

595. Committees

- (1) The Board may establish such committees as it considers necessary for the purpose of assisting

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it in the perform of any of its functions or the exercise of any of its powers or advising it on any matter relating to this Act.

- (2) A committee comprises such persons as the Board appoints.
- (3) A member of the Board may be a member of a committee.
- (4) Subject to subsection (5), a member of a committee may be paid such remuneration and allowances as the Board may from time to time determine and any such remuneration and allowances are to be paid by the Board.
- (5) A member of a committee who is a State Service officer or State Service employee is not entitled to remuneration under subsection (4) except with the approval of the Minister administering the *State Service Act 2000*.
- (6) The Board may give written directions to a committee and the committee must comply with those directions.
- (7) A committee is to keep accurate minutes of its proceedings.
- (8) Except as otherwise provided in this Act, a committee may regulate its own proceedings.

596. Employees

- (1) The Board is to appoint a suitably qualified person as the executive officer of the Board and

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may appoint such other persons as it considers necessary.

- (2) The executive officer is to act as secretary to the Board.
- (3) The *State Service Act 2000* does not apply to persons appointed by the Board.

Division 3 – Rules of Board

597. General rules

- (1) The Board may make rules for the purposes of performing its functions and exercising its powers under this Act.
- (2) Rules made under subsection (1) may be made subject to conditions, or be made so as to apply differently according to factors, limitations or restrictions, as are specified in the rules.
- (3) Rules made under subsection (1) are not statutory rules within the meaning of the *Rules Publication Act 1953*.
- (4) The *Subordinate Legislation Act 1992* does not apply to rules under subsection (1).

Division 4 – Finance and reports

598. Funds of Board

- (1) The Board is authorised to keep such ADI accounts as it considers necessary.

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- (2) The funds of the Board are to be paid to the credit of such of its ADI accounts as it determines and are to consist of money received by the Board from any source.
- (3) The funds of the Board are to be applied –
 - (a) for the purposes of this Act, which include the administration and enforcement of regulations or rules made under this Act; and
 - (b) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Board in the performance of its functions or the exercise of its powers; and
 - (c) in payment of the expenses incurred by the Tribunal in the performance of its functions or the exercise of its powers; and
 - (d) where considered necessary by the Board, in payment to any person or prescribed authority in connection with any of the person's or prescribed authority's functions under this Act; and
 - (e) in payment of any remuneration payable by the Board.
- (4) The Board may invest any money that it is holding in any manner in which a trustee is authorised by law to invest funds.

599. Accounts

The Board is to keep proper accounts and records of its financial affairs and, not later than 15 August after the end of each financial year, prepare a statement of accounts in a form approved by the Auditor-General exhibiting a true and correct view of the financial position and transactions of the Board for that financial year.

600. Audit

The accounts of the Board are subject to the *Financial Management and Audit Act 1990*.

601. Annual report

- (1) The Board is to, on or before 31 August after the end of each financial year, prepare and present to the Minister a report on its operations for that financial year.
- (2) The report is to contain –
 - (a) an audited statement of accounts prepared for that financial year under section 599; and
 - (b) a statement regarding the number and nature of complaints received and matters subject to investigation or hearing; and

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- (c) information as to the handling of complaints including information relating to the number of complaints dismissed and the number of uncompleted matters outstanding at the end of the financial year; and
 - (d) the outcome of disciplinary action taken during the year to which the report relates; and
 - (e) the report of the Tribunal provided in accordance with section 617 (Report of Tribunal); and
 - (f) the report of the prescribed authority provided in accordance with section 653 (Prescribed authority to report to Board); and
 - (g) any other matters the Board considers relevant; and
 - (h) such other information as the Minister may require.
- (3) The Minister is to cause a copy of the Board's report to be laid before each House of Parliament not later than 31 October after the end of the financial year to which it relates.

Division 5 – Miscellaneous

602. Confidentiality

- (1) Subject to this section, a member of the Board, a member of a committee of the Board or a person employed or engaged on work related to the affairs of the Board must not divulge information that comes to his or her knowledge by virtue of that office or position except –
- (a) in the course of, and for a purpose related to, carrying out the duties of that office or position; or
 - (b) as may be authorised by or under this Act or any other Act; or
 - (c) in evidence before a court in which proceedings arising from matters subject to a report of the Board have been brought.

Penalty: Fine not exceeding 100 penalty units.

- (2) Notwithstanding subsection (1), a person referred to in that subsection may divulge information referred to in that subsection to –
- (a) the Board; and
 - (b) a prescribed authority; and
 - (c) the Minister; and
 - (d) a member of a law enforcement or prosecution authority of any jurisdiction,

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or of the Commonwealth, relating to a matter referred to the authority by the Minister or reported to the authority by the Board to which the information is relevant; and

- (e) a corresponding authority that has requested the information in connection with actual or possible disciplinary action against an Australian legal practitioner; and
- (f) a person to whom the Board has delegated its power to investigate pursuant to this Act.

603. Protection from liability

- (1) An action does not lie against a member or employee of the Board or against a member of a committee of the Board for any act or omission by the member or employee, or by the Board or committee, in good faith and in the performance or purported performance of functions, or in the exercise or purported exercise of powers, under this Act.
- (2) An action does not lie against a person to whom the Board has delegated or contracted a function under this Act for any act or omission done by the person in good faith and in the performance or purported performance of functions, or in the exercise or purported exercise of powers, under this Act.

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(3) A liability that would, but for this section, attach to –

- (a) a member or employee of the Board; or
- (b) a member of a committee of the Board;
or
- (c) a natural person to whom the Board has delegated or contracted a function under this Act –

attaches to the Board.

PART 7.2 – BOARD OF LEGAL EDUCATION

604. Board of Legal Education

- (1) The Board of Legal Education established under the *Legal Practitioners Act 1959* is continued as a body corporate with a common seal.
- (2) The Board of Legal Education –
 - (a) may acquire, hold, dispose of and otherwise deal with property; and
 - (b) may sue and be sued in its corporate name.
- (3) The common seal is to be kept and used as authorised by the Board of Legal Education.
- (4) The execution of a document sealed by the Board of Legal Education is to be attested by 2 members of the Board of Legal Education.
- (5) All courts and persons acting judicially must take judicial notice of the imprint of the common seal on a document and presume that it was duly sealed by the Board of Legal Education.

605. Membership of Board of Legal Education

- (1) The Board of Legal Education consists of the following members appointed by the Minister:
 - (a) one judge nominated by the judges;

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- (b) one person nominated by the Faculty of Law in the University of Tasmania who is a member of the academic staff of that Faculty;
 - (c) a local legal practitioner nominated by the Board;
 - (d) one person nominated by the Council of the University of Tasmania who is a local lawyer;
 - (e) 2 persons nominated by the Law Society who are local legal practitioners.
- (2) The Board of Legal Education is to elect one of its members to be chairperson of the Board of Legal Education and that person holds office as chairperson for such term and on such conditions as are determined by the Board of Legal Education.
- (3) If a nomination under subsection (1) is not made within 30 days after the date on which that nomination is required by the Minister to be made, the Minister may appoint suitably qualified persons for appointment under that subsection.
- (4) Schedule 4 has effect with respect to members of the Board of Legal Education.
- (5) Schedule 5 has effect with respect to meetings of the Board of Legal Education.

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Part 7.2 – Board of Legal Education

606. Functions and powers of Board of Legal Education

- (1) The Board of Legal Education has the following functions:
 - (a) to determine the subjects which candidates for admission to the legal profession under Part 2.2 (Admission of local lawyers) must pass;
 - (b) to approve courses of practical instruction on the duties of an Australian legal practitioner;
 - (c) such other functions as may be imposed by this Act.
- (2) The Board of Legal Education may do all things necessary or convenient to perform its functions.

607. Secretary of Board of Legal Education

Subject to and in accordance with the *State Service Act 2000*, a person may be appointed as secretary to the Board of Legal Education and may hold office in conjunction with State Service employment.

608. Rules of Board of Legal Education

- (1) The Board of Legal Education may make rules for the purpose of performing its functions and exercising its powers under this Act.

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- (2) Without limiting subsection (1), rules may be made for any or all of the following purposes:
- (a) admission requirements regarding, and the approval of, academic qualifications and practical legal training;
 - (b) the examination of applicants for admission to the legal profession and the assessment of their academic qualifications and practical legal training;
 - (c) the assessment of qualifications and practical legal training of overseas qualified or trained applicants against the academic requirements and practical legal training requirements that apply to local applicants;
 - (d) exemption of a person from the requirements of section 25(1)(a) or (b) (Eligibility for admission) as provided for by section 25(4);
 - (e) accreditation of legal education and practical legal education courses;
 - (f) abridging in specified circumstances any period of practical legal training required by the rules;
 - (g) prescribing the fees and costs to be payable under the rules and providing for the waiver, refund or remission of fees;
 - (h) any other matters relating to the admission of local lawyers insofar as

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they do not conflict with the admission rules.

- (3) Rules may be made subject to conditions, or be made so as to apply differently according to factors, limitations or restrictions, as are specified in the rules.
- (4) The Board of Legal Education rules must not require a person to satisfactorily complete before admission a period of supervised training that exceeds in length a period or periods equivalent to one full-time year (as determined in accordance with the rules).

609. Rule-making procedure

Rules made under this Part are –

- (a) statutory rules within the meaning of the *Rules Publication Act 1953*; and
- (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

PART 7.3 – DISCIPLINARY TRIBUNAL

610. Disciplinary Tribunal

- (1) The Disciplinary Tribunal is established.
- (2) The Tribunal consists of –
 - (a) 10 Australian legal practitioners appointed by the judges from a panel of 15 Australian legal practitioners consisting of 2 legal practitioners to be nominated by the Tasmanian Bar Association, 2 legal practitioners to be nominated by the Tasmanian Independent Bar and the balance to be nominated by the Law Society; and
 - (b) 5 lay persons appointed by the judges on the nomination of the Minister.
- (3) The judges are to appoint a chairperson and deputy chairperson of the Tribunal from the practitioner members of the Tribunal.
- (4) Schedule 6 has effect with respect to the membership of the Tribunal.

611. Composition of Tribunal for proceedings

- (1) The functions and powers of the Tribunal may be performed and exercised by any 3 or more of its members, of whom –

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Part 7.3 – Disciplinary Tribunal

- (a) one must be the chairperson or, in the absence of the chairperson, the deputy chairperson or, in the absence of both the chairperson and deputy chairperson, a practitioner member appointed by the chairperson; and
 - (b) at least one must be a practitioner member; and
 - (c) at least one must be a lay member.
- (2) Subject to subsection (1), the chairperson of the Tribunal is to determine the members who are to constitute the Tribunal for a particular hearing.
- (3) The chairperson of the Tribunal may appoint as a special member of the Tribunal for a particular hearing a person whom the chairperson considers to have the skill, knowledge or experience that is relevant for the purposes of that hearing.
- (4) A person referred to in subsection (3) may or may not be an Australian legal practitioner.
- (5) Notwithstanding subsection (1), the chairperson or deputy chairperson of the Tribunal may sit alone for the purpose of making an interim order, giving directions or adjourning proceedings.
- (6) The chairperson or deputy chairperson or practitioner member appointed by the chairperson under subsection (1)(a) is to preside at a Tribunal hearing.

612. Change in composition

- (1) If one of the members (other than the member presiding) constituting the Tribunal for the purposes of a hearing vacates office or becomes incapable of sitting for any reason before the hearing is completed or a determination has been made in respect of the hearing, the hearing may be continued and completed by the remaining members.
- (2) If the member presiding or more than one member vacates office or becomes incapable of sitting before the Tribunal has completed the hearing or made a determination in respect of the hearing, the hearing is terminated and a new hearing may be commenced before the Tribunal constituted in accordance with this Part.
- (3) In a new hearing the Tribunal may have regard to the record of the proceedings before the Tribunal as previously constituted, including the record of any evidence taken in the proceeding.

613. Immunity of members of Tribunal

An action does not lie against a member of the Tribunal in respect of any act done by that member in good faith and in the exercise or purported exercise of any power conferred, or in the performance or purported performance of any function imposed, by this Act.

614. Confidentiality

- (1) A member of the Tribunal or a person employed or engaged on work related to the affairs of the Tribunal must not divulge any information gained by virtue of that office or position except –
- (a) in the course of and for a purpose related to carrying out the duties of the office or position; or
 - (b) as may be authorised by this Act or any other Act; or
 - (c) as may be required by a court in relation to proceedings before the court.

Penalty: Fine not exceeding 100 penalty units.

- (2) Notwithstanding subsection (1), a person referred to in that subsection may divulge information referred to in that subsection to –
- (a) the Tribunal; and
 - (b) the Board; and
 - (c) the prescribed authority; and
 - (d) the Minister; and
 - (e) a member of a law enforcement or prosecution authority of a jurisdiction, or of the Commonwealth, relating to a matter referred to the authority by the Minister or reported to the authority by

the Tribunal to which the information is relevant; and

- (f) a corresponding authority that has requested the information in connection with actual or possible disciplinary action against an Australian legal practitioner.

615. General functions and powers of Tribunal

- (1) The Tribunal must hear and determine any matter referred to it in an application made under Part 4.7 unless section 466(7)(b) or (c) applies to the matter.
- (2) If, during the course of a hearing, the Tribunal is of the opinion that a matter is one which should be heard and determined by the Supreme Court –
 - (a) it may refer the matter to the Supreme Court to be dealt with as an application under section 486 (Applications to Supreme Court); and
 - (b) it must suspend the hearing with effect from the date of the referral; and
 - (c) it must advise the parties accordingly.
- (3) If, during the course of a hearing, the Tribunal is of the opinion that a related matter may constitute unsatisfactory professional conduct or professional misconduct, it may require the Board to conduct an investigation under Part 4.4.

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Part 7.3 – Disciplinary Tribunal

- (4) The Tribunal may do all things necessary or convenient to be done for hearing and determining a matter to which an application under this Part relates.
- (5) The Tribunal may make rules for regulating the making, hearing and determining of applications under Part 4.7.
- (6) Rules made under this section are –
 - (a) statutory rules within the meaning of the *Rules Publication Act 1953*; and
 - (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

616. Secretary to Tribunal

- (1) Subject to subsection (2), the Tribunal is to appoint a secretary to the Tribunal to assist the Tribunal in the performance of its functions and the exercise of its powers under this Act.
- (2) The Tribunal must not appoint a person who is a member of the Board as secretary to the Tribunal.

617. Report of Tribunal

- (1) The Tribunal must provide on or before 31 July after the end of each financial year to the Board a report, stating –

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- (a) the number of applications made to it under section 464 for that financial year and the nature of those applications; and
 - (b) the orders made by it in respect of those applications; and
 - (c) any other information the Tribunal considers relevant.
- (2) The Board may require the Tribunal to provide further information in relation to any matter contained in a report provided under subsection (1).

PART 7.4 – THE LAW SOCIETY OF TASMANIA

618. The Law Society

- (1) The Law Society of Tasmania established under the *Law Society Act 1962* is continued as a body corporate with a common seal.
- (2) The Law Society –
 - (a) may acquire, hold, dispose of and otherwise deal with property; and
 - (b) may sue and be sued in its corporate name.
- (3) All courts and persons acting judicially must take judicial notice of the imprint of the common seal on a document and presume that it was duly sealed by the Law Society.

619. Membership of Law Society

- (1) An Australian legal practitioner may become a member of the Law Society.
- (2) A barrister may become a member of the Law Society.
- (3) An Australian legal practitioner who is suspended or prohibited from practising as a barrister or Australian legal practitioner is not entitled to be a member of the Law Society and ceases to be a member during the period of the suspension or prohibition.

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Part 7.4 – The Law Society of Tasmania

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- (4) The Law Society may admit any person as an associate member of the Law Society on the terms and conditions prescribed by by-laws made under section 627.
 - (5) The Law Society may expel a person as an associate member or member of the Law Society in accordance with by-laws made under section 627.

620. Functions of Law Society

The Law Society has the following functions:

- (a) the promotion and representation of the legal profession;
- (b) the promotion of law reform;
- (c) any other functions as may be prescribed.

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Part 7.5 – The Council of the Law Society

PART 7.5 – THE COUNCIL OF THE LAW SOCIETY

621. The Council

- (1) The Council of the Law Society established under the *Law Society Act 1962* is continued.
- (2) The Council consists of 16 members elected under by-laws made under section 627.
- (3) The quorum at any meeting of the Council is 9 members.
- (4) All acts and proceedings of the Council or of any person acting pursuant to any direction of the Council are, notwithstanding the subsequent discovery of any defect in the election of any member or that any person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly elected and was qualified to act as, or capable of being, a member and as if the Council had been fully constituted.
- (5) Any act or proceeding of the Council or of any person acting pursuant to any direction of the Council is not invalidated or prejudiced only because, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Council.

622. Functions and powers of Council

The Council –

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Part 7.5 – The Council of the Law Society

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- (a) has the sole management of the Law Society, its affairs, funds, income and property for the purposes and benefit of the Law Society; and
 - (b) may exercise the powers that are vested in the Law Society and do all acts and things that this Act directs or authorises to be done by the Law Society, except those powers, acts and things that are expressly required to be exercised or done by the Law Society in an ordinary general meeting or special general meeting.

623. Executive committee

- (1) There is established an executive committee of the Council.
- (2) The executive committee consists of such members as may be prescribed under by-laws made by the Council.

624. Records of Council proceedings

The Council must keep records of its proceedings for a period of 10 years.

625. Inspection of records of Council proceedings

The Council must make available for inspection by a member of the Law Society at all

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Part 7.5 – The Council of the Law Society

reasonable times, without payment, records of its proceedings.

626. Delegation

The Council, by resolution, may delegate to the executive committee or any person any of its functions or powers other than this power of delegation.

627. Power of Council to make by-laws

- (1) The Council may, by resolution and in accordance with section 628, make by-laws with respect to any or all of the following:
 - (a) the objects of the Law Society;
 - (b) the custody and use of the common seal of the Law Society;
 - (c) the promotion and representation of the legal profession and the Law Society;
 - (d) the geographical areas of the State for the purpose of representation of members of the Council;
 - (e) the determination of offices of the Law Society, the election of persons to those offices and their tenure;
 - (f) the election of members of the Council and the tenure of their membership;

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- (g) the membership of the executive committee;
 - (h) the filling of any casual vacancy in any office of the Law Society, in the membership of the Council or in the membership of the executive committee;
 - (i) the convening of and regulation of proceedings at ordinary general meetings and special general meetings of the Law Society and the conduct of business at those meetings;
 - (j) the convening of and regulation of proceedings at meetings of the Council, the executive committee or a committee of the Council and the conduct of business by the Council, the executive committee or other committee;
 - (k) the admission, resignation and expulsion of members and associate members of the Law Society;
 - (l) the re-entry of persons who have ceased to be members or associate members of the Law Society;
 - (m) the fees, levies and subscriptions payable in respect of membership by members and associate members of the Law Society;
 - (n) the power of the Council to make rules of the Law Society for any purpose specified in the by-laws;

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- (o) any other matter relating to the administration of the Law Society or giving effect to the objects of the Law Society.
- (2) By-laws made under subsection (1) may be made subject to conditions, or be made so as to apply differently according to factors, limitations or restrictions, as are specified in the by-laws.

628. Procedure relating to making of by-laws

- (1) A resolution by the Council to make any by-laws must be adopted on the affirmative vote of at least three-quarters of the members of the Council present and voting at the meeting.
- (2) The Executive Director of the Law Society is to cause a resolution to be published in all daily newspapers published and circulating in the State within one month of its adoption.
- (3) If, within one month of publication of a resolution, 25 or more members of the Law Society make a requisition for a special general meeting of the Law Society to consider the resolution, the Executive Director of the Law Society must convene a special general meeting as soon as reasonably practicable.
- (4) The Executive Director of the Law Society must give 15 days' notice in writing to each member of the Law Society of a special general meeting to be held, stating the resolution to be considered at that meeting.

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- (5) A resolution considered by a special general meeting may be carried by a majority of the members present and voting at that meeting.
 - (6) A resolution carried under subsection (5) takes effect one month after the date on which it was so carried.
 - (7) If, within a period of one month of the publication of a resolution, a requisition is not made, the resolution takes effect –
 - (a) when that period expires; or
 - (b) at such later date as may be specified in the resolution.
 - (8) By-laws made under this Part are –
 - (a) statutory rules within the meaning of the *Rules Publication Act 1953*; and
 - (b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

629. Executive Director and other employees

- (1) The Council, on any terms and conditions it considers appropriate, may appoint and employ a person as Executive Director of the Law Society and such other persons as it deems necessary.
- (2) The Executive Director of the Law Society must –

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- (a) keep all the necessary books and documents; and
- (b) carry out all instructions from the Law Society and the Council; and
- (c) perform all duties imposed on the Executive Director under this Act or under the by-laws made under section 627, the regulations or other rules.

630. Institution of proceedings on behalf of Law Society

- (1) The Council may institute proceedings in the name of the Law Society.
- (2) Any proceedings instituted by the Council under subsection (1) are to be instituted on behalf of the Law Society.

631. Law Society entitled to appear in certain proceedings

- (1) The Council may appoint an Australian legal practitioner to appear before a court or tribunal in a matter which affects the Law Society or its members or in which the Law Society is directly or indirectly concerned or interested.
- (2) Without limiting subsection (1), the Law Society is entitled to appear –

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- (a) in any proceedings instituted by the Council; and
 - (b) in any proceedings in which a person seeks admission to the legal profession; and
 - (c) in any proceedings which affect the Law Society or its members.

632. Protection from liability

- (1) An action does not lie against a member of the Council or employee of the Law Society for any act or omission by the member of the Council or employee of the Law Society, in good faith and in the performance or purported performance of functions, or in the exercise or purported exercise of powers, under this Act.
- (2) A liability that would, but for subsection (1), attach to a member of the Council, or an employee of the Law Society, attaches to the Law Society.

PART 7.6 – SOLICITORS’ TRUST

633. Solicitors’ Trust

- (1) The Solicitors’ Trust established under the *Legal Practitioners Act 1959* and continued under the *Legal Profession Act 1993* is continued as a body corporate with a common seal.
- (2) The Trust –
 - (a) may acquire, hold, dispose of and otherwise deal with property; and
 - (b) may sue and be sued in its corporate name.
- (3) All courts and persons acting judicially must take judicial notice of the imprint of the common seal on a document and presume that it was duly sealed by the Trust.

634. Membership of Trust

- (1) The Trust consists of the following members appointed by the Governor:
 - (a) 2 persons nominated by the Law Society and who are Australian legal practitioners;
 - (b) one person nominated by the Minister and who is a member of –

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- (i) the Australian Society of Certified Practising Accountants;
or
 - (ii) the Institute of Chartered Accountants in Australia.
- (2) The members of the Trust are to elect a chairperson of the Trust from the members of the Trust.
 - (3) If a nomination under subsection (1) is not made within 30 days after the date on which that nomination is required by the Governor to be made, the Governor may appoint suitably qualified persons under that subsection.
 - (4) Schedule 7 has effect with respect to the membership of the Trust.
 - (5) Schedule 8 has effect with respect to the meetings of the Trust.

635. Functions and powers of Trust

- (1) The function of the Trust is to administer and manage the Guarantee Fund.
- (2) The Trust may do all things necessary or convenient to perform its functions.
- (3) The Trust may appoint and employ, on such terms as it thinks fit, such persons as may be necessary for the performance of its functions and exercise of its powers under this Part.

636. Trust deposit accounts

- (1) The Trust is to establish in an ADI in Tasmania as many accounts as it thinks fit, to be known as trust deposit accounts.
- (2) The funds of a trust deposit account consist of all money deposited to the credit of that account pursuant to –
 - (a) section 258 (Unclaimed money); and
 - (b) section 352 (Deposit of trust money into designated trust deposit account); and
 - (c) section 357 (Trust to invest interest).

637. Application of funds in trust deposit accounts

- (1) The Trust may invest so much of the funds of a trust deposit account as it thinks proper in any of the ways trustees are authorised to invest trust funds under the *Trustee Act 1898*.
- (2) The Trust must apply any income arising from any funds invested by it under subsection (1) –
 - (a) firstly, in the payment of its operating expenses, including the remuneration of its members and the payment of persons appointed and employed by it under section 635; and
 - (b) secondly, in the creation and maintenance of the Guarantee Fund.

638. Accounts, reports and audit

- (1) The Trust must –
 - (a) keep proper accounts and records in relation to all of its operations; and
 - (b) as soon as practicable after 31 December in each year, prepare a statement of accounts exhibiting a true and correct view of the transactions of the Trust with respect to the period of 12 months ending on that date.
- (2) The statement of accounts prepared under subsection (1) is to be submitted to a company auditor appointed by the Trust for examination and certification.
- (3) The Trust must provide to the Minister and the Board copies of the statement of accounts certified by a company auditor under subsection (2) within 14 days after the statement has been prepared.
- (4) The Trust must submit to the Minister and the Board a report in respect of its operations and financial position when required to do so by the Board or Minister.
- (5) For the purpose of enabling the Trust to keep proper accounts and records, the prescribed authority and the Board must make available when required by the Trust any of their relevant accounts and records.

CHAPTER 8 – MISCELLANEOUS

PART 8.1 – NOTICES AND EVIDENTIARY MATTERS

639. Service of notices on local legal practitioners, locally registered foreign lawyers and law practices

- (1) For the purposes of this Act, a notice or other document may be served on, or given to, a local legal practitioner or locally registered foreign lawyer by –
 - (a) delivering it personally to the practitioner or lawyer; or
 - (b) sending it by post to the practitioner or lawyer at his or her address for service appearing on the register under section 88 (Register of local practising certificates); or
 - (c) by faxing it to the practitioner's or lawyer's fax number; or
 - (d) by emailing it to the practitioner's or lawyer's email address.
- (2) For the purposes of this Act, a notice or other document may be served on, or given to, a law practice by –
 - (a) delivering it personally to a principal of the law practice; or

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- (b) sending it by post to the practice at its usual or last known business address; or
 - (c) leaving it at the practice's usual or last known business address with a person on the premises who is apparently 16 or more years of age and apparently employed there; or
 - (d) faxing it to the practice's fax number; or
 - (e) emailing it to the practice's email address.
- (3) A notice or other document may also be served on, or given to, an incorporated legal practice in any other way that service of documents may be effected on a body corporate.

640. Service on the Board or prescribed authority

For the purposes of this Act, a notice or other document may be served on, lodged with or given to the Board or a prescribed authority –

- (a) by delivering it personally to the office of the Board or prescribed authority; or
- (b) by sending it by post to the office of the Board or prescribed authority.

641. Service of notices on other persons

For the purposes of this Act, a notice or other document may be served on, or given to, a

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person (other than a person referred to in section 639 or 640) –

- (a) if the person is a natural person, by –
 - (i) delivering it personally to the person; or
 - (ii) sending it by post to the person at his or her usual or last known residential or business address; or
 - (iii) leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently 16 or more years of age and apparently residing or employed there; or
- (b) if the person is a company within the meaning of the Corporations Act –
 - (i) by delivering it personally to the registered office of the company; or
 - (ii) by sending it by post to the registered office of the company; or
 - (iii) in any other way that service of documents may be effected on a body corporate; or
- (c) if the person is an incorporated association within the meaning of the

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Associations Incorporation Act 1964, in
accordance with section 28 of that Act.

642. When is service effective?

For the purposes of this Act, a notice or other document must be taken to have been served on, or given to, a person or law practice –

- (a) in the case of delivery in person, at the time the document is delivered; or
- (b) in the case of posting, 2 business days after the day on which the document was posted.

643. Evidentiary matters

- (1) A certificate sealed by, or signed on behalf of, the prescribed authority, specifying that, on a date or during a period specified in the certificate –

- (a) a person held or did not hold a local practising certificate; or
- (b) the local practising certificate of a person was subject to a specified condition or restriction –

is, in the absence of proof to the contrary, proof of the matters stated in it.

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(2) A certificate issued by a regulatory authority of another jurisdiction that states that, on a date or during a period specified in the certificate –

(a) a specified person was or was not the holder of an interstate practising certificate; or

(b) that a specified interstate legal practitioner's interstate practising certificate was or was not subject to a specified condition –

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

(3) A certificate that is issued by the domestic registration authority and that states that, on a date or during a period specified in the certificate –

(a) a specified person was or was not a locally registered foreign lawyer; or

(b) the registration of a specified locally registered foreign lawyer was or was not subject to a specified condition –

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

(4) A certificate that is issued by a foreign registration authority (within the meaning of Part 2.6 (Legal practice by foreign lawyers)) and that states that, on a date specified in the certificate, specified foreign regulatory action (within the meaning of Part 2.4 (Inter-

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jurisdictional provisions regarding admission and practising certificates)) was taken in relation to a person is admissible in any legal proceedings and is evidence of the fact or facts so stated.

(5) For the purposes of this section –

“domestic registration authority” means the prescribed authority.

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644. Liability of principals

- (1) If a law practice contravenes, whether by act or omission, any provision of this Act or the regulations imposing an obligation on the practice, each principal of the practice is taken to have contravened the same provision, unless the principal establishes that –
 - (a) the practice contravened the provision without the actual, imputed or constructive knowledge of the principal; or
 - (b) the principal was not in a position to influence the conduct of the law practice in relation to its contravention of the provision; or
 - (c) the principal, if in that position, used all due diligence to prevent the contravention by the practice.
- (2) Subsection (1) does not affect the liability of the law practice for the contravention.
- (3) A contravention of a requirement imposed on a law practice by this Act is capable of constituting unsatisfactory professional conduct or professional misconduct by a principal of the practice.

645. Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute –
- (a) a contravention of this Act; or
 - (b) attempting to contravene this Act; or
 - (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
 - (f) conspiring with others to contravene this Act –

the Supreme Court may, on the application of the Board, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

- (2) Where an application for an injunction under subsection (1) has been made, the Supreme Court may, if the Court determines it to be appropriate, grant an injunction by consent of all

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the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

- (3) Where in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (4) The Supreme Court may discharge or vary an injunction granted under subsection (1) or (3).
- (5) The power of the Supreme Court to grant an injunction restraining a person from engaging in conduct may be exercised –
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (6) The Supreme Court must not require the Board or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (7) In this section –

“this Act” includes the regulations and the legal profession rules.

646. Disclosure of information by local regulatory authorities

- (1) A local regulatory authority may disclose information to another local regulatory authority about any matter relating to or arising under this Act or a corresponding law.
- (2) A local regulatory authority may disclose information to an interstate regulatory authority about any matter relating to or arising under this Act or a corresponding law.
- (3) In this section –

“interstate regulatory authority” means –

- (a) an authority having functions or powers under a corresponding law; or
- (b) a person or body prescribed, or of a class prescribed, by the regulations as an interstate regulatory authority;

“local regulatory authority” means –

- (a) an authority having functions or powers under this Act; or
- (b) a person or body prescribed, or of a class prescribed, by the

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regulations as a local regulatory authority.

647. Confidentiality of personal information

- (1) A relevant person must not disclose to any other person, whether directly or indirectly, any personal information obtained by reason of being a relevant person.

Penalty: Fine not exceeding 25 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information –
- (a) to the extent that the disclosure is reasonably required to perform duties or exercise powers under this Act, the regulations or the legal profession rules or under any other Act or regulations made under any other Act; or
 - (b) to the extent that the relevant person is expressly authorised, permitted or required to disclose the information under this Act, the regulations or the legal profession rules or under any other Act or regulations made under any other Act; or
 - (c) with the prior consent in writing of the person to whom the information relates; or
 - (d) to a court or tribunal in the course of legal proceedings; or

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- (e) pursuant to an order of a court or tribunal under any Act or law; or
 - (f) to the extent that the disclosure is reasonably required to enable the enforcement or investigation of the criminal law or a disciplinary matter.
- (3) Subsection (1) extends to the disclosure of information that was disclosed under a corresponding law to a local regulatory authority or a relevant person.
- (4) In this section –

“local regulatory authority” means –

- (a) an authority having functions or powers under this Act; or
- (b) a person or body prescribed, or of a class prescribed, by the regulations as a local regulatory authority;

“personal information” means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about a natural person whose identity is apparent, or can be reasonably ascertained, from the information or opinion, but does not include information or an opinion of a kind prescribed by the regulations;

“relevant person” means –

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- (a) a local regulatory authority; or
- (b) a member or former member of a local regulatory authority; or
- (c) a person currently or previously employed by or acting at the direction of a local regulatory authority.

648. Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements

- (1) This section applies to a requirement under –
 - (a) section 254 (Reporting certain irregularities and suspected irregularities) to give written notice of an irregularity in connection with a trust account, a trust ledger account or trust money; or
 - (b) section 546 (Power of receiver to require documents or information) to give access to documents or information; or
 - (c) section 573 (Provisions relating to requirements under this Part) to produce documents, provide information or otherwise assist in, or co-operate with, an investigation.
- (2) The validity of the requirement is not affected, and a person is not excused from complying with the requirement, on the ground of legal

professional privilege or any other duty of confidence.

649. Duty to report suspected offences

- (1) This section applies if the prescribed authority, Board or Tribunal suspects on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any Act or law (other than a crime).
- (2) The prescribed authority, Board or Tribunal must –
 - (a) report the suspected offence to the Commissioner of Police, or other appropriate prosecuting authority; and
 - (b) make available to the Commissioner or authority the information and documents relevant to the suspected offence in its possession or under its control.
- (3) The obligation under subsection (2)(b) to make available the information and documents continues while the prescribed authority, Board or Tribunal holds the relevant suspicion.

650. Destruction of documents

A law practice or Australian legal practitioner may destroy or dispose of any documents held by the practice or practitioner relating to a matter after a period of 7 years has elapsed since the

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completion of the matter if the practice or practitioner has been unable, despite making reasonable efforts, to obtain instructions from the client to whom the documents relate as to the destruction or disposal of the documents.

651. Change of name

- (1) If a body referred to in this Act changes its name, the Governor, by order, may amend the provisions of this Act in which the name of the body occurs by substituting the body's new name.
- (2) If a body referred to in this Act ceases to exist, the Governor, by order, may amend the provisions of this Act in which the name of the body occurs by substituting the name of a body which the Governor is satisfied substantially represents the interests represented by the first-mentioned body.

652. Approved forms

An authority having a function or power under this Act may approve application forms and other forms for use in connection with that function or power.

653. Prescribed authority to report to Board

- (1) In the performance of any of its functions under this Act, the prescribed authority is to report to the Board any matter of which it becomes aware that may give rise to disciplinary action unless the matter is or has already become the subject of a complaint under Chapter 4.
- (2) The prescribed authority, on receipt of a request made by the Board, is to provide to the Board a report relating to the performance of any of its functions under this Act.
- (3) The prescribed authority, on or before 1 August after the end of each financial year, is to prepare and present to the Board a report on its operations for that financial year.
- (4) The report is to contain such other information as the Board may require.

654. Request for information, &c.

- (1) The Board may request the Law Society to provide it with any records or information requested by the Board.
- (2) The Law Society must comply with the request of the Board.

655. Confidentiality of prescribed authority

- (1) Subject to this section, a member of a prescribed authority or a person employed or engaged on work related to the affairs of the prescribed authority must not divulge information that comes to his or her knowledge by virtue of that office or position except –
- (a) in the course of, and for a purpose related to, carrying out the duties of that office or position; or
 - (b) as may be authorised by or under this Act or any other Act; or
 - (c) in evidence before a court in which proceedings, arising from matters subject to a report of the Board, have been brought.

Penalty: Fine not exceeding 100 penalty units.

- (2) Notwithstanding subsection (1), a person referred to in that subsection may divulge information referred to in that subsection to –
- (a) the Board; and
 - (b) a prescribed authority; and
 - (c) the Minister; and
 - (d) a member of a law enforcement or prosecution authority of any jurisdiction, or of the Commonwealth, relating to a matter referred to the authority by the Minister or reported to the authority by

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the Board or prescribed authority to which the information is relevant; and

- (e) a corresponding authority that has requested the information in connection with actual or possible disciplinary action against an Australian legal practitioner; and
- (f) a person to whom the Board has delegated its power to investigate pursuant to this Act.

656. Protection from liability for prescribed authority

- (1) An action does not lie against a member or employee of a prescribed authority for any act or omission by the member or employee, or by the prescribed authority, in good faith and in the performance or purported performance of functions, or in the exercise or purported exercise of powers, under this Act.
- (2) A liability that would, but for this section, attach to a member or employee of a prescribed authority attaches to the prescribed authority.

657. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Without limiting the generality of subsection (1), the regulations may be made for or with respect to –
 - (a) prescribing fees to be paid for practising certificates; and
 - (b) prescribing levies payable by local legal practitioners.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (5) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.
- (6) The regulations may be made –
 - (a) so as to apply at all times or at a specified time; and
 - (b) so as to require matters affected by the regulations to be –

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- (i) in accordance with specified standards or specified requirements; or
 - (ii) approved by or to the satisfaction of specified persons or bodies or specified classes of persons or bodies; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
- (c) so as to apply, adopt or incorporate any matter contained in any document whatsoever whether –
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time; and
- (d) so as to confer a discretionary authority or impose a duty on specified persons or bodies or specified classes of persons or bodies; and
- (e) so as to provide in specified cases or classes of cases for the exemption of persons or things or classes of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

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658. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Workplace Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

659. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 9 have effect.

660. Repeal and rescission

- (1) The *Legal Profession Act 1993* (No. 90 of 1993) is repealed.
- (2) The *Rules of Practice 1994* are rescinded.

**SCHEDULE 1 – PROVISIONS WITH RESPECT TO
HEARINGS OF BOARD UNDER CHAPTER 4**

Section 453

1. Convening of hearings

- (1) The chairperson of the Board, after giving each member of the Board reasonable notice of a hearing, may convene a hearing of the Board at any time.
- (2) If the chairperson of the Board is absent from duty or otherwise unable to perform the duties of the office, a hearing of the Board may be convened, after reasonable notice of the hearing has been given, by a person authorised by the Board to do so.
- (3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Board.

2. Presiding at hearings

- (1) The chairperson of the Board is to preside at all hearings of the Board at which he or she is present.
- (2) If the chairperson of the Board is not present at a hearing of the Board, a member of the Board elected by the members present is to preside at the hearing.

3. Quorum and voting at hearings

- (1) Four members of the Board, one of whom must be a person referred to in section 590(1)(d) (Membership of Board), constitute a quorum at a duly convened hearing of the Board for the purposes of section 450(a) (Powers of Board after investigation).
- (2) At a hearing of the Board –
 - (a) the member of the Board presiding has a deliberative vote only; and
 - (b) an issue is decided –
 - (i) by a majority of votes of the members present and voting; or
 - (ii) in the negative if there is an equality of votes of the members present and voting.

4. Hearings to be open to public

- (1) Except as provided in subclause (2), a hearing of the Board is to be open to the public.
- (2) The Board may do any or all of the following at a hearing if it considers that there are reasonable grounds for doing so:
 - (a) make an order that the hearing be closed to the public;

- (b) make an order excluding any person from the hearing;
 - (c) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the hearing or prohibiting the reporting or other disclosure of particular information in respect of the hearing.
- (3) Without limiting the range of grounds that may be relevant for the purposes of subclause (2), the Board may exercise its power under that subclause if –
 - (a) it is dealing with privileged information or information that has been communicated to the Board in confidence; or
 - (b) it is dealing with information concerning the personal affairs, finances or business arrangements of an Australian legal practitioner or any other person; or
 - (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of an Australian legal practitioner or any other person.
- (4) If the Board makes an order under subclause (2)(b), the Board may determine who, other than the parties or their representative, may be present before it at any stage of the proceedings.

5. Procedure

- (1) If the Board convenes a hearing, it is to serve a notice in writing on the Australian legal practitioner, requiring the practitioner to attend the hearing, not less than 14 days before the date of the hearing.
- (2) The Board may require a party to a complaint to provide evidence relating to the complaint.
- (3) In respect of a hearing of the Board, the Board may do any or all of the following:
 - (a) summon any person whose evidence, in the opinion of the Board, appears to be material to the hearing;
 - (b) proceed to hold a hearing in the absence of any person who has been duly summoned to appear;
 - (c) take evidence by affidavit;
 - (d) take evidence on oath or affirmation and, for that purpose, administer oaths and affirmations;
 - (e) require any person to produce or to authorise another person to produce any documents or records, or class of documents or records, in that person's possession or subject to that person's control that, in the opinion of the Board, appear to be material to the hearing;

- (f) require a person who appears at the hearing to answer any questions that, in the opinion of the Board, appear to be material to the hearing;
 - (g) adjourn the hearing from place to place and from time to time.
- (4) In respect of a hearing of the Board, the Board is not bound to observe the rules of law governing the admission of evidence but may inform itself of any matter in such manner as it thinks fit.
- (5) Except as provided by this Act, the Board may regulate its own procedure in relation to a hearing.
- (6) A person who fails without reasonable excuse to –
 - (a) attend a hearing of the Board as required by the Board; or
 - (b) take an oath or make an affirmation at a hearing of the Board; or
 - (c) produce or authorise another person to produce any documents when required by the Board to do so; or
 - (d) answer any question when required by the Board to do so; or
 - (e) assist in the course of an investigation of the Board –

is guilty of an offence.

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Penalty: Fine not exceeding 10 penalty units.

- (7) If an Australian legal practitioner contravenes subclause (6), the Board may refer the complaint that is the subject matter of the hearing to the Tribunal by making an application to the Tribunal under section 464.

6. Representation

Each party to a complaint is entitled to be represented by an advocate at a hearing of the Board under Part 4.5.

7. Disclosure of interests

- (1) If a member of the Board has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered, or about to be considered, by the Board, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.
- (2) Unless the Board otherwise determines, a member of the Board who has made a disclosure under subclause (1) must not –
- (a) be present during any deliberation of the Board in relation to the matter; or

- (b) take part in any decision of the Board in relation to the matter.
- (3) For the purpose of the making by the Board of a determination under subclause (2), the member to whom the determination relates must not –
 - (a) be present during any deliberation of the Board for the purpose of making the determination; or
 - (b) take part in making the determination.

8. Report to Minister

The Board, if requested to do so by the Minister, must furnish the Minister with any information the Minister may require in relation to the proceedings of the Board.

**SCHEDULE 2 – PROVISIONS WITH RESPECT TO
MEMBERSHIP OF BOARD**

Section 590(4)

1. Interpretation

In this Schedule –

“member” means a member of the Board,
and includes the chairperson of the
Board.

2. Term of office

- (1) A member is appointed for such term, not exceeding 5 years, as is specified in the member’s instrument of appointment.
- (2) A member may serve any number of terms but may not serve more than 10 years in succession.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

4. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

5. Remuneration of members and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Vacation of office

- (1) A member vacates office if the member –
 - (a) dies; or
 - (b) resigns by written notice addressed to the Minister; or

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- (c) is removed from office under subclause (2) or (3); or
 - (d) ceases to be qualified for office by virtue of subclause (4).
- (2) The Governor may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Board without the permission of the Board; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or offence punishable by imprisonment for a term of 3 months or longer; or
 - (d) fails, without reasonable excuse, to comply with the member's obligation under clause 7 (Disclosure of interests) of Schedule 1 or 3; or
 - (e) is convicted of an offence against this Act.
- (3) The Governor may remove a member from office if satisfied that the member is unable to

perform, or is not performing adequately or competently, the duties of the office.

- (4) A member referred to in section 590(1) (Membership of Board) vacates office if he or she ceases to be eligible for appointment.

7. Chairperson may resign but remain a member

The chairperson of the Board may resign from that office but remain a member.

8. Filling of casual vacancies

If the office of –

- (a) a member referred to in section 590(1)(a) becomes vacant, the Minister is to appoint a local legal practitioner nominated by the Law Society to the vacant office for the remainder of that member's term of office; or
- (b) a member referred to in section 590(1)(b) becomes vacant, the Minister is to appoint a local legal practitioner nominated by the Tasmanian Independent Bar and Tasmanian Bar Association to the vacant office for the remainder of that member's term of office; or

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- (c) a member referred to in section 590(1)(c) becomes vacant, the Minister may appoint a local legal practitioner to the vacant office for the remainder of that member's term of office; or
- (d) a member referred to in section 590(1)(d) becomes vacant, the Minister may appoint a lay person who has not completed the degree of Bachelor of Laws or equivalent, either in this State or in another jurisdiction, whether or not combined with any other degree, to the vacant office for the remainder of that member's term of office.

9. Validity of proceedings, &c.

- (1) An act or proceeding of the Board or of a person acting under any direction of the Board is not invalid by reason only that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or was incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or was capable of being, a member, and as if the Board had been fully constituted.

10. Presumptions

In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) the appointment of any member.

**SCHEDULE 3 – PROVISIONS WITH RESPECT TO
MEETINGS OF BOARD**

Section 590(5)

1. Interpretation

In this Schedule –

“meeting” does not include a hearing under
Chapter 4.

2. Convening of meetings

- (1) The chairperson of the Board, after giving each member of the Board reasonable notice of a meeting –
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting when requested to do so by 2 or more other members.
- (2) If the chairperson of the Board is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given, by –
 - (a) two or more members of the Board; or
 - (b) a person authorised by the Board to do so.

- (3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Board.

3. Presiding at meetings

- (1) The chairperson of the Board is to preside at all meetings of the Board at which he or she is present.
- (2) If the chairperson of the Board is not present at a meeting of the Board, a member of the Board elected by the members present at the meeting is to preside.

4. Quorum and voting at meetings

- (1) Four members of the Board, one of whom must be a person referred to in section 590(1)(d) (Membership of Board), constitute a quorum at a duly convened meeting of the Board.
- (2) Notwithstanding subclause (1), three members of the Board, two of whom must be persons referred to in section 590(1)(a), (b) or (c) and one of whom must be a person referred to in section 590(1)(d), constitute a quorum at a duly convened meeting of the Board for the purpose of dealing with a matter under section 456 (Procedure for less serious complaint).
- (3) A meeting of the Board under subclause (1) at which a quorum is present is competent to

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transact any business of the Board for which the meeting is convened.

- (4) A meeting of the Board under subclause (2) at which a quorum is present is competent to transact any business of the Board for which the meeting is convened.
- (5) At a meeting of the Board –
 - (a) the member of the Board presiding has a deliberative vote only; and
 - (b) a question is decided by a majority of votes of the members present and voting; and
 - (c) if there is an equality of votes of the members present and voting, the matter stands adjourned until the next meeting.

5. Conduct of meetings

- (1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board may permit members of the Board to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or

(c) any other means of communication approved by the Board.

- (3) A member of the Board who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

6. Minutes

The Board is to keep accurate minutes of its meetings.

7. Disclosure of interests

- (1) If a member of the Board has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered, or about to be considered, by the Board, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.
- (2) Unless the Board otherwise determines, a member of the Board who has made a disclosure under subclause (1) in relation to a matter must not –

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- (a) be present during any deliberation of the Board in relation to the matter; or
 - (b) take part in any decision of the Board in relation to the matter.
- (3) For the purpose of the making by the Board of a determination under subclause (2), the member to whom the determination relates must not –
 - (a) be present during any deliberation of the Board for the purpose of making the determination; or
 - (b) take part in making the determination.

8. Meetings to be open to public

- (1) Except as provided in subclauses (2), (3) and (4), a meeting of the Board is to be open to the public.
- (2) The Board may determine that a meeting convened in relation to, or part of a meeting that is to deal with, the investigation of a complaint is not to be open to the public.
- (3) A meeting of the Board convened for the purposes of section 456 (Procedure for less serious complaint) is not to be open to the public.
- (4) The Board may do any or all of the following at a meeting if it considers that there are reasonable grounds to do so:

- (a) make an order excluding any person from the meeting;
 - (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the meeting or prohibiting the reporting or other disclosure of particular information in respect of the meeting.
- (5) Without limiting the range of grounds that may be relevant for the purposes of subclause (4), the Board may exercise its power under that subclause if –
 - (a) it is dealing with privileged information or information that has been communicated to the Board in confidence; or
 - (b) it is dealing with information concerning the personal affairs, finances or business arrangements of an Australian legal practitioner or any other person; or
 - (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of an Australian legal practitioner or any other person.

9. Report to Minister

The Board, if requested to do so by the Minister, must furnish the Minister with any information

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the Minister may require in relation to the
proceedings of the Board.

10. General procedure

Except as provided by this Act, the Board may
regulate its own proceedings.

11. Presumptions

In any proceeding by or against the Board,
unless evidence is given to the contrary, proof is
not required of –

- (a) any resolution of the Board; and
- (b) the presence of a quorum at any meeting
of the Board.

**SCHEDULE 4 – PROVISIONS WITH RESPECT TO
MEMBERS OF BOARD OF LEGAL EDUCATION**

Section 605(4)

1. Interpretation

In this Schedule –

“deputy” means a person appointed as a deputy under clause 6;

“member” means a member of the Board of Legal Education.

2. Term of office

A member is to be appointed for such period, not exceeding 3 years, as is specified in the member’s instrument of appointment and may be reappointed.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of member or deputy; or
- (b) accepting any remuneration payable to a member or deputy.

4. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member or deputy in his or her capacity as a member or deputy.
- (2) A person may hold the office of member or deputy in conjunction with State Service employment.

5. Remuneration of members

- (1) A member or deputy is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member or deputy who is a State Service employee or State Service officer is not entitled to remuneration or allowances under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member or deputy holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's or deputy's instrument of appointment.

6. Appointment of deputy

- (1) A member, with the approval of the Minister, may appoint another person to be the deputy of that member.

- (2) A deputy appointed under subclause (1) holds office for such period as the Minister may determine.
- (3) All things done or omitted to be done by a deputy while acting in the office of a member are as valid and have the same consequences as if they had been done or omitted to be done by that member.

7. Vacation of office

- (1) A member may resign from office by written notice addressed to the Minister.
- (2) A member vacates office if he or she –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under subclause (3), (4) or (5).
- (3) The Minister may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Board of Legal Education without the permission of the Minister; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's

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remuneration or estate for their benefit;
or

(c) is convicted, in Tasmania or elsewhere,
of a crime or offence punishable by
imprisonment for a term of 12 months or
longer; or

(d) is convicted of an offence against this
Act.

(4) The Minister may remove a member or deputy
from office if the Minister is satisfied that the
member or deputy is unable to perform
adequately or competently the duties of office.

(5) The Minister may remove a member from office
if –

(a) the Minister is satisfied, having regard to
the information supplied by the person
who, or the body which, nominated that
member, that the member is no longer
qualified to be a member of the Board of
Legal Education; or

(b) that person or body recommends the
removal of that member.

(6) The appointment of any deputy of a member
terminates if that member vacates office.

8. Validity of proceedings

(1) An act or proceeding of the Board of Legal
Education or of a person acting under the

direction of the Board of Legal Education is not invalid by reason only that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Board of Legal Education.

- (2) An act or proceeding of the Board of Legal Education or of a person acting under the direction of the Board of Legal Education is valid even if –
- (a) the appointment of a member was defective; or
 - (b) a person appointed as a member was disqualified from acting as, or incapable of being, such a member.

9. Filling of casual vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

10. Presumptions

In any proceedings by or against the Board of Legal Education, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board of Legal Education; or

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- (b) the appointment of any member or deputy.

**SCHEDULE 5 – PROVISIONS WITH RESPECT TO
MEETINGS OF BOARD OF LEGAL EDUCATION**

Section 605(5)

1. Interpretation

In this Schedule –

“member” means a member of the Board of Legal Education or the deputy of a member of the Board of Legal Education.

2. Convening of meetings of Board

A meeting of the Board of Legal Education may be convened by the chairperson of the Board of Legal Education or by any 2 members.

3. Procedure at meetings

- (1) The quorum at any duly convened meeting of the Board of Legal Education is 4 members.
- (2) Any duly convened meeting of the Board of Legal Education at which a quorum is present is competent to transact any business of the Board of Legal Education.
- (3) Questions arising at a meeting of the Board of Legal Education are to be determined by a majority of votes of the members present and voting.

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4. Chairperson

- (1) The chairperson of the Board of Legal Education or his or her deputy is to preside at all meetings of the Board of Legal Education.
- (2) If the chairperson of the Board of Legal Education or his or her deputy is not present at a meeting of the Board of Legal Education, a member elected by the members present is to preside at that meeting.
- (3) The person presiding at a meeting of the Board of Legal Education has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

5. Conduct of meetings

- (1) Subject to this Act, the Board of Legal Education may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board of Legal Education may permit members of the Board of Legal Education to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Board of Legal Education.

- (3) A member of the Board of Legal Education who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Board of Legal Education may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

6. Minutes

The Board of Legal Education is to cause accurate minutes to be kept of its meetings and must submit to the Minister a copy of the minutes of each meeting within 14 days after the date on which the meeting is held.

7. General procedure

Except as provided by this Act, the Board of Legal Education may regulate its own proceedings.

8. Presumptions

In any proceeding by or against the Board of Legal Education, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Board of Legal Education; and

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- (b) the presence of a quorum at any meeting of the Board of Legal Education.

**SCHEDULE 6 – PROVISIONS WITH RESPECT TO
MEMBERSHIP OF TRIBUNAL**

Section 610(4)

1. Interpretation

In this Schedule –

“member” means a member of the Tribunal
and includes the chairperson or deputy
chairperson of the Tribunal.

2. Term of office

A member is to be appointed for such term, not
exceeding 3 years, as is specified in the
instrument of appointment and is eligible for
reappointment.

3. Holding other office

The holder of an office who is required under
any Act to devote the whole of his or her time to
the duties of the office is not disqualified from –

- (a) holding that office and also the office of
a member; or
- (b) accepting and retaining any remuneration
payable to a member.

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4. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

5. Remuneration of members

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Vacation of office

- (1) A member vacates office if he or she –
 - (a) dies; or
 - (b) resigns by written notice addressed to the judges; or

- (c) is removed from office under subclause (2) or (3); or
 - (d) ceases to be qualified for office by virtue of subclause (4).
- (2) The judges may only remove a member from office if the member –
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (b) is convicted, in Tasmania or elsewhere, of a crime or offence punishable by imprisonment for a term of 12 months or longer; or
 - (c) fails, without reasonable excuse, to comply with the member's obligations under clause 8; or
 - (d) is convicted of an offence against this Act.
- (3) The judges may remove a member from office if they are satisfied that the member is unable to perform adequately or competently the duties of office.
- (4) A member referred to in section 610(2)(a) (Disciplinary Tribunal) vacates office if he or she ceases to be eligible for appointment.

7. Filling of casual vacancies

If the office of a member becomes vacant, the judges may appoint a person to the vacant office for the remainder of that member's term of office.

8. Disclosure of interests

- (1) If a member has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being heard, or about to be heard, by the Tribunal, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Tribunal.
- (2) Unless the Tribunal otherwise determines, a member who has made a disclosure under subclause (1) in relation to a matter must not –
 - (a) be present during any deliberation of the Tribunal in relation to the matter; or
 - (b) take part in any decision of the Tribunal in relation to the matter.
- (3) For the purposes of the making by the Tribunal of a determination under subclause (2), the member to whom the determination relates must not –
 - (a) be present during any deliberation of the Tribunal for the purpose of making the determination; or

- (b) take part in making the determination.

9. Validity of proceedings

- (1) An act or proceeding of the Tribunal or of a person acting under the direction of the Tribunal is not invalid by reason only that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Tribunal.
- (2) An act or proceeding of the Tribunal or of a person acting under the direction of the Tribunal is valid even if –
 - (a) the appointment of a member of the Tribunal was defective; or
 - (b) a person appointed as a member of the Tribunal was disqualified from acting as, or incapable of being, such a member.

10. Presumptions

In any proceeding by or against the Tribunal, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Tribunal; or
- (b) the appointment of any member.

**SCHEDULE 7 – PROVISIONS WITH RESPECT TO
MEMBERSHIP OF TRUST**

Section 634(4)

1. Interpretation

In this Schedule –

“member” means a member of the Trust and includes the chairperson of the Trust;

“substitute member” means a person appointed under clause 6 to act as a substitute for a member.

2. Term of office

A member is to be appointed for such term, not exceeding 3 years, as is specified in the instrument of appointment and is eligible for reappointment.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office, is not disqualified from –

- (a) holding that office and also the office of a member; or

- (b) accepting any remuneration payable to a member.

4. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member or substitute member in his or her capacity as a member.
- (2) A person may hold the office of member or substitute member in conjunction with State Service employment.

5. Remuneration of members and substitute members and conditions of appointment

- (1) A member or substitute member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member or substitute member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member or substitute member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's or substituted member's instrument of appointment.

6. Appointment of substitute

- (1) The members present at a meeting of the Trust may elect a member to act as substitute in the office of the chairperson of the Trust or appoint any person to act as substitute in the office of a member other than the chairperson of the Trust while the chairperson of the Trust or that member is absent from office through illness or any other cause.
- (2) For the purposes of subclause (1), a member, other than the chairperson of the Trust, is absent from office if the member is acting in the office of the chairperson of the Trust pursuant to subclause (1).
- (3) For the purposes of subclause (1), a member is absent from office if there is a vacancy in that office which has not been filled in accordance with clause 8.
- (4) Any thing done or omitted to be done by a substitute member while acting in the office of a member is as valid, and has the same consequences, as if it had been done or omitted to be done by that member.

7. Vacation of office

- (1) A member vacates office if the member –
 - (a) dies; or
 - (b) resigns by written notice addressed to the Governor; or

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-
- (c) is removed from office under subclause (2) or (3).
- (2) The Governor may remove a member from office if the member –
- (a) is absent from 3 consecutive meetings of the Trust without the permission of the Trust; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or offence punishable by imprisonment for a term of 3 months or longer; or
 - (d) fails, without reasonable excuse, to comply with the member's obligation under clause 7 (Disclosure of interests) of Schedule 8; or
 - (e) is convicted of an offence against this Act.
- (3) The Governor may remove a member or substitute member from office if satisfied that the member or substitute member is unable to perform adequately or competently the duties of office.

8. Filling of casual vacancy

If the office of –

- (a) a member referred to in section 634(1)(a) (Membership of Trust) becomes vacant, the Minister may appoint a person on the nomination of the Law Society to the vacant office for the remainder of that member's term of office; or
- (b) a member referred to in section 634(1)(b) becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

9. Validity of proceedings

- (1) An act or proceeding of the Trust or of a person acting under the direction of the Trust is not invalid by reason only that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member.
- (2) An act or proceeding of the Trust or of a person acting under the direction of the Trust is valid and has effect, even if –
 - (a) the appointment of a member or substitute member of the Trust was defective; or
 - (b) a person appointed as a member or substitute member of the Trust was

disqualified from acting as, or incapable
of being, such a member.

10. Presumptions

In any proceedings by or against the Trust,
unless evidence is given to the contrary, proof is
not required of –

- (a) the constitution of the Trust; or
- (b) the appointment of any member or
substitute member.

**SCHEDULE 8 – PROVISIONS WITH RESPECT TO
MEETINGS OF TRUST**

Section 634(5)

1. Interpretation

In this Schedule, other than clause 2 –

“member” means a member of the Trust or a
substitute member of the Trust.

2. Convening of meetings

A meeting of the Trust may be convened by the
chairperson of the Trust or any two members.

3. Presiding at meetings

- (1) The chairperson of the Trust is to preside at all
meetings of the Trust at which he or she is
present.
- (2) If the chairperson of the Trust is not present at a
meeting of the Trust, a member elected at that
meeting to act as substitute in the office of the
chairperson of the Trust is to preside.

4. Quorum and voting at meetings

- (1) Two members of the Trust constitute a quorum
at a duly convened meeting of the Trust.

- (2) A meeting of the Trust at which a quorum is present is competent to transact any business of the Trust.
- (3) At a meeting of the Trust –
 - (a) the member of the Trust presiding has a deliberative vote; and
 - (b) a question is decided by a majority of votes of the members present and voting; and
 - (c) if there is an equality of votes of the members present and voting, the member of the Trust presiding also has a casting vote.

5. Conduct of meetings

- (1) Subject to this Act, the Trust may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Trust may permit members of the Trust to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Trust.

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- (3) A member of the Trust who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Trust may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

6. Minutes

The Trust is to keep accurate minutes of its meetings.

7. Disclosure of interests

- (1) If a member of the Trust has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered, or about to be considered, by the Trust, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Trust.
- (2) Unless the Trust otherwise determines, a member of the Trust who has made a disclosure under subclause (1) in relation to a matter must not –
 - (a) be present during any deliberation of the Trust in relation to the matter; or

- (b) take part in any decision of the Trust in relation to the matter.
- (3) For the purpose of the making by the Trust of a determination under subclause (2), the member to whom the determination relates must not –
 - (a) be present during any deliberation of the Trust for the purpose of making the determination; or
 - (b) take part in making the determination.

8. General procedure

Except as provided by this Act, the Trust may regulate its own proceedings.

9. Presumptions

In any proceeding by or against the Trust, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Trust; and
- (b) the presence of a quorum at any meeting of the Trust.

**SCHEDULE 9 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 659

1. Interpretation

In this Schedule –

“old Act” means the *Legal Profession Act 1993*.

2. Roll of legal practitioners

The Roll of the Legal Practitioners kept by the Supreme Court and in existence immediately before the commencement of Part 2.2 (Admission of local lawyers) is taken to be, or to form part of, the roll of local lawyers under section 35 (Roll of local lawyers).

3. Admission

A person –

- (a) who was admitted by the Supreme Court as a legal practitioner before the commencement of Part 2.2; and
- (b) whose enrolment by the Supreme Court was current or pending immediately before the commencement of Part 2.2 –

is taken to have been admitted by the Supreme Court as a lawyer under this Act on the day on which the person was admitted as a legal practitioner.

4. Admission as barrister

A person admitted as a barrister under section 28 of the old Act is taken to be admitted as a lawyer under this Act on the day on which the person was admitted as a barrister, subject to the condition that the person may practise solely as a barrister.

5. Applications for admission

- (1) An application for admission as a legal practitioner or barrister under the old Act that was pending immediately before the commencement of Part 2.2 of this Act is taken to be an application for admission as a lawyer under Part 2.2 of this Act.
- (2) The applicant may be admitted as a lawyer under this Act if the applicant could have been admitted as a legal practitioner or barrister under the old Act if Part 2.2 of this Act had not been enacted, and the admission requirements of this Act are taken to have been satisfied in relation to the applicant.

6. Practising certificates

- (1) A practising certificate in force under the old Act immediately before the commencement of Part 2.3 (Legal practice by Australian legal practitioners) of this Act is, on that commencement, in force under this Act.
- (2) A practising certificate in force under this Act pursuant to subclause (1) ceases to have effect on and from 30 June in the year immediately following the commencement of Part 2.3.
- (3) An application for a practising certificate under the old Act that was pending immediately before the commencement of Part 2.3 of this Act is taken to be an application for a local practising certificate under Part 2.3 of this Act.

7. Foreign lawyers

An approval to practise as a foreign lawyer under the old Act that is in force immediately before the commencement of Part 2.6 of this Act is taken to be registration under that Part.

8. Incorporated legal practices

- (1) An incorporated legal practice that was, immediately before the commencement of Part 2.5 (Incorporated legal practices and multi-disciplinary partnerships), a legal practitioner corporation within the meaning of the old Act is taken to have complied with section 115(1)

(Notice of intention to start providing legal services) of this Act.

- (2) Section 123 (Disclosure obligations) does not apply in respect of any matter for which services are first provided before the commencement of Part 2.5.

9. Members of Law Society

A person who, immediately before the commencement of section 619 (Membership of Law Society), was a member of the Law Society under the old Act is, on that commencement, a member of the Law Society under this Act.

10. Members of Council

A person who, before the commencement of section 621 (The Council), was elected as a member of the Council under the old Act holds office, on that commencement, as a member of the Council as if elected under the by-laws under section 627 (Power of Council to make by-laws) until the period for which the member was elected under the old Act expires.

11. Delegations of powers of Council

A power, the exercise of which has, before the commencement of Part 7.5 (The Council of the Law Society), been delegated to the Council

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under the old Act is, on that commencement, to be treated for all purposes as if it had been delegated under this Act.

12. Executive Director of Law Society

The person who, immediately before the commencement of Part 7.5, held office as Executive Director of the Law Society under the old Act holds office, on that commencement, as Executive Director of the Law Society as if appointed under this Act.

13. Employees of Law Society

A person who, immediately before the commencement of Part 7.5, was employed by the Council under the old Act is, on that commencement, taken to have been appointed and employed under this Act.

14. Members of the Board of Legal Education

A person who, immediately before the commencement of Part 7.2 (Board of Legal Education), was a member of the Board of Legal Education under the old Act holds office, on that commencement, as a member of the Board of Legal Education, as if appointed under this Act, until the period for which that member was nominated under the old Act expires.

15. Secretary to Board of Legal Education

The person who, immediately before the commencement of Part 7.2, held office as secretary to the Board of Legal Education under the old Act holds office, on that commencement, as secretary to the Board of Legal Education as if appointed under this Act.

16. Solicitors' Trust

A person who, immediately before the commencement of Part 7.6 (Solicitors' Trust), was a member of the Solicitors' Trust established under the old Act holds office, on that commencement, as a member of the Trust as if appointed under this Act until the period for which the member was appointed under the old Act expires.

17. Employees of Solicitors' Trust

A person who, immediately before the commencement of Part 7.6, was employed by the Solicitors' Trust established under the old Act is, on that commencement, taken to have been appointed and employed under this Act.

18. Client information and legal costs

- (1) Subject to subclause (2), Part 3.3 (Costs disclosure and assessment) applies to a matter if

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the client first instructs the law practice on or after the commencement of that Part, and Part 11 of the old Act continues to apply to a matter if the client first instructed the law practice in the matter before the commencement of Part 3.3 of this Act.

- (2) Part 3.3 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 Part, in relation to a matter in which the other law practice was retained by the client before the commencement of that Part, and in that case Part 11 of the old Act continues to apply.

19. Taxation of costs

Any taxation of costs commenced under Part 11 of the old Act before the commencement of Part 3.3 of this Act but not completed by that commencement may be completed under Part 11 of the old Act as if it had not been repealed.

20. Professional indemnity insurance

Professional indemnity insurance maintained by a legal practitioner under the old Act and in force immediately before the commencement of Part 3.4 (Professional Indemnity Insurance) of this Act is taken to be professional indemnity insurance under that Part.

21. Trust money and trust accounts

An offence is not committed under the provisions of Part 3.2 (Trust money and trust accounts) or of the regulations made for the purposes of that Part for anything done or omitted to be done in good faith during the period of 12 months after the commencement of this clause, if –

- (a) it was done for the purpose of attempting to comply with any of those provisions; or
- (b) it was done in substantial conformity with the requirements of the old Act or the *Rules of Practice 1994* made under the old Act, had that Act and the *Rules of Practice 1994* continued in force.

22. Deficiencies in trust accounts

Section 252 (Dealing with trust money: legal costs and unclaimed money) and section 253 (Deficiency in trust account) apply to a deficiency in a trust account or a failure to pay or deliver trust money whether the deficiency or failure to pay or deliver relates to money received before, on or after the commencement of Part 3.2 (Trust money and trust accounts).

23. Defaults

- (1) Division 5 of Part 9 of the old Act continues to apply to a claim made against the Guarantee Fund under that Division and finalised before the commencement of Part 3.5 (Solicitors' Guarantee Fund) of this Act.
- (2) Part 3.5 of this Act applies to a default occurring before the commencement of Part 3.5 if a claim had not been made or finalised under Division 5 of Part 9 of the old Act in respect of the default before that commencement.

24. Costs incurred by liquidator

The Trust may continue to apply the funds of the Guarantee Fund in payment of any remuneration payable to, and costs incurred by, a liquidator appointed under section 601EE of the *Corporations Act 2001* of the Commonwealth to wind up an unregistered managed investment scheme operated by a law practice on the application of the Australian Securities and Investments Commission or a member of that scheme –

- (a) if the expenditure is reasonable; or
- (b) if there is a reasonable prospect of success in any recovery action.

25. Complaints

Any complaint made under Part 8 of the old Act as in force immediately before the commencement of Chapter 4 (Complaints and Discipline) of this Act –

- (a) that has not been dismissed or finally determined by the Council before that commencement; or
- (b) in relation to which a hearing has not begun under Part 8 of the old Act as in force immediately before that commencement; or
- (c) in relation to which an application has not been made under section 72 of the old Act as in force immediately before that commencement –

is to be dealt with by the Board as if it were a complaint made to the Board under Chapter 4 of this Act.

26. New complaints about old conduct

- (1) This clause applies to conduct that –
 - (a) happened or is alleged to have happened before the commencement of Chapter 4; and
 - (b) could have been, but was not, the subject of a complaint under the old Act.

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- (2) A complaint about the conduct may be made and dealt with under Chapter 4 even if the conduct could not be the subject of a complaint under this Act if it had happened after the commencement of that Chapter.
- (3) Chapter 4 applies (with the necessary modifications) in relation to the conduct.
- (4) However, disciplinary action may not be taken against a person under this Act in relation to the conduct if it is more onerous than the disciplinary action that could have been taken against the person under the old Act in relation to the conduct.

27. Hearing of complaints

- (1) If, immediately before the commencement of Chapter 4 (Complaints and Discipline) of this Act, a hearing had begun into a complaint made under Part 8 of the old Act as in force immediately before that commencement, but had not been concluded, the Council may –
 - (a) terminate the hearing; or
 - (b) continue and conclude the hearing as if Chapter 4 of this Act had not been enacted.
- (2) In making a decision under subclause (1), the Council may have regard to such matters as it considers appropriate, but must have particular regard to –

- (a) how far the hearing had progressed by the commencement of Chapter 4; and
 - (b) fairness to the person who is the subject of the hearing; and
 - (c) cost and inconvenience to any person; and
 - (d) any submissions made to the Board by or on behalf of the person who is the subject of the hearing.
- (3) If a hearing is terminated under subclause (1)(a), the complaint is to be dealt with as if it were a complaint made to the Board under Chapter 4.
- (4) The Council, upon the conclusion of the hearing continued under subclause (1)(b), may take such action as it considers appropriate as if Chapter 4 had not been enacted.

28. Application to Tribunal

- (1) If, before the commencement of Chapter 4 (Complaints and Discipline) of this Act, an application was made under section 72 of the old Act as in force immediately before that commencement, and a hearing in relation to the application had not commenced at that commencement, the application is taken on that commencement to be made under section 464 (Applications to Tribunal) of this Act.
- (2) If, immediately before the commencement of Chapter 4 of this Act, a hearing had begun into

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an application made under section 72 of the old Act as in force immediately before that commencement, but had not been concluded, the Tribunal, as constituted under the old Act as in force immediately before that commencement, may –

- (a) terminate the hearing; or
 - (b) continue and conclude the hearing as if Chapter 4 of this Act had not been enacted.
- (3) If a decision is made to terminate the hearing under subclause (2)(a), the application is to be dealt with as if it were an application made to the Tribunal under section 464 of this Act.
- (4) In making a decision under subclause (2), the Tribunal may have regard to such matters as it considers appropriate, but must have particular regard to –
 - (a) how far the hearing had progressed by the commencement of Chapter 4 of this Act; and
 - (b) fairness to the person who is the subject of the hearing; and
 - (c) cost and inconvenience to the Tribunal, the person who is the subject of the hearing or other persons; and
 - (d) any submissions made to the Tribunal by or on behalf of the person who is the subject of the hearing.

- (5) In a case to which subclause (2)(b) applies, the Tribunal, on the conclusion of the hearing, may take such action as it considers appropriate having regard to the findings of the hearing, as if Chapter 4 of this Act had not been enacted.

29. Application for rehearing

- (1) If, before the commencement of Chapter 4 (Complaints and Discipline) of this Act, an application was made under section 63 of the old Act, as in force immediately before that commencement, and a hearing in relation to the application had not commenced at that commencement, the application is taken on that commencement to be made under section 458 (Application against determinations) of this Act.
- (2) If, immediately before the commencement of Chapter 4 of this Act, a hearing had commenced into an application made under section 63(1)(a) of the old Act, as in force immediately before that commencement, but had not been concluded, the Tribunal, as constituted under the old Act as in force immediately before that commencement, may –
- (a) terminate the hearing; or
 - (b) continue and conclude the hearing as if Chapter 4 of this Act had not been enacted.
- (3) If a decision is made to terminate the hearing under subclause (2)(a), the application is to be

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dealt with as if it were an application made to the Tribunal, as constituted under this Act, under section 464 of this Act.

- (4) In making a decision under subclause (2), the Tribunal may have regard to such matters as it considers appropriate, but must have particular regard to –
 - (a) how far the hearing had progressed by the commencement of Chapter 4 of this Act; and
 - (b) fairness to the person who is the subject of the hearing; and
 - (c) cost and inconvenience to the Tribunal, the person who is the subject of the hearing or other persons; and
 - (d) any submissions made to the Tribunal by or on behalf of the person who is the subject of the hearing.
- (5) In a case to which subclause (2)(b) applies, the Tribunal, on the conclusion of the hearing, may take such action as it considers appropriate, as if Chapter 4 of this Act had not been enacted.
- (6) If, immediately before the commencement of Chapter 4 of this Act, a hearing had begun in relation to an application made under section 63(1)(b) of the old Act, as in force immediately before that commencement, but had not been concluded, the Supreme Court is to continue and conclude the hearing and take such action as it

considers appropriate, as if Chapter 4 of this Act had not been enacted.

30. Orders

- (1) An order of the Tribunal made under section 76 of the old Act as in force immediately before the commencement of Chapter 4 (Complaints and Discipline) of this Act is taken to have been made under Part 4.7 (Proceedings in Disciplinary Tribunal) of this Act.
- (2) An action taken under section 79(2) of the old Act as in force immediately before the commencement of Chapter 4 of this Act is taken to have been taken under section 458 (Application against determinations) of this Act.
- (3) An order made under section 81 of the old Act as in force immediately before the commencement of Chapter 4 of this Act is taken to have been made under section 487 (Hearing and determination of application) of this Act.
- (4) An order made under section 89 of the old Act as in force immediately before the commencement of Chapter 4 of this Act is taken to have been made under section 488 (Orders pending determination of complaint) of this Act.

31. Determination under section 61 of old Act

- (1) A determination made by the Council under section 61(2) of the old Act, as in force

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immediately before the commencement of Chapter 4 (Complaints and Discipline) of this Act, is taken to have been made by the Board under section 454 (Determination of Board) of this Act.

- (2) A determination made by the Council under section 65B(2) of the old Act as in force immediately before the commencement of Chapter 4 of this Act is taken to have been made by the Board under section 456 (Procedure for less serious complaint) of this Act.

32. Determinations imposing fines

Where a fine imposed on a person pursuant to Part 8 of the old Act as in force immediately before the commencement of Chapter 4 (Complaints and Discipline) of this Act had not been paid, or paid in full, immediately before that commencement, that fine, or the unpaid balance of that fine, is due and payable to the Board, and may be recovered as a debt due to the Board in a court of competent jurisdiction.

33. Appeals against determination

Where, before the commencement of Chapter 4, an appeal was made in accordance with section 63 of the old Act, as in force immediately before that commencement, but has not been determined, that appeal is taken to be made

under section 458 (Application against determinations) of this Act.

34. Appeals against orders of Tribunal

Where, before the commencement of Chapter 4 (Complaints and Discipline), an appeal was made in accordance with section 78 of the old Act, as in force immediately before that commencement, but has not been determined, that appeal is taken to be made under section 484 (Appeals against orders of Tribunal) of this Act.

35. Undertakings

- (1) The requirement of a practitioner to give an undertaking to the Council or Tribunal in accordance with a determination or order under Part 8 of the old Act as in force immediately before the commencement of Chapter 4 (Complaints and Discipline) of this Act that has not been complied with immediately before that commencement is taken to be a requirement to give an undertaking to the Board or Tribunal under that Chapter.
- (2) An undertaking given to the Council or Tribunal by a practitioner under Part 8 of the old Act as in force immediately before the commencement of Chapter 4 of this Act and subsisting immediately before that commencement is taken to be an undertaking given to the Board or Tribunal under that Chapter, and any breach of the

undertaking may be dealt with and have consequences under that Chapter in all respects in the same way as a failure to honour an undertaking given to the Board or Tribunal after that commencement.

36. Legal Ombudsman

- (1) Any complaint lodged under section 85 of the old Act with the Legal Ombudsman for monitoring, investigation or examination and not finally determined before the commencement of Chapter 4 (Complaints and discipline) is to be referred to the Board for investigation under section 440 (Complaints to be investigated) of this Act.
- (2) The Legal Ombudsman is to forward any documents in his or her possession relating to his or her functions under the old Act to the Board within 30 days of the commencement of Chapter 4.

37. Managers

Chapter 5 (External Intervention) applies in relation to a manager appointed under Division 6 of Part 9 of the old Act before the commencement of Chapter 5 of this Act as if the manager had been appointed under that Chapter.

38. References to legal practitioner

A reference in any Act or statutory rule made before the commencement of Part 1.2 (Interpretation) or in any document to –

- (a) a legal practitioner, is to be read as a reference to an Australian legal practitioner within the meaning of this Act; and
- (b) a practitioner, is to be read as a reference to an Australian legal practitioner within the meaning of this Act; and
- (c) a barrister, is to be read as a reference to a barrister within the meaning of this Act; and
- (d) a solicitor, or a solicitor and barrister, is to be read as a reference to an Australian legal practitioner within the meaning of this Act –

except where the Act, statutory rule or document otherwise provides or the context or subject matter indicates that the term is to have a different meaning.

39. General savings and transitional provision

- (1) If any thing of a kind required or permitted to be done under a provision of this Act was done under a corresponding provision of the old Act and still had effect immediately before the commencement of section 4 of this Act, the

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thing continues in effect on and after that commencement as if –

- (a) this Act had been in force when it was done; and
 - (b) it had been done under this Act.
- (2) If subclause (1) applies in relation to the signing, lodgment, issue or publication of a written instrument, a reference in the instrument to a provision of the old Act must, for that subclause, be read as a reference to the corresponding provision of this Act.
- (3) Without limiting subclauses (1) and (2), if a provision of the old Act that corresponds to a provision of this Act would, but for its repeal, have applied in relation to any thing done or being done or in existence before the commencement of this Schedule, the provision of this Act applies (with the necessary modifications) in relation to the thing.
- (4) This clause does not have effect to the extent that –
 - (a) other provision is made by this Schedule; or
 - (b) the context or subject matter otherwise indicates or requires.
- (5) In addition, this clause has effect subject to any transitional regulations that may be made under clause 41.

40. Continued application of old Act

If a provision of the old Act continues to apply under this Schedule, the following provisions also continue to apply in relation to the provision:

- (a) other provisions of the old Act necessary to give effect to the continued provision;
- (b) subordinate legislation made under the old Act for the continued provision as in force immediately before the commencement of section 4 of this Act.

41. Transitional regulations

- (1) The regulations may make provision (a “**transitional regulation**”) in respect of a matter for which –
 - (a) it is necessary to make provision to allow or facilitate the doing of any thing to achieve the transition from the operation of the old Act to this Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a date not earlier than the date of the commencement of this Schedule.
- (3) Regulations made under subclause (1), if the regulations so provide, are to have effect notwithstanding the provisions of this Schedule.